THE

AMERICAN

ANNUAL REGISTER;

FOR THE YEARS 1827-8-9,

OR,

THE FIFTY-SECOND AND FIFTY-THIRD YEARS OF AMERICAN INDEPENDENCE.

SECOND PART.

NEW-YORK:

E. & G. W. BLUNT.

LONDON:
BALDWIN & CRADOCK.

1830.

TABLE OF CONTENTS.

PUBLIC DOCUMENTS.

	Page
Message of the President of the United States to the 20th Congress, 1st session,	1
Message of do. second session,	15
Instructions to the Envoys of the United States to the Congress of Panama,	29
Correspondence concerning the Northeastern Boundary of the United States,	56
Inundated lands of the Mississippi,	92
Treaty between the United States and Sweden,	102
Convention between the United States and Great Britain, relative to the North-eastern Boundary,	109
Convention between same powers respecting the Northwestern Coast,	113
do do do extending Commercial Treaty,	114
Convention between the United States and the Hanseatic Republics,	115
Speech to the Legislature of New-Brunswick, 1828,	120
do do do Nova Scotia, 1828,	123
Opening of the Parliament of Lower Canada, 1828,	124
Governor's Message to do do 1829,	125
Resolutions of the House in answer to foregoing Message,	129
Speech to the Legislature of Upper Canada,	132
General Orders respecting Military Settlers,	133
Speech of President of the Mexican United States, 1828,	134
Decree of Legislature of Mexico, expelling Spaniards,	136
Treaty of Peace between Colombia and Peru,	139
Treaty between Peru and Bolivia,	141
Convention between Great Britain and Brazil, for the abolition of the Slave Trade,	143
Treaty of Commerce between Great Britain and Brazil,	144
do do between Brazil and the Hanse-towns,	150
do do and Indemnity between France and Brazil,	154
Treaty of Peace between Brazil and Buenos Ayres,	155
Speech of the Emperor of Brazil to the Chambers, 1828,	159
Message to Assembly on Finances,	160
Message of the Executive of Buenos Ayres, 1828,	165
Speech of the King of Great Britain on the opening of Parliament, 1828,	169
do do do do do do 1829,	171
Prorogation of Parliament,	172
Convention between Great Britain and Portugal, relative to British Troops,	173
Despatch from Colonial Department to Lieutenant Governor of Jamaica, relative to Slaves,	175
Speech of King of France to Chambers, 1828,	184
do do do 1829,	186
Law relative to Journals and Periodical writings,	188
Protocol relative to Greece,	192
Manifesto of the Porte against Russia,	194
Note of Ambassadors to the Reis Effendi, announcing treaty of London,	198
Letter of Sultan to his Viziers concerning do	199
Proclamation of Greek Government, announcing Treaty,	200
Protocal on the question of intervention,	202
Protocol of the Admirals,	ib.
General Orders after Battle of Navarino,	203
Letter of Admirals to the Greek Government,	204
Hatti Sheriff of the Porte, to the Musselmans,	205
Circular of Nesselrode to the Diplomatic Corps,	209
Manifesto of Russia against Turkey,	210
Letter from the Grand Vizier to Count Nesselrode,	216
Reply,	217

Page
Answer of the Porte to the Russian Manifesto, ... 219
Declaration of the Greek Government relative to Boundaries, . . . 227
Constitution of Greece, ... 230
Letter of English resident to Greek Government, requiring suspension of hostilities, ... 238
Reply of Greek Government, ... ib.
Protocol on final settlement of Greece, ... 241
Treaty of Peace between Russia and Turkey, ... 244
Separate Act relating to Moldavia and Wallachia, ... 250
Manifesto of Emperor of Russia, ... 252
Address of President of Greece to the 4th Congress, ... 253
Proclamation of Regent of Portugal, ... 261
Decree naming Don Miguel Lieutenant of Portugal, ... 262
Protocol of Vienna, October 18th, 1827, ... ib.
do do do 20th, do 265
Letter from Don Miguel to Emperor of Brazil, ... 267
do do Regent of Portugal, ... ib.
do do King of Great Britain, ... 268
Protocol of Vienna, October 23d, ... ib.
Letter from Don Miguel to King of Spain, ... 269
Resolution of three States, declaring Don Miguel King, ... 270
Protest of Brazillian Ambassadors, ... 279
Correspondence between British and Brazilian Governments, relative thereto, 283
Spanish Decree concerning Commerce, ... 297
Proclamation of King of Spain, ... 301
Letter of A. H. Everett to Minister of Foreign Affairs, respecting the independence of the Spanish Colonies, ... 302
Acts of 20th Congress, 1st session, ... 323
Acts of do do 2d session, ... 353

LAW CASES.

King and Verplanck vs. Root. *Libel*, ... 1
James Jackson ex dem. Theodosius Fowler et al. vs. James Carver. *Astor claim*, ... 45
Commonwealth of Pennsylvania vs. Michael McGarvey. *Murder*, . . . 59
Trial for the abduction of William Morgan, ... 68
Smith vs. State of Tennessee. An Attorney stricken from the roll for fighting a Duel, ... 76
Hickie and others vs. Starkie and others. *Louisiana Treaty*, . . . 81
The Governor of Georgia vs. Juan Madrazo. *Jurisdiction*, ... 82
do do do vs. sundry African Slaves, ... ib.
Breithaupt and al. vs. the Bank of Georgia. *Jurisdiction*, ... 87
D'Wolfe vs. Rabaud and al. *Jurisdiction*, ... ib.
American Insurance Co. and al. vs. Canter. *Florida Treaty*, . . . ib.
Fullerton and al. vs. the United States Bank. *Constitutionality of State Law*, 91
Wilson and al. vs. the Black Bird Creek Marsh Co. *do. do.* . 94
Foster and al. vs. Neilson. *Louisiana Treaty*, ... 96
The Bank of Kentucky vs. Hester and al. *Suability of a State*, . . 106
Satterlee vs. Matthewson. *Conititutionality of a State Law*, . . . 107
Weston and al. vs. the City Council of Charleston. *Exemption of U. S. Stock from Taxation*, ... 111
Bucknor vs. Finlay and Van Lear. *Jurisdiction*, ... 115
Wilkinson vs. Leland and al. *Retrospective Legislation*, ... 118

BIOGRAPHY.

William Tilghman, 125—George Canning, 130—John Eager Howard, 137—Thomas Addis Emmet, 139—Prince Alexander Ypsilanti, 149—Helen Maria Williams, 150—De Witt Clinton, 156—Dugald Stewart, 166—Count Lauriston, 170—Duke of San Carlos, 172—Richard Peters, 174—Dr. Gall, 180—John Taylor Gilman, 182—The Earl of Liverpool, 194—Timothy Pickering, 198—Sir Humphrey Davy, 204—John Jay, ... 215

PUBLIC DOCUMENTS.

I.—DOMESTIC.

Message of the President of the United States to the Twentieth Congress.—First Session.

Fellow-Citizens of the Senate,
and of the House of Representatives:

A REVOLUTION of the seasons has nearly been completed, since the Representatives of the People and States of this Union were last assembled at this place, to deliberate and to act upon the common important interests of their constituents. In that interval, the never-slumbering eye of a wise and beneficient Providence has continued its guardian care over the welfare of our beloved country. The blessing of health has continued generally to prevail throughout the land. The blessing of peace with our brethren of the human race, has been enjoyed without interruption; internal quiet has left our fellow citizens in the full enjoyment of all their rights, and in the free exercise of all their faculties, to pursue the impulse of their nature, and the obligation of their duty, in the improvement of their own condition. The productions of the soil, the exchanges of commerce, the vivifying labours of human industry, have combined to mingle in our cup a portion of enjoyment as large and liberal as the indulgence of heaven has perhaps ever granted to the imperfect state of man upon earth; and as the purest of human felicity consists in its participation with others, it is no small addition to the sum of our national happiness, at this time, that peace and prosperity prevail to a degree seldom experienced over the whole habitable globe; presenting, though as yet with painful exceptions, a foretaste of that blessed period of promise, when the lion shall lie down with the lamb, and wars shall be no more. To preserve, to improve, and to perpetuate the sources, and to direct, in their most effective channels, the streams which contribute to the public weal, is the purpose for which government was instituted. Objects of deep importance to the welfare of the Union are constantly recurring, to demand the attention of the Federal Legislature; and they call with accumulated interest, at the first meeting of the two Houses, after their periodical renovation. To present

to their consideration from time to time, subjects in which the interests of the nation are most deeply involved, and for the regulation of which the legislative will is alone competent, is a duty prescribed by the constitution, to the performance of which the first meeting of the new Congress is a period eminently appropriate, and which it is now my purpose to discharge.

Our relations of friendship with the other nations of the earth, political and commercial, have been preserved unimpaired; and the opportunities to improve them have been cultivated with anxious and unremitting attention. A negotiation upon subjects of high and delicate interest with the government of Great Britain, has terminated in the adjustment of some of the questions at issue upon satisfactory terms, and the postponement of others for future discussion and agreement. The purposes of the convention concluded at St. Petersburg, on the 12th day of July, 1822, under the mediation of the late Emperor Alexander, have been carried into effect, by a subsequent convention concluded at London on the 13th of November, 1826, the ratifications of which were exchanged at that place on the 6th day of February last. A copy of the proclamation issued on the nineteenth day of March last, publishing this convention, is herewith communicated to Congress. The sum of twelve hundred and four thousand nine hundred and sixty dollars, therein stipulated to be paid to the claimants of indemnity under the first Article of the Treaty of Ghent, has been duly received, and the Commission instituted conformably to the act of Congress of the second of March last, for the distribution of the indemnity to the persons entitled to receive it, are now in session, and approaching the consummation of their labours. This final disposal of one of the most painful topics of collision between the United States and Great Britain, not only affords an occasion of gratulation to ourselves, but has had the happiest effect in promoting a friendly disposition, and in softening asperities upon other objects of discussion. Nor ought it to pass without the tribute of a frank and cordial acknowledgment of the magnanimity with which an honourable nation, by the reparation of their own wrongs, achieves a triumph more glorious than any field of blood can ever bestow.

The conventions of 3d July, 1815, and of 20th October, 1818, will expire by their own limitation on the 20th of October, 1828. These have regulated the direct commercial intercourse between the United States and Great Britain, upon terms of the most perfect reciprocity; and they effected a temporary compromise of the respective rights and claims to territory westward of the Rocky Mountains. These arrangements have been continued for an indefinite period of time, after the expiration of the above-mentioned conventions; leaving each party the liberty of terminating them, by giving twelve months notice to the other. The radical principle of all commercial intercourse between independent nations, is the mutual interest of both parties. It is the vital spirit of trade itself; nor can it be reconciled to the nature of man, or to the primary laws of human society, that any traffic should long be willingly pursued, of which all the advantages are on one side, and all the bur-

dens on the other. Treaties of commerce have been found, by experience, to be among the most effective instruments for promoting peace and harmony between nations whose interests, exclusively considered on either side, are brought into frequent collisions by competition. In framing such treaties, it is the duty of each party, not simply to urge with unyielding pertinacity that which suits its own interest, but to concede liberally to that which is adapted to the interest of the other. To accomplish this, little more is generally required than a simple observance of the rule of reciprocity; and were it possible for the statesmen of our nation, by stratagem and management, to obtain from the weakness or ignorance of another, an overreaching treaty, such a compact would prove an incentive to war rather than a bond of peace. Our conventions with Great Britain are founded upon the principles of reciprocity. The commercial intercourse between the two countries is greater in magnitude and amount than between any other two nations on the globe. It is, for all purposes of benefit or advantage to both, as precious, and in all probability, far more extensive than if the parties were still constituent parts of one and the same nation. Treaties betweens uch states, regulating the intercourse of peace between them, and adjusting interests of such transcendant importance to both, which have been found, in a long experience of years, mutually advantageous, should not be lightly cancelled or discontinued. Two conventions for continuing in force those above mentioned have been concluded between the plenipotentiaries of the two governments, on the 6th of August last, and will be forthwith laid before the Senate for the exercise of their constitutional authority concerning them.

In the execution of the treaties of peace of November, 1782, and September, 1783, between the United States and Great Britain, and which terminated the war of our Independence, a line of boundary was drawn as a demarcation of territory between the two countries, extending over near twenty degrees of latitude, and ranging over seas, lakes, and mountains, then very imperfectly explored, and scarcely opened to the geographical knowledge of the age. In the progress of discovery and settlement by both parties since that time, several questions of boundary between their respective territories have arisen, which have been found of exceedingly difficult adjustment. At the close of the last war with Great Britain, four of these questions pressed themselves upon the consideration of the negotiators of the treaty of Ghent, but without the means of concluding a definitive arrangement concerning them. They were referred to three separate commissions, consisting of two commissioners, one appointed by each party, to examine and decide upon their respective claims. In the event of disagreement between the commissioners, it was provided that they should make reports to their several governments; and that the reports should finally be referred to the decision of a sovereign, the common friend of both. Of these commissions, two have already terminated their sessions and investigations, one by entire, the other by partial agreement. The commissioners of the fifth article of the

treaty of Ghent have finally disagreed, and made their conflicting reports to their own governments. But from these reports a great difficulty has occurred in making up a question to be decided by the arbitrator. This purpose has, however, been effected by a fourth convention, concluded at London by the plenipotentiaries of the two governments on the 29th of September last. It will be submitted, together with the others, to the consideration of the Senate.

While these questions have been pending, incidents have occurred of conflicting pretensions, and of dangerous character, upon the territory itself in dispute between the two nations. By a common understanding between the governments, it was agreed that no exercise of exclusive jurisdiction by either party, while the negotiation was pending, should change the state of the question of right to be definitively settled. Such collision has nevertheless recently taken place, by occurrences, the precise character of which has not yet been ascertained. A communication from the Governor of the state of Maine, with accompanying documents, and a correspondence between the Secretary of State and the Minister of Great Britain, on this subject, are now communicated. Measures have been taken to ascertain the state of the facts more correctly, by the employment of a special agent to visit the spot where the alleged outrages have occurred, the result of whose inquiries, when received, will be transmitted to Congress.

While so many of the subjects of high interest to the friendly relations between the two countries have been so far adjusted, it is matter of regret, that their views respecting the commercial intercourse between the United States and the British colonial possessions have not equally approximated to a friendly agreement.

At the commencement of the last session of Congress, they were informed of the sudden and unexpected exclusion by the British government, of access, in vessels of the United States, to all their colonial ports, except those immediately bordering upon our own territories. In the amicable discussions which have succeeded the adoption of this measure, which, as it affected harshly the interests of the United States, became a subject of expostulation on our part, the principles upon which its justification has been placed have been of a diversified character. It has been at once ascribed to a mere recurrence to the old long established principle of colonial monopoly, and at the same time to a feeling of resentment because the offers of an act of Parliament, opening the colonial ports upon certain conditions, had not been grasped at with sufficient eagerness by an instantaneous conformity to them. At a subsequent period, it has been intimated that the new exclusion was in resentment, because a prior act of Parliament of 1822, opening certain colonial ports under heavy and burdensome restrictions to vessels of the United States, had not been reciprocated by an admission of British vessels from the colonies, and their cargoes, without any restriction or discrimination whatever. But, be the motive for the interdiction what it may, the British government have manifested no disposition, either by negotiation or by corresponding legislative enactments, to recede

from it, and we have been given distinctly to understand that neither of the bills which were under the consideration of Congress at their last session would have been deemed sufficient in the concessions, to have been rewarded by any relaxation from the British interdict. It is one of the inconveniences inseparably connected with the attempt to adjust by reciprocal legislation interests of this nature, that neither party can know what would be satisfactory to the other; and that after enacting a statute for the avowed and sincere purpose of conciliation, it will generally be found utterly inadequate to the expectations of the other party, and will terminate in mutual disappointment.

The session of Congress having terminated without any act upon the subject, a proclamation was issued on the 17th of March last, conformably to the provisions of the 6th section of the Act of 1st March, 1823, declaring the fact that the trade and intercourse authorized by the British act of Parliament of 24th June, 1822, between the United States and the British enumerated colonial ports, had been by the subsequent acts of Parliament of 5th July, 1825, and the order of Council of 27th July, 1826, prohibited. The effect of this proclamation, by the terms of the act under which it was issued, has been, that each and every provision of the act concerning Navigation, of 18th April, 1818, and of the act supplementary thereto, of 15th May, 1820, revived, and is in full force. Such, then, is the present condition of the trade, that, useful as it is to both parties, it can, with a single momentary exception, be carried on directly by the vessels of neither. That exception itself is found in a proclamation of the Governor of the Island of St. Christopher, and of the Virgin Islands, inviting, for three months from the 28th of August last, the importation of the articles of the produce of the United States, which constitue their export portion of this trade, in the vessels of all nations. That period having already expired, the state of mutual interdiction has again taken place. The British government have not only declined negotiation upon this subject, but by the principle they have assumed with reference to it, have precluded even the means of negotiation. It becomes not the self respect of the United States, either to solicit gratuitious favours, or to accept as the grant of a favour that for which an ample equivalent is exacted. It remains to be determined by the respective governments, whether the trade shall be opened by acts of reciprocal legislation. It is in the mean time satisfactory to know, that apart from the inconveniences resulting from a disturbance of the usual channels of trade, no loss has been sustained by the commerce, the navigation or the revenue of the United States, and none of magnitude is to be apprehended from this existing state of mutual interdict.

With the other maritime and commercial nations of Europe, our intercourse continues with little variation. Since the cessation, by the convention of 24th June, 1822, of all discriminating duties upon the vessels of the United States and of France, in either country, our trade with that nation has increased, and is increasing. A disposition on the part of France has been manifested to renew that negotia-

tion; and, in acceding to the proposal, we have expressed the wish that it might be extended to other objects, upon which a good understanding between the parties would be beneficial to the interests of both. The origin of the political relations between the United States and France, is coeval with the first years of our independence. The memory of it is interwoven with that of our arduous struggle for national existence. Weakened as it has occasionally been since that time, it can by us never be forgotten; and we should hail with exultation the moment which should indicate a recollection equally friendly in spirit on the part of France. A fresh effort has recently been made by the minister of the United States residing at Paris, to obtain a consideration of the just claims of citizens of the United States, to the reparation of wrongs long since committed, many of them frankly acknowledged, and all of them entitled, upon every principle of justice, to a candid examination. The proposal last made to the French government has been, to refer the subject, which has formed an obstacle to this consideration, to the determination of a sovereign, the common friend of both. To this offer no definitive answer has yet been received: but the gallant and honourable spirit which has at all times been the pride and glory of France, will not ultimately permit the demands of innocent sufferers to be extinguished in the mere consciousness of the power to reject them.

A new treaty of amity, navigation, and commerce, has been concluded with the kingdom of Sweden, which will be submitted to the Senate for their advice with regard to its ratification. At a more recent date, a minister plenipotentary from the Hanseatic Republics of Hamburg, Lubeck, and Bremen, has been received, charged with a special mission for the negotiation of a treaty of amity and commerce between that ancient and renowned league and the United States. This negotiation has accordingly been commenced, and is now in progress, the result of which will, if successful, be also submitted to the Senate for their consideration.

Since the accession of the Emperor Nicholas to the imperial throne of all the Russias, the friendly dispositions towards the United States, so constantly manifested by his predecessor, have continued unabated; and have been recently testified by the appointment of a minister plenipotentiary to reside at this place. From the interest taken by this sovereign in behalf of the suffering Greeks, and from the spirit with which others of the great European powers are co-operating with him, the friends of freedom and humanity may indulge the hope, that they will obtain relief from that most unequal of conflicts, which they have so long and so gallantly sustained; that they will enjoy the blessing of self-government, which by their sufferings in the cause of liberty they have richly earned; and that their independence will be secured by those liberal institutions, of which their country furnished the earliest example in the history of mankind, and which have consecrated to immortal remembrance the very soil for which they are now again profusely pouring forth their blood. The sympathies which the people and government of the United

States have so warmly indulged with their cause, have been acknowledged by their government, in a letter of thanks, which I have received from their illustrious President, a translation of which is now communicated to Congress, the representatives of that nation to whom this tribute of gratitude was intended to be paid, and to whom it was justly due.

In the American hemisphere the cause of freedom and independence has continued to prevail; and if signalized by none of those splendid triumphs which had crowned with glory some of the preceding years, it has only been from the banishment of all external force against which the struggle had been maintained. The shout of victory has been superseded by the expulsion of the enemy over whom it could have been achieved. Our friendly wishes, and cordial good will, which have constantly followed the southern nations of America in all the vicissitudes of their war of independence, are succeeded by a solicitude, equally ardent and cordial, that by the wisdom and purity of their institutions, they may secure to themselves the choicest blessings of social order, and the best rewards of virtuous liberty. Disclaiming alike all right, and all intention of interfering in those concerns which it is the prerogative of their independence to regulate as to them shall see fit, we hail with joy every indication of their prosperity, of their harmony, of their persevering and inflexible homage to those principles of freedom and of equal rights, which are alone suited to the genius and temper of the American nations. It has been therefore with some concern that we have observed indications of intestine divisions in some of the republics of the south, and appearances of less union with one another, than we believe to be the interest of all.—Among the results of this state of things has been that the treaties concluded at Panama do not appear to have been ratified by the contracting parties, and that the meeting of the Congress at Tacubaya has been indefinitely postponed. In accepting the invitations to be represented at this Congress, while a manifestation was intended on the part of the United States, of the most friendly disposition towards the Southern Republics by whom it had been proposed, it was hoped that it would furnish an opportunity for bringing all the nations of this hemisphere to the common acknowledgment and adoption of the principles, in the regulation of their international relations, which would have secured a lasting peace and harmony between them, and have promoted the cause of mutual benevolence throughout the globe. But as obstacles appear to have arisen to the re-assembling of the Congress, one of the two ministers commissioned on the part of the United States has returned to the bosom of his country, while the minister charged with the ordinary mission to Mexico remains authorized to attend at the conferences of the Congress whenever they may be resumed.

A hope was for a short time entertained, that a treaty of peace actually signed between the governments of Buenos Ayres and Brazil, would supersede all further occasion for those collisions between belligerent pretensions and neutral rights, which are so commonly the result of maritime war,

and which have unfortunately disturbed the harmony of the relations between the United States and the Brazilian governments. At their last session, Congress were informed that some of the naval officers of that empire had advanced and practised upon principles in relation to blockades, and to neutral navigation, which we could not sanction, and which our commanders found it necessary to resist. It appears that they have not been sustained by the government of Brazil itself. Some of the vessels captured under the assumed authority of these erroneous principles, have been restored; and we trust that our just expectations will be realized, that adequate indemnity will be made to all the citizens of the United States who have suffered by the unwarranted captures which the Brazilian tribunals themselves have pronounced unlawful.

In the diplomatic discussions at Rio de Janeiro, of these wrongs sustained by citizens of the United States, and of others which seemed as if emanating immediately from that government itself, the Chargé d'Affaires of the United States, under an impression that his representations in behalf of the rights and interests of his countrymen were totally disregarded, and useless, deemed it his duty, without waiting for instructions, to terminate his official functions, to demand his passports, and to return to the United States. This movement, dictated by an honest zeal for the honour and interests of his country, motives which operated exclusively upon the mind of the officer who resorted to it, has not been disapproved by me. The Brazilian government, however, complained of it as a measure for which no adequate intentional cause had been given by them; and upon an explicit assurance, through their Chargé d'Affaires, residing here, that a successor to the late representative of the United States near that government, the appointment of whom they desired, should be received and treated with the respect due to his character, and that indemnity should be promptly made for all injuries inflicted on citizens of the United States, or their property, contrary to the laws of nations, a temporary commission as Chargé d'Affaires to that country has been issued, which it is hoped will entirely restore the ordinary diplomatic intercourse between the two governments, and the friendly relations between their respective nations.

Turning from the momentous concerns of our Union in its intercourse with foreign nations to those of the deepest interest in the administration of our internal affairs, we find the revenues of the present year corresponding as nearly as might be expected with the anticipations of the last, and presenting an aspect still more favourable in the promise of the next. The balance in the Treasury on the first of January last was six millions three hundred and fifty-eight thousand six hundred and eighty-six dollars and eighteen cents. The receipts from that day to the 30th of September last, as near as the returns of them yet received can show, amount to sixteen millions eight hundred and eighty-six thousand five hundred and eighty-one dollars and thirty-two cents. The receipts of the present quarter, estimated at four millions five hundred and fifteen thousand, added to

the above, form an aggregate of twenty-one millions four hundred thousand dollars of receipts. The expenditures of the year may perhaps amount to twenty-two millions three hundred thousand dollars, presenting a small excess over the receipts. But of these twenty-two millions, upwards of six have been applied to the discharge of the principal of the public debt; the whole amount of which, approaching seventy-four millions on the first of January last, will on the first day of next year fall short of sixty-seven millions and a half. The balance in the treasury on the first of January next, it is expected, will exceed five millions four hundred and fifty thousand dollars; a sum exceeding that of the first of January, 1825, though falling short of that exhibited on the first of January last.

It was foreseen that the revenue of the present year would not equal that of the last, which had itself been less than that of the next preceding year. But the hope has been realized which was entertained, that these deficiencies would in nowise interrupt the steady operation of the discharge of the public debt by the annual ten millions devoted to that object by the act of 3d March, 1817.

The amount of duties secured on merchandise imported from the commencement of the year until the 30th of September last, is twenty-one millions two hundred and twenty-six thousand, and the probable amount of that which will be secured during the remainder of the year, is five millions seven hundred and seventy-four thousand dollars; forming a sum total of twenty-seven millions. With the allowances for drawbacks and contingent deficiencies which may occur, though not specifically foreseen, we may safely estimate the receipts of the ensuing year at twenty-two millions three hundred thousand dollars; a revenue for the next equal to the expenditure of the present year.

The deep solicitude felt by our citizens of all classes throughout the Union, for the total discharge of the public debt, will apologize for the earnestness with which I deem it my duty to urge this topic upon the consideration of Congress —of recommending to them again the observance of the strictest economy in the application of the public funds. The depression upon the receipts of the revenue which had commenced with the year 1826, continued with increased severity during the two first quarters of the present year. The returning tide began to flow with the third quarter, and so far as we can judge from experience, may be expected to continue through the course of the ensuing year. In the mean time, an alleviation from the burden of the public debt will, in three years, have been effected to the amount of nearly sixteen millions, and the charge of annual interest will have been reduced upwards of one million. But among the maxims of political economy which the stewards of the public moneys should never suffer without urgent necessity to be transcended, is that of keeping the expenditures of the year within the limits of its receipts. The appropriations of the two last years, including the yearly ten millions of the sinking fund, have each equalled the promised revenue of the ensuing year. While we foresee with confidence that the public

coffers will be replenished from the receipts, as fast as they will be drained by the expenditures, equal in amount to those of the current year, it should not be forgotten that they could ill suffer the exhaustion of larger disbursements.

The condition of the army, and of all the branches of the public service under the superintendence of the secretary of war, will be seen by the report from that officer, and the documents with which it is accompanied.

During the course of the last summer, a detachment of the army has been usefully and successfully called to perform their appropriate duties. At the moment when the commissioners appointed for carrying into execution certain provisions of the treaty of August 19th, 1825, with various tribes of the northwestern Indians, were about to arrive at the appointed place of meeting, the unprovoked murder of several citizens, and other acts of unequivoaal hostility committed by a party of the Winnebago tribe, one of those associated in the treaty, followed by indications of a menacing character, among other tribes of the same region, rendered necessary an immediate display of the defensive and protective force of the Union in that quarter. It was accordingly exhibited by the immediate and concerted movements of the governors of the state of Illinois, and of the territory of Michigan, and competent levies of militia under their authority; with a corps of seven hundred men of United States troops under the command of General Atkinson, who, at the call of Governor Cass, immediately repaired to the scene of danger from their station at St. Louis. Their presence dispelled the alarms of our fellow citizens on those borders, and overawed the hostile purposes of the Indians. The perpetrators of the murders were surrendered to the authority and operation of our laws; and every appearance of purposed hostility from those Indian tribes has subsided.

Although the present organization of the army, and the administration of its various branches of service, are, upon the whole, satisfactory, they are yet susceptible of much improvement in particulars, some of which have been heretofore submitted to the consideration of Congress, and others are now first presented in the report of the secretary of war.

The expediency of providing for additional numbers of officers in the two corps of engineers will, in some degree, depend upon the number and extent of the objects of national importance upon which Congress may think it proper that surveys should be made, conformably to the act of the 30th of April, 1824. Of the surveys which, before the last session of Congress, had been made under the authority of that act, reports were made:

1. Of the Board of Internal Improvement, on the Chesapeake and Ohio Canal.

2. On the continuance of the National Road from Cumberland to the tide waters within the District of Columbia.

3. On the continuation of the National Road from Canton to Zanesville.

4. On the location of the National Road from Zanesville to Columbus.

5. On the continuation of the same road to the seat of government in Missouri.

6. On a Post Road from Baltimore to Philadelphia.

7. Of a survey of Kennebec River, (in part.)

8. On a National Road from Washington to Buffalo.

9. On the survey of Saugatuck Harbour and River.

10. On a Canal from Lake Pontchartrain to the Mississippi River.

11. On surveys at Edgartown, Newburyport, and Hyannis Harbour.

12. On survey of La Plaisance Bay, in the territory of Michigan.

And reports are now prepared, and will be submitted to Congress,

On surveys of the peninsula of Florida, to ascertain the practicability of a canal to connect the waters of the Atlantic with the gulf of Mexico, across that peninsula; and also of the country between the bays of Mobile and of Pensacola, with the view of connecting them together by a canal:

On surveys of a route for a canal to connect the waters of James and Great Kenhawa rivers:

On the survey of the Swash in Pamlico Sound, and that of Cape Fear, below the town of Wilmington, in North Carolina:

On the survey of the Muscle Shoals, in the Tennessee river, and for a route for a contemplated communication between the Hiwassee and Coosa rivers, in the state of Alabama.

Other reports of surveys upon objects pointed out by the several acts of Congress of the last and preceding sessions, are in the progress of preparation, and most of them may be completed before the close of this session. All the officers of both corps of engineers, with several other persons duly qualified, have been constantly employed upon these services, from the passage of the act of 30th of April, 1824, to this time. Were no other advantage to accrue to the country from their labours, than the fund of topographical knowledge which they have collected and communicated, that alone would have been a profit to the Union more than adequate to all the expenditures which have been devoted to the object; but the appropriations for the repair and continuation of the Cumberland road, for the construction of various other roads, for the removal of obstructions from the rivers and harbours, for the erection of light-houses, beacons, piers, and buoys, and for the completion of canals undertaken by individual associations, but needing the assistance of means and resources more comprehensive than individual enterprise can command, may be considered rather as treasures laid up from the contributions of the present age, for the benefit of posterity, than as unrequited applications of the accruing revenues of the nation. To such objects of permanent improvement to the condition of the country, of real addition to the wealth, as well as to the comfort of the people by whose authority and resources they have been effected, from three to four millions of the annual income of the nation have, by laws enacted at the three most recent sessions of Congress, been applied, without intrenching upon the necessities of the treasury; without adding a dollar to the taxes or debts of the community; without suspending even the steady and regular discharge of the debts contracted in former days, which, within the same three years, have been diminished by the

amount of nearly sixteen millions of dollars.

The same observations are, in a great degree, applicable to the appropriations made for fortifications upon the coasts and harbours of the United States, for the maintenance of the Military Academy at West Point, and for the various objects under the superintendence of the department of the navy. The report of the secretary of the navy, and those from the subordinate branches of both the military departments, exhibit to Congress, in minute detail, the present condition of the public establishments dependent upon them; the execution of the acts of Congress relating to them, and the views of the officers engaged in the several branches of the service, concerning the improvements which may tend to their perfection. The fortification of the coasts, and the gradual increase and improvement of the navy, are parts of a great system of national defence, which has been upwards of ten years in progress, and which, for a series of years to come, will continue to claim the constant and persevering protection and superintendence of the legislative authority. Among the measures which have emanated from these principles, the act of the last session of Congress, for the gradual improvement of the navy, holds a conspicuous place. The collection of timber for the future construction of vessels of war; the preservation and reproduction of the species of timber peculiarly adapted to that purpose; the construction of dry docks for the use of the navy; the erection of a marine railway for the repair of the public ships, and the improvement of the navy yards for the preservation of the public property deposited in them, have all received from the executive the attention required by that act, and will continue to receive it, steadily proceeding towards the execution of all its purposes. The establishment of a naval academy, furnishing the means of theoretic instruction to the youths who devote their lives to the service of their country upon the ocean, still solicits the sanction of the legislature. Practical seamanship, and the art of navigation, may be acquired upon the cruises of the squadrons, which, from time to time, are despatched to distant seas; but a competent knowledge even of the art of ship building, the higher mathematics, and astronomy; the literature which can place our officers on a level of polished education with the officers of other maritime nations; the knowledge of the laws, municipal and national, which, in their intercourse with foreign states, and their governments, are continually called into operation; and, above all, that acquaintance with the principles of honour and justice, with the higher obligations of morals, and of general laws, human and divine, which constitute the great distinction between the warrior patriot and the licensed robber and pirate; these can be systematically taught, and eminently acquired, only in a permanent school, stationed upon the shore, and provided with the teachers, the instruments, and the books, conversant with, and adapted to, the communication of the principles of these respective sciences to the youthful and inquiring mind.

The report from the post master general exhibits the condition of that department as highly satisfac-

tory for the present, and still more promising for the future. Its receipts for the year ending the first of July last, amounted to one million four hundred and seventy-three thousand five hundred and fifty-one dollars, and exceeded its expenditures by upwards of one hundred thousand dollars. It cannot be an over sanguine estimate to predict that in less than ten years, of which one half have elapsed, the receipts will have been more than doubled. In the mean time, a reduced expenditure upon established routes has kept pace with increased facilities of public accommodation, and additional services have been obtained at reduced rates of compensation. Within the last year the transportation of the mail in stages has been greatly augmented. The number of post offices has been increased to seven thousand; and it may be anticipated, that while the facilities of intercourse between fellow citizens in person or by correspondence, will soon be carried to the door of every village in the Union, a yearly surplus of revenue will accrue, which may be applied as the wisdom of Congress, under the exercise of their constitutional powers, may devise, for the further establishment and improvement of the public roads, or by adding still further to the facilities in the transportation of the mails. Of the indications of the prosperous condition of our country, none can be more pleasing, than those presented by the multiplying relations of personal and intimate intercourse between the citizens of the Union dwelling at the remotest distances from each other.

Among the subjects which have heretofore occupied the earnest solicitude and attention of Congress, is the management and disposal of that portion of the property of the nation which consists of the public lands. The acquisition of them, made at the expense of the whole Union, not only in treasure, but in blood, marks a right of property in them equally extensive. By the report and statements from the general land office now communicated, it appears, that under the present government of the United States, a sum little short of thirty-three millions of dollars has been paid from the common treasury for that portion of this property which has been purchased from France and Spain, and for the extinction of the aboriginal tribes. The amount of lands acquired is near two hundred and sixty millions of acres, of which, on the first of January, 1826, about one hundred and thirty-nine millions of acres had been surveyed, and little more than nineteen millions of acres had been sold. The amount paid into the treasury by the purchasers of the lands sold is not yet equal to the sums paid for the whole, but leaves a small balance to be refunded; the proceeds of the sales of the lands have long been pledged to the creditors of the nation, a pledge from which we have reason to hope that they will in a very few years be redeemed. The system upon which this great national interest has been managed, was the result of long, anxious, and persevering deliberations; matured and modified by the progress of our population, and the lessons of experience, it has been hitherto eminently successful. More than nine tenths of the lands still remain the common property of the Union, the appropriation and disposal of which are sacred trusts in the hands of

Congress. Of the lands sold, a considerable part were conveyed under extended credits, which, in the vicissitudes and fluctuations in the value of lands, and of their produce, became oppressively burdensome to the purchasers. It can never be the interest, or the policy of the nation, to wring from its own citizens the reasonable profits of their industry and enterprise, by holding them to the rigorous import of disastrous engagements. In March, 1821, a debt of twenty-two millions of dollars, due by purchasers of the public lands, had accumulated, which they were unable to pay. An act of Congress of the 2d of March, 1821, came to their relief, and has been succeeded by others, the latest being the act of the 4th of May, 1826, the indulgent provisions of which expired on the 4th of July last. The effect of these laws has been to reduce the debt from the purchasers to a remaining balance of about four millions three hundred thousand dollars due; more than three fifths of which are for lands within the state of Alabama. I recommend to Congress the revival and continuance, for a further term, of the beneficent accommodations to the public debtors, of that statute; and submit to their consideration, in the same spirit of equity, the remission, under proper discriminations, of the forfeitures of partial payments on account of purchases of the public lands, so far as to allow of their application to other payments.

There are various other subjects of deep interest to the whole union, which have heretofore been recommended to the consideration of Congress, as well by my predecessors as, under the impression of the duties devolving upon me, by myself. Among these are the debt rather of justice, than gratitude, to the surviving warriors of the revolutionary war; the extention of the judicial administration of the federal government, to those extensive and important members of the union, which, having risen into existence since the organization of the present judiciary establishment, now constitute at least one third of its territory, power, and population; the formation of a more effective and uniform system for the government of the militia, and the amelioration, in some form or modification, of the diversified and often oppressive codes relating to insolvency.—Amidst the multiplicity of topics of great national concernment which may recommend themselves to the calm and patriotic deliberations of the Legislature, it may suffice to say, that on these and all other measures which may receive their sanction, my hearty co-operation will be given, conformably to the duties enjoined upon me, and under the sense of all the obligations prescribed by the constitution.

JOHN QUINCY ADAMS.

Washington, December 4, 1827.

Message of the President of the United States to the Twentieth Congress.—Second Session.

Fellow Citizens of the Senate,
and of the House of Representatives:

If the enjoyment in profusion of the bounties of Providence forms a suitable subject of mutual gratulation and grateful acknowledgment, we are admonished, at this return of the season, when the representatives of the nation are assembled to deliberate upon their concerns, to offer up the tribute of fervent and grateful hearts, for the never-failing mercies of Him who ruleth over all. He has again favoured us with healthful seasons, and abundant harvests. He has sustained us in peace with foreign countries, and in tranquillity within our borders. He has preserved us in the quiet and undisturbed possession of civil and religious liberty. He has crowned the year with his goodness, imposing on us no other conditions than of improving for our own happiness the blessings bestowed by his hands; and in the fruition of all his favours, of devoting the faculties with which we have been endowed by him, to his glory, and to our own temporal and eternal welfare.

In the relations of our federal Union with our brethren of the human race, the changes which have occurred since the close of your last session, have generally tended to the preservation of peace, and to the cultivation of harmony. Before your last separation, a war had unhappily been kindled between the empire of Russia, one of those with which our intercourse has been no other than a constant exchange of good offices, and that of the Ottoman Porte, a nation from which geographical distance, religious opinions, and maxims of government on their part, little suited to the formation of those bonds of mutual benevolence which result from the benefits of commerce, had kept us in a state, perhaps too much prolonged, of coldness and alienation. The extensive, fertile, and populous dominions of the Sultan, belong rather to the Asiatic, than the European division of the human family. They enter but partially into the system of Europe; nor have their wars with Russia and Austria, the European states upon which they border, for more than a century past, disturbed the pacific relations of those states with the other great powers of Europe. Neither France, nor Prussia, nor Great Britain, has ever taken part in them, nor is it to be expected that they will at this time. The declaration of war by Russia has received the approbation or acquiescence of her allies, and we may indulge the hope that its progress and termination will be signalized by the moderation and forbearance, no less than by the energy of the Emperor Nicholas, and that it will afford the opportunity for such collateral agency in behalf of the suffering Greeks, as will secure to them ultimately the triumph of humanity, and of freedom.

The state of our particular relations with France has scarcely varied in the course of the present year. The commercial intercourse between the two countries has con-

tinued to increase for the mutual benefit of both. The claims of indemnity to numbers of our fellow citizens for depredations upon their property, heretofore committed, during the revolutionary governments, still remain unadjusted, and still form the subject of earnest representation and remonstrance. Recent advices from the minister of the United States at Paris, encourage the expectation that the appeal to the justice of the French government will ere long receive a favourable consideration.

The last friendly expedient has been resorted to for the decision of the controversy with Great Britain, relating to the northeastern boundary of the United States. By an agreement with the British government, carrying into effect the provisions of the fifth article of the treaty of Ghent, and the convention of 20th September, 1827, his majesty, the king of the Netherlands, has, by common consent, been selected as the umpire between the parties. The proposal to him to accept the designation for the performance of this friendly office, will be made at an early day, and the United States, relying upon the justice of their cause, will cheerfully commit the arbitrament of it to a prince equally distinguished for the independence of his spirit, his indefatigable assiduity to the duties of his station, and his inflexible personal probity.

Our commercial relations with Great Britain will deserve the serious consideration of Congress, and the exercise of a conciliatory and forbearing spirit in the policy of both governments. The state of them has been materially changed by the act of Congress passed at their last session, in alteration of the several acts imposing duties on imports, and by acts of more recent date of the British Parliament. The effect of the interdiction of direct trade, commenced by Great Britain and reciprocated by the United States, has been, as was to be foreseen, only to substitute different channels for an exchange of commodities indispensable to the colonies, and profitable to a numerous class of our fellow citizens. The exports, the revenue, the navigation of the United States, have suffered no diminution by our exclusion from direct access to the British colonies. The colonies pay more dearly for the necessaries of life, which their government burdens with the charges of double voyages, freight, insurance, and commission, and the profits of our exports are somewhat impaired, and more injuriously transferred from one portion of our citizens to another. The resumption of this old, and otherwise exploded system of colonial exclusion, has not secured to the shipping interest of Great Britain, the relief which, at the expense of the distant colonies, and of the United States, it was expected to afford. Other measures have been resorted to, more pointedly bearing upon the navigation of the United States, and which, unless modified by the construction given to the recent acts of Parliament, will be manifestly incompatible with the positive stipulations of the commercial convention existing between the two countries. That convention, however, may be terminated with twelve months' notice, at the option of either party.

A treaty of amity, navigation, and commerce, between the United States and his majesty the empe-

ror of Austria, king of Hungary and Bohemia, has been prepared for signature by the Secretary of State, and by the Baron de Lederer, intrusted with full powers of the Austrian government. Independently of the new and friendly relations which may be thus commenced with one of the most eminent and powerful nations of the earth, the occasion has been taken in it, as in other recent treaties concluded by the United States, to extend those principles of liberal intercourse, and of fair reciprocity, which intertwine with the exchanges of commerce the principles of justice, and the feelings of mutual benevolence. This system, first proclaimed to the world in the first commercial treaty ever concluded by the United States, that of 6th of February, 1778, with France, has been invariably the cherished policy of our Union. It is by treaties of commerce alone that it can be made ultimately to prevail as the established system of all civilized nations. With this principle our fathers extended the hand of friendship to every nation of the globe, and to this policy our country has ever since adhered—whatever of regulation in our laws has ever been adopted unfavourable to the interest of any foreign nation, has been essentially defensive and counteracting to similar regulations of theirs operating against us.

Immediately after the close of the war of independence, commissioners were appointed by the Congress of the confederation, authorized to conclude treaties with every nation of Europe disposed to adopt them. Before the wars of the French revolution, such treaties had been consummated with the United Netherlands, Sweden, and Prussia. During those wars, treaties with Great Britain and Spain had been effected, and those with Prussia and France renewed. In all these, some concessions to the liberal principles of intercourse proposed by the United States had been obtained; but as in all the negotiations they came occasionally in collision with previous internal regulations, or exclusive aud excluding compacts of monopoly, with which the other parties had been trammelled, the advances made in them towards the freedom of trade were partial and imperfect. Colonial establishments, chartered companies, and ship-building influence, pervaded and encumbered the legislation of all the great commercial states; and the United States, in offering free trade, and equal privilege to all, were compelled to acquiesce in many exceptions with each of the parties to their treaties, accommodated to their existing laws and anterior engagements.

The colonial system, by which this whole hemisphere was bound, has fallen into ruins. Totally abolished by revolutions, converting colonies into independent nations, throughout the two American continents, excepting a portion of territory chiefly at the northern extremity of our own, and confined to the remnants of dominion retained by Great Britain over the insular Archipelago, geographically the appendages of our part of the globe. With all the rest we have free trade—even with the insular colonies of all the European nations except Great Britain. Her government had also manifested approaches to the adoption of a free and liberal intercourse be-

tween her colonies and other nations, though, by a sudden and scarcely explained revulsion, the spirit of exclusion has been revived for operation upon the United States alone.

The conclusion of our last treaty of peace with Great Britain was shortly afterwards followed by a commercial convention, placing the direct intercourse between the two countries upon a footing of more equal reciprocity than had ever before been admitted. The same principle has since been much farther extended, by treaties with France, Sweden, Denmark, the Hanseatic cities, Prussia in Europe, and with the republics of Colombia, and of Central America, in this hemisphere. The mutual abolition of discriminating duties and charges, upon the navigation and commercial intercourse between the parties, is the general maxim which characterizes them all. There is reason to expect that it will, at no distant period, be adopted by other nations, both of Europe and America, and to hope that, by its universal prevalence, one of the fruitful sources of wars of commercial competition will be extinguished.

Among the nations upon whose governments many of our fellow citizens have had long pending claims of indemnity, for depredations upon their property during a period when the rights of neutral commerce were disregarded, was that of Denmark. They were, soon after the events occurred, the subject of a special mission from the United States, at the close of which the assurance was given, by his Danish majesty, that, at a period of more tranquillity, and of less distress, they would be considered, examined, and decided upon, in a spirit of determined purpose for the dispensation of justice. I have much pleasure in informing Congress that the fulfilment of this honourable promise is now in progress; that a small portion of the claims has already been settled to the satisfaction of the claimants; and that we have reason to hope that the remainder will shortly be placed in a train of equitable adjustment. This result has always been confidently expected, from the character of personal integrity and of benevolence which the sovereign of the Danish dominions has, through every vicissitude of fortune, maintained.

The general aspect of the affairs of our neighbouring American nations of the south, has been rather of approaching than of settled tranquillity. Internal disturbances have been more frequent among them than their common friends would have desired. Our intercourse with all has continued to be that of friendship, and of mutual good will. Treaties of commerce and of boundaries with the United Mexican states have been negotiated, but, from various successive obstacles, not yet brought to a final conclusion. The civil war which unfortunately still prevails in the republic of Central America, has been unpropitious to the cultivation of our commercial relations with them; and the dissentions and revolutionary changes in the republics of Colombia and of Peru, have been seen with cordial regret by us, who would gladly contribute to the happiness of both. It is with great satisfaction, however, that we have witnessed the recent conclusion of a peace between the governments of Buenos Ayres and

Brazil; and it is equally gratifying to observe that indemnity has been obtained for some of the injuries which our fellow citizens had sustained in the latter of those countries. The rest are in a train of negotiation, which we hope may terminate to mutual satisfaction, and that it may be succeeded by a treaty of commerce and navigation, upon liberal principles, propitious to a great and growing commerce, already important to the interests of our country.

The condition and prospects of the revenue are more favourable than our most sanguine expectations had anticipated. The balance in the treasury, on the first of January last, exclusive of the moneys received under the convention of 13th November, 1826, with Great Britain, was five millions eight hundred and sixty-one thousand nine hundred and seventy-two dollars and eighty-three cents. The receipts into the treasury from the first of January to the 30th of September last, so far as they have been ascertained to form the basis of an estimate, amount to eighteen millions six hundred and thirty-three thousand nine hundred and eighty dollars and twenty-seven cents, which, with the receipts of the present quarter, estimated at five millions four hundred and sixty-one thousand two hundred and eighty-three dollars and forty cents, form an aggregate of receipts during the year of twenty-four millions and ninety-four thousand eight hundred and sixty-three dollars and sixty-seven cents. The expenditures of the year may probably amount to twenty-five millions six hundred and thirty-seven thousand five hundred and eleven dollars and sixty-three cents; and leave in the treasury, on the first of January next, the sum of five millions one hundred and twenty-five thousand six hundred and thirty-eight dollars, fourteen cents.

The receipts of the present year have amounted to near two millions more than was anticipated at the commencement of the last session of Congress.

The amount of duties secured on importations from the first of January to the 30th of September, was about twenty-two millions nine hundred and ninety-seven thousand, and that of the estimated accruing revenue is five millions; leaving an aggregate for the year of near twenty-eight millions. This is one million more than the estimate made last December for the accruing revenue of the present year, which, with allowances for drawbacks and contingent deficiencies, was expected to produce an actual revenue of twenty-two millions three hundred thousand dollars. Had these only been realized, the expenditures of the year would have been also proportionally reduced. For of these twenty-four millions received, upwards of nine millions have been applied to the extinction of public debt bearing an interest of six per cent. a year, and of course reducing the burden of interest annually payable in future, by the amount of more than half a million. The payments on account of interest during the current year, exceed three millions of dollars; presenting an aggregate of more than twelve millions applied during the year to the discharge of the public debt, the whole of which remaining due on the first of January next, will amount only to eight millions three hundred and sixty-

two thousand one hundred and thirty-five dollars and seventy-eight cents.

That the revenue of the ensuing year will not fall short of that received in the one now expiring, there are indications which can scarcely prove deceptive. In our country, an uniform experience of forty years has shown that whatever the tariff of duties upon articles imported from abroad has been, the amount of importations has always borne an average value nearly approaching to that of the exports, though occasionally differing in the balance, sometimes being more, and sometimes less. It is, indeed, a general law of prosperous commerce, that the real value of exports should, by a small, and only a small balance, exceed that of imports, that balance being a permanent addition to the wealth of the nation. The extent of the prosperous commerce of the nation must be regulated by the amount of its exports; and an important addition to the value of these will draw after it a corresponding increase of importations. It has happened, in the vicissitudes of the seasons, that the harvests of all Europe have, in the late summer and autumn, fallen short of their usual average. A relaxation of the interdict upon the importion of grain and flour from abroad has ensued; a propitious market has been opened to the granaries of this country; and a new prospect of reward presented to the labours of the husbandman, which, for several years, has been denied. This accession to the profits of agriculture in the middle and western portions of our Union, is accidental and temporary. It may continue only for a single year. It may be, as has been often experienced in the revolutions of time, but the first of several scanty harvests in succession. We may consider it certain that, for the approaching year, it has added an item of large amount to the value of our exports, and that it will produce a corresponding increase of importations. It may, therefore, confidently be foreseen, that the revenue of 1829 will equal, and probably exceed, that of 1828, and will afford the means of extinguishing ten millions more of the principal of the public debt.

This new element of prosperity to that part of our agricultural industry which is occupied in producing the first article of human subsistence, is of the most cheering character to the feelings of patriotism. Proceeding from a cause which humanity will view with concern, the sufferings of scarcity in distant lands, it yields a consolatory reflection, that this scarcity is in no respect attributable to us. That it comes from the dispensation of Him who ordains all in wisdom and goodness, and who permits evil itself only as an instrument of good. That, far from contributing to this scarcity, our agency will be applied only to the alleviation of its severity; and that in pouring forth, from the abundance of our own garners, the supplies which will partially restore plenty to those who are in need, we shall ourselves reduce our stores, and add to the price of our own bread, so as in some degree to participate in the wants which it will be the good fortune of our country to relieve.

The great interests of an agricultural, commercial, and manufacturing nation, are so linked in union together, that no permanent cause of prosperity to one of them

can operate without extending its influence to the others. All these interests are alike under the protecting power of the legislative authority; and the duties of the representative bodies are to conciliate them in harmony together. So far as the object of taxation is to raise a revenue for discharging the debts, and defraying the expenses of the community, it should as much as possible suit the burden with equal hand upon all, in proportion with their ability of bearing it without oppression. But the legislation of one nation is sometimes intentionally made to bear heavily upon the interests of another. That legislation, adapted, as it is meant to be, to the special interests of its own people, will often press most unequally upon the several component interests of its neighbours. Thus, the legislation of Great Britain, when, as has recently been avowed, adapted to the depression of a rival nation, will naturally abound with regulations of interdict upon the productions of the soil or industry of the other which come in competition with its own; and will present encouragement, perhaps even bounty, to the raw material of the other state, which it cannot produce itself, and which is essential for the use of its manufacutures, competitors in the markets of the world with those of its commercial rival. Such is the state of the commercial legislation of Great Britain as it bears upon our interests. It excludes, with interdicting duties, all importations, (except in time of approaching famine) of the great staple productions of our Middle and Western States; it proscribes, with equal rigour, the bulkier lumber and live stock of the same portion, and also of the northern and eastern part of our Union. It refuses even the rice of the south, unless aggravated with a charge of duty upon the northern carrier who brings it to them. But the cotton, indispensable for their looms, they will receive almost duty free, to weave it into a fabric for our own wear, to the destruction of our own manufactures, which they are enabled thus to undersell. Is the self-protecting energy of this nation so helpless, that there exists in the political institutions of our country, no power to counteract the bias of this foreign legislation? that the growers of grain must submit to this exclusion from the foreign markets of their produce; that the shippers must dismantle their ships, the trade of the north stagnate at the wharves, and the manufacturers starve at their looms, while the whole people shall pay tribute to foreign industry to be clad in a foreign garb; that the Congress of the Union are impotent to restore the balance in favour of native industry destroyed by the statutes of another realm? More just and more generous sentiments will, I trust, prevail. If the tariff adopted at the last session of Congress, shall be found by experience to bear oppressively upon the interests of any one section of the Union, it ought to be, and I cannot doubt it will be, so modified as to alleviate its burden. To the voice of just complaint from any portion of their constituents, the representatives of the states and people will never turn away their ears. But so long as the duty of the foreign shall operate only as a bounty upon the domestic article —while the planter, and the merchant, and the shepherd, and the husbandman, shall be found thriv-

ing in their occupations under the duties imposed for the protection of domestic manufactures, they will not repine at the prosperity shared with themselves by their fellow citizens of other professions, nor denounce, as violations of the constitution, the deliberate acts of congress to shield from the wrongs of foreign laws the native industry of the Union. While the tariff of the last session of Congress was a subject of legislative deliberation, it was foretold by some of its opposers that one of its necessary consequences would be to impair the revenue. It is yet too soon to pronounce, with confidence, that this prediction was erroneous. The obstruction of one avenue of trade not unfrequently opens an issue to another. The consequence of the tariff will be to increase the exportation, and to diminish the importation of some specific articles. But, by the general law of trade, the increase of exportation of one article will be followed by an increased importation of others, the duties upon which will supply the deficiencies, which the diminished importation would otherwise occasion. The effect of taxation upon revenue can seldom be foreseen with certainty. It must abide the test of experience. As yet, no symptoms of diminution are perceptible in the receipts of the treasury. As yet, little addition of cost has even been experienced upon the articles burthened with heavier duties by the last tariff. The domestic manufacturer supplies the same or a kindred article at a diminished price, and the consumer pays the same tribute to the labour of his own countryman, which he must otherwise have paid to foreign industry and toil.

The tariff of the last session was, in its details, not acceptable to the great interests of any portion of the Union, not even to the interests which it was especially intended to subserve. Its object was to balance the burdens upon native industry imposed by the operation of foreign laws; but not to aggravate the burdens of one section of the Union by the relief afforded to another. To the great principle sanctioned by that act, one of those upon which the Constitution itself was formed, I hope and trust the authorities of the Union will adhere. But if any of the duties imposed by the act only relieve the manufacturer by aggravating the burden of the planter, let a careful revisal of its provisions, enlightened by practical experience of its effects, be directed to retain those which impart protection to native industry, and remove or supply the place of those which only alleviate one great national interest by the depression of another.

The United States of America, and the people of every state of which they are composed, are each of them sovereign powers. The legislative authority of the whole is exercised by Congress, under authority granted them in the common constitution. The legislative power of each state is exercised by assemblies deriving their authority from the constitution of the state. Each is sovereign within its own province. The distribution of power between them, presupposes that these authorities will move in harmony with each other. The members of the state and general governments are all under oath to support both, and allegiance is due to the one and to the other. The case of a conflict be-

tween these two powers has not been supposed; nor has any provision been made for it in our institutions; as a virtuous nation of ancient times existed more than five centuries without a law for the punishment of parricide.

More than once, however, in the progress of our history, have the people and the legislatures of one or more states, in moments of excitement, been instigated to this conflict; and the means of affecting this impulse have been allegations that the acts of Congress to be resisted were *unconstitutional*. The people of no one state have ever delegated to their legislature the power of pronouncing an act of Congress unconstitutional; but they have delegated to them powers, by the exercise of which the execution of the laws of Congress within the state may be resisted. If we suppose the case of such conflicting legislation sustained by the corresponding executive and judicial authorities, Patriotism and Philanthropy turn their eyes from the condition in which the parties would be placed, and from that of the people of both, which must be its victims.

The reports from the Secretary of War, and from the various subordinate offices of the resort of that department, present an exposition of the public administration of affairs connected with them, through the course of the current year. The present state of the army, and the distribution of the force of which it is composed, will be seen from the report of the Major General. Several alterations in the disposal of the troops have been found expedient in the course of the year, and the discipline of the army, though not entirely free from exception, has been generally good.

The attention of Congress is particularly invited to that part of the report of the secretary of war which concerns the existing system of our relations with the Indian tribes. At the establishment of the federal government, under the present Constitution of the United States, the principle was adopted of considering them as foreign and independent powers; and also as proprietors of lands. They were, moreover, considered as savages, whom it was our policy and our duty to use our influence in converting to Christianity, and in bringing within the pale of civilization.

As independent powers, we negotiated with them by treaties; as proprietors, we purchased of them all the lands which we could prevail upon them to sell; as brethren of the human race, rude and ignorant, we endeavoured to bring them to the knowledge of religion and of letters. The ultimate design was to incorporate in our own institutions that portion of them which could be converted to the state of civilization. In the practice of European states, before our revolution, they had been considered as children to be governed; as tenants at discretion, to be dispossessed as occasion might require; as hunters, to be indemnified by trifling concessions for removal from the grounds upon which their game was extirpated. In changing the system, it would seem as if a full contemplation of the consequences of the change had not been taken. We have been far more successful in the acquisition of their lands than in imparting to them the principles, or inspiring them with the spirit of civilization. But in appropriating to ourselves their

hunting-grounds, we have brought upon ourselves the obligation of providing them with subsistence; and when we have had the rare good fortune of teaching them the arts of civilization, and the doctrines of christianity, we have unexpectedly found them forming, in the midst of ourselves, communities claiming to be independent of ours, and rivals of sovereignty within the territories of the members of our Union. This state of things requires that a remedy should be provided. A remedy which, while it shall do justice to those unfortunate children of nature, may secure to the members of our confederation their rights of sovereignty and of soil. As the outline of a project to that effect, the views presented in the report of the secretary of war are recommended to the consideration of Congress.

The report from the engineer department presents a comprehensive view of the progress which has been made in the great systems promotive of the public interest, commenced and organized under the authority of Congress, and the effects of which have already contributed to the security, as they will hereafter largely contribute to the honour and dignity of the nation.

The first of these great systems is that of fortifications, commenced immediately after the close of our last war, under the salutary experience which the events of that war had impressed upon our countrymen of its necessity. Introduced under the auspices of my immediate predecessor, it has been continued with the persevering and liberal encouragement of the legislature; and combined with corresponding exertions for the gradual increase and improvement of the navy, prepares for our extensive country a condition of defence adapted to any critical emergency which the varying course of events may bring forth. Our advances in these concerted systems have for the last ten years been steady and progressive; and in a few years more will be so completed as to leave no cause for apprehension that our sea coast will ever again offer a theatre of hostile invasion.

The next of these cardinal measures of policy, is the preliminary to great and lasting works of public improvement, in the surveys of roads, examination for the course of canals, and labours for the removal of the obstructions of rivers and harbours, first commencod by the act of Congress of 30th April, 1824.

The report exhibits in one table the funds appropriated at the last and preceding sessions of Congress, for all these fortifications, surveys, and works of public improvement; the manner in which these funds have been applied, the amount expended upon the several works under construction, and the further sums which may be necessary to complete them. In a second, the works projected by the board of engineers, which have not been commenced, and the estimate of their cost.

In a third, the report of the annual board of visiters at the Military Academy at West Point. For thirteen fortifications erected on various points of our Atlantic coast from Rhode Island to Louisiana, the aggregate expenditure of the year has fallen a little short of one million of dollars.

For the preparation of five additional reports of reconnoissances and surveys since the last session

of Congress, for the civil constructions upon thirty-seven different public works commenced, eight others for which specific appropriations have been made by acts of Congress, and twenty other incipient surveys under the authority given by the act of 30th April, 1824, about one million more of dollars have been drawn from the treasury.

To these two millions of dollars are to be added the appropriation of 250,000 dollars, to commence the erection of a breakwater near the mouth of the Delaware river; the subscriptions to the Delaware and Chesapeake, the Louisville and Portland, the Dismal Swamp, and the Chesapeake and Ohio canals; the large donations of lands to the states of Ohio, Indiana, Illinois, and Alabama, for objects of improvements within those states, and the sums appropriated for light houses, buoys, and piers, on the coast, and a full view will be taken of the munificence of the nation in application of its resources to the improvement of its own condition.

Of these great national undertakings, the Academy at West Point is among the most important in itself, and the most comprehensive in its consequences. In that institution, a part of the revenue of the nation is applied to defray the expense of educating a competent portion of her youth, chiefly to the knowledge and duties of military life. It is the living armory of the nation. While the other works of improvement enumerated in the reports now presented to the attention of Congress, are destined to ameliorate the face of nature; to multiply the facilities of communication between the different parts of the Union; to assist the labours, increase the comforts, and enhance the enjoyments of individuals—the instruction acquired at West Point enlarges the dominion and expands the capacities of the mind. Its beneficial results are already experienced in the composition of the army, and their influence is felt in the intellectual progress of society. The institution is susceptible still of great improvement from benefactions proposed by several successive boards of visiters, to whose earnest and repeated recommendations I cheerfully add my own.

With the usual annual reports from the Secretary of the Navy and the Board of Commissioners, will be exhibited to the view of Congress the execution of the laws relating to that department of the public service. The repression of piracy in the West Indian and in the Grecian seas, has been effectually maintained, with scarcely any exception. During the war between the governments of Buenos Ayres and of Brazil, frequent collisions between belligerent acts of power and the rights of neutral commerce occurred. Licentious blockades, irregularly enlisted or impressed seamen, and the property of honest commerce seized with violence, and even plundered under legal pretences, are disorders never separable from the conflict of wars upon the ocean. With a portion of them, the correspondence of our commanders on the eastern aspect of the South American coast, and among the islands of Greece, discover how far we have been involved. In these, the honour of our country and the rights of our citizens have been asserted and vindicated. The appearance of new squadrons in the Mediteranean, and the blockade of the Darda-

nelles, indicate the danger of other obstacles to the freedom of commerce, and the necessity of keeping our naval force in those seas. To the suggestions repeated in the report of the Secretary of the Navy, and tending to the permanent improvement of this institution, I invite the favourable consideration of Congress.

A resolution of the House of Representatives, requesting that one of our small public vessels should be sent to the Pacific ocean and South Sea, to examine the coasts, islands, harbours, shoals, and reefs, in those seas, and to ascertain their true situation and description, has been put in a train of execution. The vessel is nearly ready to depart; the successful accomplishment of the expedition may be greatly facilitated by suitable legislative provisions; and particularly by an appropriation to defray its necessary expense. The addition of a second, and, perhaps, a third vessel, with a slight aggravation of the cost, would contribute much to the safety of the citizens embarked on this undertaking, the results of which may be of the deepest interest to our country.

With the report of the Secretary of the Navy, will be submitted, in conformity to the act of Congress of third March, 1827, for the gradual improvement of the navy of the United States, statements of the expenditures under that act, and of the measures taken for carrying the same into effect. Every section of that statute contains a distinct provision, looking to the great object of the whole, the gradual improvement of the navy. Under its salutary sanction, stores of ship-timber have been procured, and are in process of seasoning and preservation for the future uses of the navy. Arrangements have been made for the preservation of the live oak timber growing on the lands of the United States, and for its reproduction, to supply, at future and distant days, the waste of that most valuable material for ship building, by the great consumption of it yearly for the commercial, as well as for the military marine of our country. The construction of the two dry docks at Charlestown and at Norfolk, is making satisfactory progress towards a durable establishment. The examinations and inquiries to ascertain the practicability and expediency of a marine railway at Pensacola, though not yet accomplished, have been postponed, but to be more effectually made. The navy yards of the United States have been examined, and plans for their improvement, and the preservation of the public property therein, at Portsmouth, Charlestown, Philadelphia, Washington, and Gosport, and to which two others are to be added, have been prepared, and received my sanction; and no other portion of my duties has been performed with more intimate conviction of its importance to the future welfare and security of the Union.

With the report of the Postmaster General, is exhibited a comparative view of the gradual increase of that establishment, from five to five years, since 1792, till this time in the number of post offices, which has grown from less than two hundred to nearly eight thousand; in the revenue yielded by them, from sixty-seven thousand dollars, which, has swollen to upwards of a million and a half, and in the number of miles of post roads, which, from

five thousand six hundred and forty-two, have multiplied to one hundred and fourteen thousand five hundred and thirty-six. While, in the same period of time, the population of the Union has about thrice doubled, the rate of increase of these offices is nearly forty, and of the revenue, and of travelled miles, from twenty to twenty-five for one. The increase of revenue, within the last five years, has been nearly equal to the whole revenue of the department in 1812.

The expenditures of the department during the year which ended on the first of July last, have exceeded the receipts by a sum of about twenty-five thousand dollars. The excess has been occasioned by the increase of mail conveyances and facilities, to the extent of near eight hundred thousand miles. It has been supplied by collections from the postmasters, of the arrearages of preceding years. While the correct principle seems to be, that the income levied by the department should defray all its expenses, it has never been the policy of this government to raise from this establishment any revenue to be applied to any other purposes. The suggestion of the Postmaster General, that the insurance of the safe transmission of moneys by the mail might be assumed by the department, for a moderate and competent remuneration, will deserve the consideration of Congress.

A report from the Commissioner of public buildings in this city exhibits the expenditures upon them in the course of the current year. It will be seen that the humane and benevolent intentions of Congress in providing, by the act of 20th May, 1826, for the erection of a penitentiary in this district, have been accomplished. The authority of further legislation is now required for the removal to this tenement of the offenders against the laws, sentenced to atone by personal confinement for their crimes, and to provide a code for their employment and government while thus confined.

The Commissioners appointed comformably to the act of 2d March, 1827, to provide for the adjustment of claims of persons entitled to indemnification under the first article of the treaty of Ghent, and for the distribution among such claimants of the sum paid by the government of Great Britain under the convention of 13th November, 1826, closed their labours on the 30th of August last, by awarding the claimants the sum of one million one hundred and ninety-seven thousand four hundred and twenty-two dollars and eighteen cents; leaving a balance of seven thousand five hundred and thirty-seven dollars and eighty-two cents, which was distributed rateably amongst all the claimants to whom awards had been made, according to the directions of the act.

The exhibits appended to the report from the Commissioner of the General Land Office, present the actual condition of that common property of the Union. The amount paid into the Treasury from the proceeds of lands, during the year 1827, and the first half of 1828, falls little short of two millions of dollars. The propriety of further extending the time for the extinguishment of the debt due to the United States by the purchasers of the public lands, limited, by the act of 21st March last, to the fourth of July next, will claim the consideration of Con-

gress, to whose vigilance and careful attention, the regulation, disposal, and preservation of this great national inheritance, has by the People of the United States been intrusted.

Among the important subjects to which the attention of the present Congress has already been invited, and which may occupy their further and deliberate discussion, will be the provision to be made for taking the fifth census or enumeration of the inhabitants of the United States. The constitution of the United States requires that this enumeration should be made within every term of ten years, and the date from which the last enumeration commenced was the first Monday of August of the year 1820. The laws under which the former enumerations were taken, were enacted at the session of congress immediately preceding the operation. But considerable inconveniencies were experienced from the delay of legislation to so late a period. That law, like those of the preceding enumerations, directed that the census should be taken by the marshals of the several districts and territories, under instructions from the secretary of state. The preparation and transmission to the marshals of those instructions, required more time than was then allowed between the passage of the law and the day when the enumeration was to commence. The term of six months, limited for the returns of the marshals, was also found even then too short; and must be more so now, when an additional population of at least three millions must be presented upon the returns. As they are to be made at the short session of congress, it would, as well as from other considerations, be more convenient to commence the enumeration from an earlier period of the year than the first of August. The most favourable season would be the Spring. On a review of the former enumerations, it will be found that the plan for taking every census has contained improvements upon that of its predecessor. The last is still susceptible of much improvement. The third census was the first of which any account was taken of the manufactures of the country. It was repeated at the last enumeration, but the returns in both cases were necessarily very imperfect. They must always be so, resting of course only on the communications voluntarily made by individuals interested in some of the manufacturing establishments. Yet they contained much valuable information, and may, by some supplementary provision of the law, be rendered more effective. The columns of age, commencing from infancy, have hitherto been confined to a few periods, all under the number of 45 years. Important knowledge would be obtained by extending those columns, in intervals of ten years, to the utmost boundaries of human life. The labour of taking them would be a trifling addition to that already prescribed, and the result would exhibit comparative tables of longevity highly interesting to the country. I deem it my duty further to observe, that much of the imperfections in the returns of the last, and perhaps the preceding enumerations, proceeded from the inadequateness of the compensation allowed to the marshals and their assistants in taking them.

In closing this communication, it only remains for me to assure the legislature of my continued earnest

wish for the adoption of measures recommended by me heretofore, and yet to be acted on by them; and of the cordial concurence on my part in every constitutional provision which may receive their sanction during the session, tending to the general welfare.

JOHN QUINCY ADAMS.

Washington, December 2, 1828.

PANAMA DOCUMENTS.

INSTRUCTIONS—GENERAL.

To RICHARD C. ANDERSON *and* JOHN SERGEANT, *Esqs. appointed Envoys Extraordinary and Ministers Plenipotentiary of the United States to the Congress at Panama.*

Department of State,
Washington, 8th May, 1826.

GENTLEMEN: The relations in which the United States stand to the other American powers, and the duties, interests, and sympathies, which belong to those relations, have determined the president to accept an invitation which has been given by the republics of Colombia, Mexico and Central America, to the United States, to send representatives to the congress at Panama. He could not, indeed, have declined an invitation proceeding from sources so highly respectable, and communicated in the most delicate and respectful manner, without subjecting the United States to the reproach of insensibility to the deepest concerns of the American hemisphere, and, perhaps, to a want of sincerity in most important declarations, solemnly made by his predecessor, in the face of the Old and the New World. In yielding, therefore, to the friendly wishes of those three republics, communicated in the notes of their respective ministers, at Washington, of which copies are herewith, the United States act in perfect consistency with all their previous conduct and professions, in respect to the New American States. The assembling of a congress at Panama, composed of diplomatic representatives from independent American nations, will form a new epoch in human affairs. The fact itself, whatever may be the issue of the conferences of such a congress, cannot fail to challenge the attention of the present generation of the civilized world, and to command that of posterity. But the hope is confidently indulged, that it will have other and stronger claims upon the regard of mankind, than any which arise out of the mere circumstance of its novelty; and that it will entitle itself to the affection and lasting gratitude of all America, by the wisdom and liberality of its principles, and by the new guaranties it may create for the great interests which will engage its deliberations. On an occasion so highly important and responsible, the president has been desirous that the representation from the United States should be composed of distinguished citizens. Confiding in your zeal, ability, and patriotism, by and with the advice

and consent of the senate, he has selected you for this interesting service. And it is his wish that you should proceed, with all practicable despatch, to Panama. For the purpose of carrying out Mr. Sergeant, the United States ship Lexington has been prepared, and is now ready to sail from the port of New York, to Porto Bello. Mr. Anderson, having been notified of his appointment, has been directed to leave the affairs of the United State at Bogota in the charge of such person as he may, for that purpose, designate, and to join Mr. Sergeant at Porto Bello, from whence it is supposed it will be most convenient to proceed, by land across the isthmus to Panama. Ministers from several of the powers have, probably by this time, reached that place, and they may even have proceeded to a comparison of their respective credentials, and to conferences on some of the objects of the Congress; but it is probable they will have deferred, until your arrival, a consideration of those deliberations in which it was expected we should take part.

Your power, accompanying this letter, is joint and several, authorizing you to confer and treat with ministers, also, duly authorized, from all or any of the American powers, of peace, friendship, commerce, navigation, maritime law, neutral and belligerent rights, and other matters interesting to the continent of America. After the mutual exchange of powers, it will be necessary to determine the forms of deliberation, and the modes of proceeding, of the Congress. It is distinctly understood by the President, that it is to be regarded, in all respects, as diplomatic, in contradistinction to a body clothed with powers of ordinary legislation; that is to say, no one of the states represented is to be considered bound by any treaty, convention, pact, or act, to which it does not subscribe, and expressly assent by its acting representative; and that in the instance of treaties, conventions, and pacts, they are to be returned, for final ratification, to each contracting state, according to the provisions of its particular constitution. All idea is, therefore, excluded of binding a minority to agreements and acts contrary to its will, by the mere circumstance of a concurrence of a majority of the states in those agreements and acts. Each state will, consequently, be governed and left free, according to its own sense of its particular interests. All notion is rejected of an Amphyctionic council, invested with power finally to decide controversies between the American states, or to regulate, in any respect, their conduct. Such a council might have been well enough adapted to a number of small, contracted states, whose united territory would fall short of the extent of that of the smallest of the American powers. The complicated and various interests which appertain to the nations of this vast continent, cannot be safely confided to the superintendence of one legislative authority. We should almost as soon expect to see an Amphyctionic council to regulate the affairs of the whole globe. But even if it were desirable to establish such a tribunal, it is beyond the competency of the government of the United States voluntarily to assent to it, without a previous change of their actual constitution.

Although the speculation of such

a council has been sometimes made, and associated in the public papers with the contemplated Congress, we can hardly anticipate that it will be seriously pressed by any of the powers. The Congresses which have been so common in Europe, especially within these later times, have been altogether diplomatic, and, consequently, the states whose ministers composed them, were only bound by their signatures. With this necessary and indispensable restriction upon the action of the Congress, great advantages may, nevertheless, be derived from an assembly, at the same time and place, of ministers from all the American nations. Such an assembly will afford great facilities for free and friendly conferences, for mutual and necessary explanations, and for discussing and establishing some general principles, applicable to peace and war, to commerce and navigation, with the sanction of all America. Treaties may be concluded, in the course of a few months, at such a Congress, laying the foundation of lasting amity and good neighbourhood, which it would require many years to consummate, if, indeed, they would be at all practicable, by separate and successive negotiations, conducted between the several powers, at different times and places. Keeping constantly in view the essential character and object of the Congress, which have been described, it is not very important in what manner its conferences and discussions may be regulated.

Experience has, perhaps, sufficiently established, that, for precision, for safety to the negotiators themselves, and for an early practical result, it is wisest to proceed by protocol, in which the mutual propositions of the parties, together with such concise observations as any of them desire to have preserved, are carefully recorded. But you are left free to agree to that mode of proceeding, with the indispensable limitation before stated, which, under all circumstances, shall appear to you most advisable. Your power conveys an authority to treat with all or any of the Nations represented at the Congress, on any of the subjects comprised in your instructions. And on those, especially, of commerce and navigation, maritime law, and neutral and belligerent rights, it is the President's wish, that, if those interests cannot be adjusted satisfactorily to all the attending Powers, you should form, nevertheless, treaties with such as may be disposed to conclude them with you. But, in the conduct of any such separate negotiations, you will carefully avoid giving any occasion of offence to those powers who may decline treating; and, if you should have strong reason to believe that the fact itself, of opening such separate negotiations, would have the tendency of creating unfriendly feelings and relations with other American Powers, you will decline entering on them altogether. You are also authorized to agree upon a transfer of the conferences from Panama to any other place on the American Continent, that may be considered more eligible for conducting them.

In now proceeding to direct your attention particularly to the instructions of the President, by which, after having settled the preliminary point to which I have just adverted, you will govern yourselves, the first observation to be made is, that, in

acceding to the invitation which has been accepted, no intention has been entertained to change the present pacific and neutral policy of the United States. On the contrary, it has been distinctly understood by the three Republics who gave the invitation, and has been enforced on our part, in all our communications with them in regard to it, that the United States would strictly adhere to that policy, and mean faithfully to perform all their neutral obligations. Whilst the existing war is limited to the present parties, it is as unnecessary as it would be unwise, in the United States, to become a belligerent. A state of things can hardly be imagined, in which they would voluntarily take part on the side of Spain; and on that of the Republics it would be entirely useless, since they have been all along able, unaided, triumphantly to maintain their cause, and to conquer the arms, if they have not overcome the obstinacy, of Spain. By maintaining the neutral position which the United States have assumed, they have been enabled to hold strong language to Europe, and successfully to check any disposition which existed there to assist Spain in the re-conquest of the Colonies. If they had departed from their neutrality, and precipitated themselves into the war, there was much reason to apprehend that their exertions might have been neutralized, if not overbalanced, by those of other Powers, who would have been drawn, by that rash example, into the war, in behalf of Spain. Keeping, therefore, constantly in view the settled pacific policy of the United States, and the duties which flow from their neutrality, the subjects will now be particularized, which, it is anticipated, will engage the consideration of the Congress at Panama.

These subjects may be arranged under two general heads: 1st, Such as relate to the future prosecution of the present war with Spain, by the combined or separate operation of the American belligerents. And, 2d, Those in which all the Nations of America, whether neutral or belligerent, may have an interest.

In respect to the first, for reasons already stated, we can take no part. Discussions of them must be confined to the parties to the war. You will refrain from engaging in them. You will not be expected or desired to do so. But, whilst it has been perfectly understood that the United States could not, at the Congress, jeopard their neutrality, they may be urged to contract an alliance, offensive and defensive, on the contingency of an attempt by the Powers of Europe, commonly called the Holy Alliance, either to aid Spain to reduce the new American Republics to their ancient colonial state, or to compel them to adopt political systems more conformable to the policy and views of that Alliance. Upon the supposition of such an attempt being actually made, there can be no doubt what it would be the interest and bounden duty of the United States to do. Their late Chief Magistrate solemnly declared what, in that event, he considered they ought to do. The people of the United States acquiesced in the declaration, and their present Chief Magistrate entirely concurs in it. If, indeed, the Powers of Continental Europe could have allowed themselves to engage in the war, for either of the purposes just indicated, the United States in opposing them with their whole force, would have been

hardly entitled to the merit of acting on the impulse of a generous sympathy with infant, oppressed, and struggling Nations. The United States, in the contingencies which have been stated, would have been compelled to fight their own proper battles, not less so because the storm of war happened to range on another part of this continent, at a distance from their borders. For it cannot be doubted that the presumptuous spirit which would have impelled Europe upon the other American Republics, in aid of Spain, or on account of the forms of their political institutions, would not have been appeased, if her arms, in such an unrighteous contest, should have been successful, until they were extended here, and every vestige of human freedom had been obliterated within these States.

There was a time when such designs were seriously apprehended; and it is believed that the declaration of the late President to the Congress of the United States, which has been already referred to, had a powerful effect in disconcerting and arresting their progress. About the same period, Great Britain manifested a determination to pursue the same policy, in regard to the new Republics, which the United States had previously marked out for themselves. After these two great maritime powers, Great Britain and the United States, had let Continental Europe know that they would not see with indifference any forcible interposition in behalf of Old Spain, it was evident that no such interposition would, or, with any prospect of success, could be afforded. Accordingly, since that period, there have been no intimations of any designs on the part of the European Alliance against the new American Republics. If that Alliance has seen, with any dissatisfaction, (as may be well imagined,) the successful progress of those Republics, both in the war and in the establishment of their free political systems, they have confined themselves to silent and unavailing regrets.

The auspicious course of events has not only occasioned the abandonment of any hostile intentions which were entertained, if such were ever entertained, by the European alliance, but there is strong reason to hope that it has led to the creation of pacific, if not friendly, views towards our sister republics. Upon the entry of the President of the United States on the duties of his present office, his attention was anxiously directed to, and has been since unremittingly employed on the object of establishing peace between Spain and those Republics. In considering the means for its accomplishment, no very sanguine hope was indulged from an approach to Spain directly, and it was thought best to endeavour to operate on her through that alliance on whose countenance and support she mainly relied for the recovery of the colonies. Russia was known to be the soul of that alliance, and to the Emperor, of whose wisdom and friendship the United States had so many proofs, the appeal was at once made. A copy of the note from this Department to the American Minister at St. Petersburg, on that subject, accompanies these instructions. Copies of it were transmitted, contemporaneously, to the courts of London and Paris, whose co-operation in the work of peace was also invited. Our Minister at Madrid was instructed to lose no fit occasion there for creating or

strengthening a disposition towards peace. The hope was cherished, that, by a general and concerted movement of the United States and the great powers of Europe at the same time, the Councils of Spain might be prevailed upon to accede to a peace, which had become more necessary, if possible, to her, than to the new Republics. An answer has lately been received here from St. Petersburg, through Mr. Middleton, a copy of which, together with copies of his accompanying notes, is placed in your hands. From a perusal of these documents, the contents of which have been confirmed by the Russian Minister, in official interviews which I have had with him, you will perceive that the appeal to Russia has not been without effect; and that the late Emperor, sensible of the necessity of peace, prior to his death, probably employed his good offices to bring it about. His successor has formally announced his intention to tread in the path of his illustrious predecessor, and it is, therefore, most likely that he will also direct the influence of that government to the conclusion of a peace satisfactory to both parties. It is possible that these efforts may not be effectual, and that the pride and obstinacy of Spain may be unconquerable. There is, however, much reason to hope, that she may either consent to a peace, upon the basis of the independence of the colonies, or, if she feels that too humiliating, that she will agree to a suspension of hostilities, as was formerly done in the case of the Low Countries, which would, in the end, inevitably lead to a formal acknowledgment of the actual independence of the new Republics. Whatever may be the future course of Spain, the favourable reception which the Emperor of Russia has given to the overture of the United States, to say nothing of the known inclination of France and other Powers of the European Continent to follow the example of the United Staes and Great Britain, fully authorizes the conclusion that the Holy Alliance will not engage in the war, on the side of Spain, but will persevere in their actual neutrality. The danger, therefore, from that quarter having disappeared, there can be no necessity at this time, for an offensive and defensive alliance between the American Powers, which could only find a justification, at any period, in the existence or continuation of such a danger. Such an alliance, under present circumstances, would be worse than useless; since it might tend to excite feelings in the Emperor of Russia and his allies, which should not be needlessly touched or provoked.

The Republic of Colombia has recently requested the friendly interposition of this government to prevail upon Spain to agree to an armistice, upon the conditions mentioned in Mr. Salazar's note, of which a copy, together with a copy of mine in reply, acceding to the request, is now furnished. And instructions have been accordingly given to the Ministers of the United States at Madrid and St. Petersburg.

Other reasons concur to dissuade the United States from entering into such an alliance. From the first establishment of their present constitution, their illustrious statesmen have inculcated the avoidance of foreign alliances as a leading maxim of their foreign policy. It is true, that, in its adoption, their attention was directed to Europe,

which, having a system of connexions and of interests remote and different from ours, it was thought most advisable that we should not mix ourselves up with them. And it is also true, that long since the origin of the maxim, the new American powers have arisen, to which, if at all, it is less applicable. Without, therefore, asserting that an exigency may not occur in which an alliance of the most intimate kind, between the United States and the other American Republics, would be highly proper and expedient, it may be safely said, that the occasion which warrant a departure from that established maxim ought to be one of great urgency, and that none such is believed now to exist. Among the objections to such alliances, those which at all times have great weight are, first, the difficulty of a just and equal arrangement of the contributions of force and of other means, between the respective parties, to the attainment of the common object; and, secondly, that of providing, beforehand, and determining with perfect precision, when the *casus fœderis* arises, and thereby guarding against all controversies about it. There is less necessity for any such alliance at this conjuncture, on the part of the United States, because no compact by whatever solemnities it might be attended, or whatever name or character it might assume, could be more obligatory upon them than the irresistible motive of self preservation, which would be instantly called into operation, and stimulate them to the utmost exertion, in the supposed contingency of an European attack upon the liberties of America.

The considerations to which I have now adverted, together with such others as may present themselves to you, will, it is hoped, satisfy the representatives of the other American States, that an alliance, offensive and defensive, between them and the United States, for the object which has been stated, is unnecessary, if not mischievous.—Should you, however, be unable to bring that conviction home to them, and should you have reason to believe that the positive rejection of such an alliance would be regarded in an unfriendly light, and have a pernicious effect on your other negotiations, you will invite them to reduce their proposals of the terms of such an alliance as they may conceive proper, to a written precise form, and state that you will take them *ad referendum*. That will afford to the government here opportunity of reconsideration, with the advantage of all the information that may be evolved in the intervening period. The alliance, if ever admissible, having been a question of time, the delay incident to the reference home, by further demonstrating its inexpediency, will better prepare the Congress at Panama for the final rejection, which, it is most probable, this government will give to the project.

II. In treating of those subjects in which all the nations of America, whether now at war or in peace, may be supposed to have a common interest, you will, on all suitable occasions, inculcate the propriety of terminating the existing war as soon as may be, and of cherishing the means best adapted to the preservation of peace among themselves, and with the rest of the world. The cultivation of peace is the true interest of all nations, but it is especially that of infant states. Repose is not more necessary to the growth

and expansion of individuals in their youth, than it is to that of young nations which have, in the midst of war, commenced the career of independence and self-government.—Peace is now the greatest want of America. Desirable, however, as it unquestionably is, there is nothing in the present or in the future, of which we can catch a glimpse, that should induce the American Republics, in order to obtain it, to sacrifice a particle of their independent sovereignty. They ought, therefore, to reject all propositions founded upon the principle of a concession of perpetual commercial privileges to any foreign power. The grant of such privileges is incompatible with their actual and absolute independence. It would partake of the spirit, and bring back, in fact, if not in form, the state of ancient colonial connexion. Nor would their honour and national pride allow them to entertain, or deliberate, on propositions founded upon the notion of purchasing, with a pecuniary consideration, the Spanish acknowledgment of their independence.

Next to the more pressing object of putting an end to the war between the new Republics and Spain, should be that of devising means to preserve peace in future, among the American nations themselves, and with the rest of the world. No time could be more auspicious than the present for a sucessful inquiry, by the American nations, into the causes which have so often disturbed the repose of the world; and for an earnest endeavour, by wise precaution, in the establishment of just and enlightened principles, for the government of their conduct, in peace and in war to guard, as far as possible, against all misunderstandings. They have no old prejudices to combat; no long established practices to change; no entangled connexions or theories to break through. Committed to no particular systems of commerce, to any selfish belligerent code of law, they are free to consult the experience of mankind, and to establish, without bias, principles for themselves, adapted to their condition, and likely to promote their peace, security, and happiness. Remote from Europe, it is not probable that they will often be involved in the wars with which that quarter of the globe may be destined, hereafter, to be afflicted. In these wars, the policy of all America will be the same, that of peace and neutrality, which the United States have, heretofore, constantly laboured to preserve.

If the principles, which that probable state of neutrality indicates as best for the interests of this hemisphere, be, at the same time, just in themselves, and calculated to prevent wars, or to mitigate the rigour of those great scourges, they will present themselves to the general acceptance with an union of irresistible recommendations. Both those qualities are believed to be possessed by the maritime principles for which the United States have ever contended, and especially throughout the whole period of the late European wars. The President wishes you to bring forward those principles on an occasion so auspicious as that is anticipated to be of the Congress of Panama. Uncontrolled power, on whatever element it is exerted, is prone to great abuse. But it is still more liable to abuse on the sea, than on the land; perhaps, because it is there exercised beyond the prescence of impartial spectators, and, therefore, with but little moral restraint resulting from the salutary

influence of public opinion, which, if applied at all, has always to be subsequently, and consequently, less efficaciously applied. The moral cognizance, when it comes to be taken, finds, too, a more doubtful or contested state of fact, than if the theatre had been where there were more numerous and less prejudiced witnesses. At all times there has existed more inequality in the distribution among nations, of maritime, than of territorial power. In almost every age, some one has had the complete mastery on the ocean, and this superiority has been occasionally so great as to more than counterbalance the combined maritime force of all other nations, if such a combination were practicable. But when a single nation finds itself possessed of a power any where, which no one, nor all other nations, can successfully check or countervail, the consequences are too sadly unfolded in the pages of history. Such a nation grows presumptuous, impatient of contradiction or opposition, and finds the solution of national problems easier, and more grateful to its pride, by the sword, than by the slow and less brilliant process of patient investigation. If the superiority be on the ocean, the excesses in the abuses of that power become intolerable. Although, in the arrangement of things, security against oppression should be the greatest where it is most likely to be often practised, it is, nevertheless, remarkable, that the progress of enlightened civilization has been much more advanced on the land than on the ocean. And, accordingly, personal rights, and especially those of property, have both a safety and protection on the former, which they do not enjoy on the latter element. Scarcely any circumstance would now tend more to exalt the character of America, than that of uniting its endeavours to bring up the arrears of civilization, as applied to the ocean, to the same forward point which it has attained on the land, and, thus rendering men and their property secure against all human injustice and violence, leave them exposed only to the action of those storms and disasters, sufficiently perilous, which are comprehended in the dispensations of Providence.

It is under the influence of these, and similar considerations, that you will bring forward, at the contemplated Congress, the proposition to abolish war against private property and non-combatants upon the ocean. Private property of an enemy is protected when on land from seizure and confiscation. Those who do not bear arms there are not disturbed in their vocations. Why should not the same humane exemptions be extended to the sea? If the merchandise in a ware-house on shore remains unmolested, amidst the ravages of modern war, can any good reason be assigned for allowing the same merchandise, when transferred to a ship which is peaceably navigating the ocean, to be an object of legitimate capture and condemnation? If artizans and husbandmen are permitted, without hindrance, to pursue their respective callings, why should not the not less useful mariners be allowed peaceably to distribute the productions of their industry in exchanges for the common benefit of mankind? This has been an object which the United States have had much at heart, ever since they assumed their place among the nations. More than

forty years ago, Dr. Franklin, one of their most enlightened and successful ministers, thus expressed himself: "It is time, it is high time, for the sake of humanity, that a stop were put to this enormity. The United States of America, though better situated than any European nation, to make profit by privateering, are, as far as in them lies, endeavouring to abolish the practice, by offering, in all their treaties with other powers, an article, engaging solemnly that, in case of future war, no privateer shall be commissioned on either side, and that unarmed merchant ships, on both sides, shall pursue their voyages unmolested. This will be a happy improvement of the law of nations. The humane and the just cannot but wish general success to the proposition." What the sagacious forecast of that illustrious man enabled him to anticipate at that early day of our national existence, has been fully confirmed in our subsequent progress. We are better situated than any other nation, and, in the event of war, we now have ample means to enable us to make profit by privateering; but, faithful to our principles, we now offer, in our maturer and stronger condition, the same stipulations which were offered by Franklin and other American negotiators, but which might then have been attributed to our infancy and weakness.

If, by the common consent of nations, private property on the ocean was no longer liable to capture as lawful prize of war, the principle that free ships should make free goods would lose its importance, by being merged in the more liberal and extensive rule. But, judging from the slow progress of civilization in its operation on the practices of war, and the tenacity with which power ever clings to advantages which it conceives itself to possess, it would be too much to indulge any very sanguine hope of a speedy, universal concurrence, in a total exemption of all private property from capture. Some nations may be prepared to admit the limited, who would withhold their assent from the more comprehensive principle. You will, therefore, also propose the adoption of the rule, that free ships shall make free goods, and its converse, that inimical ships shall make inimical goods. The one seems necessarily to follow from the other, and in their practical application there is a simplicity and certainty in both, which strongly recommend them to general adoption. Both operate in favour of neutrality, and thus present a new dissuasive to nations from rashly engaging in war. It will occur, of course, to you, to insert a provision restricting the operation of these principles to those nations which shall agree to observe them.

You will propose a definition of blockade. The experience of the United States, and that of some of the new American nations, short as has been the term of their existence, alike indicate the utility of a plain and intelligible description of the facts which constitute a legitimate blockade. The want of such a definition has been the principal cause of any difficulties which have arisen between them and the United States. The belligerent interest is to extend, the neutral to contract, as much as possible, the range of a blockade. The belligerent interest is to insist upon the smallest possible, that of the neutral upon the largest practical

amount of force, to give validity to the blockade. In this conflict of opposite pretensions, as the belligerent has arms in his hands, ready to support his, the neutral generally suffers. The best security against abuses on either side, is a clear definition which, by presenting circumstances notorious in their nature and character, admits of no controversy, among those who have a proper sense of justice, and entertain a mutual regard for their respective rights. You will find in the treaty with Colombia, and that with the Central Republic, recently concluded and ratified here, (copies of both of which are herewith,) a definition of blockade which may be proposed and safely followed. In the same treaties are also contained articles supplying a list of contraband, and several other articles having reference to a state of war, in which the contracting parties may be belligerent or neutral, as the case may be, all of which you are authorized to propose. In connexion with this interesting subject, you are furnished among the accompanying documents, with a letter from my predecessor, under the date of 28th July, 1823, addressed to Mr. Rush, Minister of the United States at London, with the draft of articles for a treaty which he was authorized to propose to Great Britain. They may facilitate your labours. The articles, having been prepared with much consideration, may serve as models for any that may be agreed on at the Congress, upon corresponding topics. It it hardly necessary to add, that this recent experiment with Great Britain, like all others which preceded it, proved abortive.

Among the most important objects which are likely to engage the attention of the congress, is that of endeavouring to fix some general principles of intercourse, applicable to all the powers of America, for the mutual regulation of their commerce and navigation. The United States, from the origin of the present war, have, on all proper occasions, uniformly proclaimed that they entertained no desire to procure for themselves, from any of the new powers, peculiar commercial advantages. They continue to adhere to this disinterested doctrine. You will state in your conferences, that, as they have not sought, in treating with the American States, separately, neither will they seek, in joint negotiations with them, for any privileges, which are not equally extended to every one of them. Indeed, they are prepared, themselves, to extend to the powers of Europe the same liberal principles of commercial intercourse and navigation, on which the United States are ready to treat. The President hopes that you will meet with corresponding dispositions in the other American States; and that you will have no difficulty in obtaining their ready concurrence to the equitable bases of perfect equality and reciprocity, which you are hereby empowered at once to propose for the commerce and navigation between all the American nations. The whole of what is very material to their commerce and navigation may be comprised under two general principles, both of which are founded on those bases. The first is, that no American nation shall grant any favours in commerce or navigation to any foreign power whatever, either upon this or any other continent,

which shall not extend to every other American nation. And, secondly, that whatever may be imported from any foreign country into any one American nation, or exported from it, in its own vessels, may, in like manner, be imported into or exported from the same nation in the vessels of every other American nation, the vessel, whether national or foreign, and the cargo, paying, in both instances, exactly the same duties and charges, and no more.

The first of those two principles is so strongly recommended to all nations, by considerations of policy as well as justice, that it will command, at least in the abstract, the assent of most, as soon as it is announced. Nations are equal, common members of an universal family. Why should there be any inequality between them, in their commercial intercourse? Why should one grant favours to another, which it withholds from a third? All such partial favours are liable to excite jealousies, and, in the end, are counterbalanced or punished by the injured powers. The principle now proposed does not preclude those particular arrangements which are founded upon real and just equivalents, independent of mere commercial reciprocity, by which certain advantages are granted to a particular power; but it is wiser even to avoid these as much as possible. If the principle be correct in its universal application, it must be allowed to be particularly adapted to the condition and circumstances of the American powers. The United States have had no difficulty in treating, on that principle, with the Republics of Colombia and Central America, and it is accordingly inserted in the treaties which have been made with both those powers. Other of the American nations are believed to have a disposition to adopt it. The United Mexican States alone have opposed it, and in their negotiations with us have brought forward the inadmissible exception, from its operation, of those American States which have a Spanish origin, in whose behalf Mexico insists upon being allowed to grant commercial favours which she may refuse to the United States. Of the view which we entertain of such an exception, you will be able to possess yourselves, by perusing a despatch from this office to Mr. Poinsett, under date of the 9th day of November, 1825, a copy of which is herewith. He has been instructed to break off the negotiations, if, contrary to expectation, the Mexican government should persist in the exception. What renders it more extraordinary, is, that whilst they pretend that there has been something like such an understanding between the new republics, no such exception was insisted upon by either Colombia or the Central Republic. It was not even mentioned during the late negotiation here, which terminated in the treaty with the latter power. Whether it was adverted to or not, in that which was conducted by Mr. Anderson with Colombia, he will recollect. We can consent to no such exception. You will resist it in every form if it be brought forward; and you will subscribe to no treaty which shall admit it. We are not yet informed whether Mexico has abandoned the exception, and concluded with Mr. Poinsett a commercial treaty, or has persevered in it, and broken off the negotiation. The basis of the most

favoured nation, leaves the party, who treats on it, free to prohibit what foreign produce and manufactures he pleases, and to impose on such as may be admitted into his ports any duties to which his policy or his interests may require. The principle only enjoins impartiality, as to the foreign powers to whom it is applied, and consequently that his prohibitions and his duties, whatever they may be, shall equally extend to the produce and manufactures of all of them. If a nation has already contracted engagements with another power, by which it has granted commercial favours, inconvenient or injurious to itself, it may be contrary to its interests to extend these same favours to other nations. But the United States have made no such improvident concessions to any particular foreign power, nor have any of the other American States, as far as we know. The time and the theatre, therefore, are propitious for the adoption of a broad and liberal commercial principle, which, by dispensing equal favour to all, deprives every one of any just cause of complaint.

2. To the other leading principle which has been stated, that of allowing the importation into, or the exportion from, the ports of any American nation, in the vessel of every other, of all produce and manufactures, the introduction or exportation of which is admitted by law, both the native and the foreign vessel, and the cargo, paying the same duties and charges, and no other, the President attaches the greatest importance. You will press it, in your conferences, with an earnestness and zeal proportionate to its high value, and to the liberality in which it is conceived. Its reciprocity is perfect; and, when it comes to be adopted by all nations, we can scarcely see any thing beyond it, in the way of improvement, to the freedom and interests of their mutual navigation. The devices of maritime nations have been various to augment their marine, at the expense of other powers. When there has been a passive acquiescence in the operation of those devices, without any resort to countervailing regulation, their success has sometimes been very great. But nations are now too enlightened to submit quietly to the selfish efforts of any one power to engross, by its own separate legislation, a disproportionate share of navigation in their mutual intercouse. Those efforts are now met by opposite efforts; restriction begets restriction, until the discovery is at last made, after a long train of vexations and irritating acts and manœuvres, on both sides, that the course of selfish legislation, ultimately, does not affect the distribution of maritime power, whilst it is attended with the certain evil of putting nations into an ill humour with each other. Experience at last teaches that, in every view, it is better to begin and to continue in the career of liberality, than in that of a narrow and restricted policy, since the most that can be said against the former, is, that it only conducts to the same end, without, however, the unpleasant incidents to which the other finally but inevitably leads. There is a simplicity in the principle of reciprocal liberty of navigation, which confers on it a strong recommendation. It renders unnecessary all difficult and vexatious scrutiny into the origin of the contents of a mixed cargo. It dispenses with all

penalties and forfeitures denounced for what is often both an ignorant and innocent violation of custom house law, in the introduction, perhaps, of a single interdicted article of small value, which is made, by arbitrary regulation, to taint the whole cargo of immense value. It sets up a rule at once plain and intelligible. It refers the foreigner, for what he may lawfully do, to an observation of that which the native actually does. It opens every American port to every American vessel, on the same equal terms, no matter in what distant sea her enterprise may have sought and earned the riches with which she is laden. This principle of reciprocal freedom of navigation, like that of the most favoured nation, leaves every state, which adopts it, at liberty to impose such tonnage duties as its necessities or policy may dictate. It only holds out that whatever may be imposed shall extend alike to the national and the foreign vessel, and also that the cargo, whether of importation or exportation, shall be charged with the same duties, whoever may be the proprietor, or in whatever vessel it may be laden. Perhaps it may be proposed to agree to the imposition of precisely the same rate of duties, on vessel and cargo, in all the ports of the American nations. But that would be inadmissible. It would subject each state to inconvenient restrictions on its power of taxation, instead of leaving it free, as is best for each, to consult the circumstances of its own peculiar position, its habits, its constitution of government, and the most fitting sources of revenue for itself. As to the foreigner, he has no pretext to complaint when the same measure is applied to him and the native.

It may, perhaps, be objected, that the marine of the other American nations is yet in its infancy; that ours has made great advances; and that they cannot be prepared for this reciprocal liberty of navigation until they have made some further progress in establishing theirs. The difference in the condition of the marine of the respective countries, assumed in the supposed argument, certainly exists. But how is it to be remedied? By a system which shall aim at engrossment, and which will, therefore, provoke retaliation? Or one which dealing, liberally by others, will lead them to measure out liberality in return? These alternatives have been already discussed; and it has been shown that the first system is never successful, except from the forbearance of foreign powers to countervail it, which is not now to be expected in the present watchful state of the maritime world. If we are to await for the commencement of the equal and liberal system, until all nations shall have brought up their respective marines even and abreast, it may be considered as indefinitely, if not forever, postponed. If the new States would build up for themselves powerful marines, they must seek for their elements not in a narrow and contracted legislation, neutralized by the counteracting legislation of other nations, but in the abundance and excellence of their materials for ship-building, in the skill of their artisans and the cheapness of their manufacture, in the number of their seamen, and their hardy and enterprising character, formed by exposure in every branch of sea faring life, by adventures on every ocean, and invigorated by a liberal, cheerful, and fearless, competition with foreign powers.

Both of the principles which I have

been discussing are provided for, though somewhat more in detail, in the second, third, fourth, and fifth articles of the before mentioned Treaty with the Federation of the Centre of America. They may serve as models for those which you are now authorized to propose; and you will consider yourselves empowered to agree to articles similar with all the others of that treaty, a copy of which accompanies this letter.

It is possible that you may not find the Ministers of the other American States prepared to agree to the second principle; that they may be unwilling to subscribe to it in the extent now proposed; they may not be ready to allow, at the same rate of duties, a reciprocal liberty of exportation and importation, without restriction as to the place of origin of the cargo, the ownership, or destination of the vessel. You will not abandon the effort to establish that principle, in its widest scope, until you have exhausted every means of argument and persuasion, and become perfectly satisfied that its adoption is wholly impracticable. If you find their opposition to it unyielding, you will then propose a modification of the principle, so as to make it, at least, comprehend the productions and manufactures of all the American nations, including the West India Islands. When so limited, it will still have great practical benefit; all vessels of the several American Powers will enjoy under it a reciprocal liberty of exportation and importation of whatever of American productions and manufactures, comprehending the produce of the sea, is allowed, by the separate laws of each, at the same standard of duties for the vessel and her cargo. If the reasoning be correct, in support of the principle in its greatest latitude, it will, of course sustain it in this more restricted operation. To which may be added, as a strong consideration in favour of its embracing, at least the American States, that there is great similarity in the produce of various parts of them, and, consequently, a great difficulty in tracing articles, having a common character, and striking resemblance, to the countries of their respective origin, and subjecting them to different rates of duty, as they happen to be imported in different vessels, or blended together in the same vessel.

If you find the principle still objected to with that modification, you will lastly propose it with the still greater restriction of only furnishing the rule which shall be observed between any two of the American nations who may agree to it, in regard to their mutual navigation, when employed in transporting their respective produce and manufactures. Under this form, it is proposed by the United States, on the 3d March, 1815, [see 4th vol. of the Laws, page 824] to all nations. On the 3d of July, of the same year, it was engrafted on the Convention with Great Britain, [see 6th vol. of the Laws, page 603.] Subsequently, it was applied to the Netherlands, the Imperial Hanseatic Cities of Hamburg, Lubec, and Bremen, the Dukedom of Oldenburg, Norway, Sardinia, and Russia, [see acts 1st Session, 18th Congress page 4.] It was also embraced in our Treaty with Sweden, of 1816, [see 6th vol. of the Laws, page 642,] and has recently been agreed to by Colombia. In the event of a concurrence in the principle, in this more limited import, the first, second, and third articles of the beforementioned Convention with Great Britain, will furnish models which

may be followed in the draft of those to which you are authorized to agree. These three articles embrace other subjects beside that principle, but they are such as to have either a direct connexion with it, or are necessary to give full and complete effect to it. In describing the territories of the new American States with which we are to maintain hereafter a commercial intercourse, you will see the propriety of employing, in any treaty which you may conclude, such terms as may embrace whatever territories, *insular or continental*, may appertain to each, upon the termination of the present war. During its future progress, possession may be won or lost, which, as the case may be, should be comprehended or excluded by those terms.

In December, 1823, the then President of the United States, in his annual Message, upon the opening of Congress, announced, as the principle applicable to this Continent, what ought hereafter to be insisted upon, that no European nation ought to be allowed to plant upon it new colonies. It was not proposed, by that principle, to disturb pre-existing European Colonies already established in America ; the principle looked forward, not backward. Several of the new American States have given intimation of their concurrence in the principle ; and it is believed that it must command the assent of the impartial world.

Whilst America was, comparatively, a boundless waste, and an almost unpeopled desert, claimed, and probably first settled with civilized men, by the European Powers who discovered it, if they could agree among themselves as to the limits of their respective territories, there was no American State to oppose, or whose rights could be affected by, the establishment of new colonies. But now the case is entirely altered ; from the north-eastern limits of the United States, in North America, to Cape Horn, in South America, on the Atlantic Ocean, with one or two inconsiderable exceptions ; and from the same cape to the fifty-first degree of north latitude, in North America, on the Pacific Ocean, without any exception, the whole coasts and countries belong to sovereign resident American Powers. There is, therefore, no chasm within the described limits in which a new European colony could be now introduced, without violating the territorial rights of some American State. An attempt to establish such a colony, and by its establishment to acquire sovereign rights for any European power, must be regarded as an inadmissible encroachment. If any portion of the people of Europe, driven by oppression from their native country, or actuated by the desire of improving the condition of themselves or their posterity, wish to migrate to America, it will no doubt be the policy of all the new States, as it ever has been ours, to afford them an asylum, and, by naturalization, to extend to such of them as are worthy, the same political privileges which are enjoyed by the native citizen. But this faculty of emigration cannot be allowed to draw after it the right of the European State, of which such emigrants shall have been natives, to acquire sovereign powers in America. The rule is good by which one, in judging of another's conduct, or pretensions, is advised to reverse positions. What would Europe think of an American at-

tempt to plant there an American colony? If its power would be provoked, and its pride exerted, to repress and punish such a presumptuous act, it is high time that it should be recollected and felt, that Americans, themselves descended from Europeans, have also their sensibilities and their rights.

To prevent any such new European colonies, and to warn Europe beforehand that they are not hereafter to be admitted, the President wishes you to propose a joint declaration of the several American States, each, however, acting for, and binding only itself, that, within the limits of their respective territories, no new European colony will hereafter be allowed to be established. It is not intended to commit the parties who may concur in that declaration, to the support of the particular boundaries which may be claimed by any one of them; nor is it proposed to commit them to a joint resistance against any future attempt to plant a new European colony. It is believed that the moral effect alone of a joint declaration, emanating from the authority of all the American nations, will effectually serve to prevent the effort to establish any such new colony; but if it should not, and the attempt should actually be made, it will then be time enough for the American powers to consider the propriety of negotiating between themselves, and, if necessary, of adopting in concert the measures which may be necessary to check and prevent it. The respect which is due to themselves, as well as to Europe, requires that they should rest in confidence that a declaration, thus solemnly put forth, will command universal deference. It will not be necessary to give to the declaration now proposed the form of a Treaty. It may be signed by the several Ministers of the Congress, and promulgated to the world as evidence of the sense of all the American powers.

Among the subjects which must engage the consideration of the Congress, scarcely any has an interest so powerful and commanding as that which belongs to Cuba and Porto Rico, the former especially. Cuba, from its position, the present amount and the character of its population, that which it is capable of sustaining, its vast, though almost latent resources, is at present the great object of attraction both to Europe and America. No power, not even Spain itself, has, in such a variety of forms, so deep an interest in its future fortunes, whatever they may happen to be, as the United States. Our policy in regard to it is fully and frankly disclosed in the before-mentioned note to Mr. Middleton. It is there stated, that, for ourselves, we desire no change in the possession or political condition of that island; and that we could not, with indifference, see it transferred from Spain to any other European power. We are unwilling to see its transfer or annexation to either of the new American States. If the present war should much longer continue, there are three conditions, into some one of which that island may fall during its further progress, and all of them deserve the most particular and serious consideration. The first is, its independence, resting at the close of the war upon its own unassisted resources to maintain that independence. 2dly. Its independence, with the guaranty of other powers, either of Europe or of America, or both. And, 3dly. Its

conquest and attachment to the dominions of the Republic of Colombia or Mexico. We will now examine each of those predicaments of the island, in the order in which they have been stated.

1. If Cuba had the ability, within itself, of maintaining an independent self-government against all assaults from without or within, we should prefer to see it in that state; because we desire the happiness of others as well as ourselves, and we believe that it is, in general, most likely to be secured by a local government springing directly from, and identified in feeling, interest, and sympathy, with the people to be governed. But a mere glance at the limited extent, moral condition, and discordant character of its population, must convince all of its incompetency, at present, to sustain self-government, unaided by other powers. And if at this premature period an attempt at independence should be so far attended with success as to break the connexion with Spain, one portion of the inhabitants of the island, as well as their neighbours in the United States, and in some other directions, would live in continual dread of those tragic scenes which were formerly exhibited in a neighbouring island, the population of which would be tempted, by the very fact of that independence, to employ all the means which vicinity, similarity of origin, and sympathy, could supply, to foment and stimulate insurrection, in order to gain ultimate strength to their own cause.

2. A guarantied independence of Cuba, although it might relieve the island from the dangers which have been just noticed, would substitute others not less formidable, and which, it is believed, are almost insuperable. Who shall be the guaranteeing powers? Shall they be exclusively American, or mixed, partly American and partly European? What shall be the amount of their respective contributions to the protecting force, military and naval, and to the other means necessary to uphold the local government? Who shall have the command of that force? Will not the guaranteeing powers, not in command, entertain continual apprehensions and jealousies of the commanding power? The candid must own that these are perplexing questions; and that, upon the whole, although all thought of that modification of independence should not, perhaps, be dismissed as absolutely inadmissible, under any possible circumstances, it must be agreed to be one, to which, if assent is ultimately yielded, it must be reluctantly, from a train of unforeseen and uncontrollable events.

3. With respect to the conquest and annexation of the island to Colombia or Mexico, it should be remarked that, if that be attempted, the whole character of the present war will be entirely changed. Hitherto, on the part of the republics, the contest has been for independence and self-government, and they have had, on their side, the good wishes and the friendly sympathies of a large portion of the world, and those especially of the people of the United States. But in the event of a military enterprise directed against Cuba, it will become a war of conquest. In such a war, whatever may be the result of that enterprise, the interests of other powers, now neutral, may be seriously affected, and they may be called upon to perform important

duties, which they may not be at liberty to neglect. The issue of such a war may have great influence upon the balance and stability of power in the West Indies. Nations of Europe may feel themselves required to interpose forcibly, to arrest a course of events to which they cannot be indifferent. If they should limit their interposition merely to the object of preventing any change in the existing state of things, in respect to the islands, the United States, far from being under any pledge, at present, to oppose them, might find themselves, contrary to their inclination, reluctantly drawn by a current of events to their side. In considering such an enterprise as has been supposed, if it be undertaken, there ought to be an anxious and deliberate examination, first, into the means of Colombia and Mexico to accomplish the object; and, secondly, their power to preserve and defend the acquisition, if made. We have not the data necessary to form a certain judgment on the first point. We ought to possess, to enable us to form such a judgment, a knowledge, first, of the force, military and naval, which the republics can apply to the operation; secondly, that which Spain can exert in resistance; and, thirdly, what portion of the inhabitants of the island would take part on the one and on the other side of the belligerents. Although we have not this information in ample detail, we know that Spain is in actual possession, with a very considerable military force; that this force, recently much strengthened, occupies the Moro Castle, deemed almost impregnable, and other strong holds in the island; that driven, as she has been, from the continent of America, all her means and all her efforts will now be concentrated on this most valuable of her remaining American possessions; that to this end she will apply her attention, which has been hitherto too much distracted by the multitude of her belligerent exertions in North and South America, exclusively to this most important point; that to its succour she will gather up from her vast wreck, the residue of her once powerful army in Europe and America; and that there is reason to believe, that if she should not be openly assisted by any of the European powers, she may receive from them covert but irresponsible aid.

With all these resources and favourable circumstances combined, it must be admitted that the conquest of Cuba is very difficult, if not impracticable, without extensive and powerful means, both naval and military. But, secondly, do either Colombia or Mexico possess such means? We doubt it. They have both to create a marine. A single ship of the line, two frigates, and three or four vessels of a smaller grade, badly manned, compose the whole naval force of the United Mexican States. That of Colombia is not much greater, nor better manned. But the means of transporting and defending, during its voyage, the military force necesary to achieve the conquest, are absolutely indispensable. Nay, more; it would be in the last degree rash and imprudent to throw an army into Cuba, unless the two republics possessed and could retain a naval superiority, at least in the Gulf of Mexico, to provide for those contingencies which ought always to be anticipated in the vicissitudes of war. And, in the third place,

it is well known that the inhabitants of Cuba, far from being united in favour of invasion, entertain great apprehensions as to their future safety in such an event, and that they especially dread an invasion from Colombia, on account of the character of a portion of the troops of that republic.

But if all difficulties were surmounted, and the conquest of the island was once effected, we should not be without continual fears of the instability of its future condition. The same want of naval power, which would be felt in reducing, would be subsequently experienced in defending and preserving it. Neither Colombia nor Mexico is destined to be a first rate naval power. They both, (Mexico still more than Colombia,) want an extent of sea coast, bays, inlets, and harbours, the nurseries of seamen; in short, all the essential elements of a powerful marine. England, France, the Netherlands, Spain herself, when she shall, as at some no very distant day she must, recover from her present debility, will, for a long time to come, if not for ever, as naval powers, outrank either Mexico or Colombia. A war with any one of those European nations would place Cuba, in the hands of either of those two republics, at the most imminent hazard. It is impossible for the government of the United States to close their eyes to the fact, that, in the event of a military enterprise being prosecuted by the republics against Cuba, the ships, the seamen, the cannon, and the other naval means necessary to conduct it, will have been principally obtained in the United States. Although, far from giving any countenance to the procurement of those supplies, determined to maintain a faithful neutrality, they have directed a strict enforcement of their laws; the fact, nevertheless, of their being collected within their ports, subjects them to unfriendly and injurious suspicions. And they would see, with much repugnance, resources drawn from themselves applied to the accomplishment of an object to which their policy and their interests are opposed.

The President hopes that these considerations, enforced by such others as may present themselves to you, if they should not be deemed of sufficient weight to prevent altogether any invasion of Cuba, will, at least, dissuade from any rash or premature enterprise with inadequate or doubtful means. And it is required, by the frank and friendly relations which we most anxiously desire ever to cherish with the new Republics, that you should, without reserve, explicitly state, that the United States have too much at stake in the fortunes of Cuba, to allow them to see, with indifference, a war of invasion, prosecuted in a desolating manner; or to see employed, in the purposes of such a war, one race of the inhabitants combating against another, upon principles and with motives that must inevitably lead, if not to the extermination of one party or the other, to the most shocking excesses. The humanity of the United States, in respect to the weaker, and which, in such a terrible struggle, would probably be the suffering portion, and their duty to defend themselves against the contagion of such near and dangerous examples, would constrain them, even at the hazard of losing the friendship, greatly as they value it, of Mexico and Colombia, to em-

ploy all the means necessary to their security.

If you should be unable to prevail on those Republics to renounce all designs of the invasion and conquest of Cuba and Porto Rico, you will then exert your endeavours to induce them to suspend the execution of them until the result is known of the interposition which we are authorized to believe the late Emperor of Russia, and his allies, at the instance of the United States, have made to put an end to the war, and that which has been herein stated to have been recently made at the instance of the Republic of Colombia. Such a suspension is due to Russia. It would be a deference to that great power which the reigning Emperor would not fail to appreciate, and the value of which the new Republics might hereafter experience, if in this instance the counsels, which we have reason to believe will have been given to Spain, should not be followed. But there is much reason to hope, that Spain will pause before she rejects them, and will see her true interest, as all the world sees it, on the side of peace; and the late events—the fall of the castles of San Juan d'Ulloa and of Callao especially—must have a powerful effect in urging her to terminate the war.

A cut or canal for purposes of navigation, somewhere through the Isthmus that connects the two Americas, to unite the Pacific and Atlantic Oceans, will form a proper subject of consideration at the Congress. That vast object, if it should ever be accomplished, will be interesting, in a greater or less degree, to all parts of the world. But to this continent will probably accrue the largest amount of benefit from its execution; and to Colombia, Mexico, the Central Republic, Peru, and the United States, more than to any other of the American nations. What is to redound to the advantage of all America, should be effected by common means and united exertions, and should not be left to the separate and unassisted efforts of any one power.

In the present limited state of our information as to the practicability and the probable expense of the object, it would not be wise to do more than to make some preliminary arrangements. The best routes will be, most likely, found in the Territory of Mexico, or that of the Central Republic. The latter Republic made to this Goverment, on the 8th day of February, of last year, in a note which Mr. Canaz, its Minister here, addressed to this Department, (a copy of which is now furnished,) a liberal offer, manifesting high and honourable confidence in the United Sates. The answer which the President instructed me to give, (of which a copy is also now placed in your hands,) could go no further than to make suitable acknowledgments for the friendly overture, and to assure the Central Republic that measures would be adopted to place the United States in the possession of the information necessary to enlighten their judgment. If the work should ever be executed, so as to admit of the passage of sea vessels from ocean to ocean, the benefits of it ought not to be exclusively appropriated to any one nation, but should be extended to all parts of the globe, upon the payment of a just compensation, or reasonable tolls. What is most desirable, at present, is, to possess the data necessary to form a correct

judgment of the practicability and the probable expense of the undertaking on the routes which offer the greatest facilities. Measures may have been already executed, or be in progress, to acquire the requisite knowledge. You will inquire particularly as to what has been done, or may have been designed, by Spain, or by either of the new States, and obtain all other information that may be within your reach, to solve this interesting problem. You will state to the Ministers of the other American Powers, that the government of the United States takes a lively interest in the execution of the work, and will see, with peculiar satisfaction, that it lies within the compass of reasonable human efforts. Their proximity and local information render them more competent than the United States are, at this time, to estimate the difficulties to be overcome. You will receive and transmit to this Government any proposals that may be made, or plans that may be suggested for its joint execution, with assurances that they will be attentively examined, with an earnest desire to reconcile the interests and views of all the American Nations.

It will probably be proposed, as a fit subject of consideration for the powers represented at Panama, whether Hayti ought to be recognised by them as an Independent State; and whether any decision taken, in that respect, should be joint, or each power be left to pursue the dictates of its own policy. The President is not prepared now to say that Hayti ought to be recognised as an Independent Sovereign Power. Considering the nature and the manner of the establishment of the governing power in that Island, and the little respect which is there shown to other races than the African, the question of acknowledging its Independence was far from being unattended with difficulty, prior to the late arrangement, which, it is understood, has been made between France and Hayti. According to that arrangement, if we possess correct information of its terms, the parent country acknowledges a nominal independence in the colony, and, as a part of the price of this acknowledgment, Hayti agrees to receive for ever the produce of France at a rate of duty one half below that which is exacted, in the ports of Hayti, from all other Nations. This is a restriction upon the freedom of its action, to which no Sovereign Power, really independent, would ever subscribe.—There is no equivalent, on the side of France, in the favourable terms on which the produce of Hayti is received in the ports of France. If the colonial relation may be correctly described to be the monopoly of the commerce of the colony, enjoyed by the parent State, it cannot be affirmed that Hayti has not voluntarily, by that arrangement, consented to its revival. There was no necessity urging her to agree to it, however she may have been called upon, by just and equitable considerations, to indemify the former individual proprietors for the loss of their property in St. Domingo. Prior to the conclusion of that arrangement, Hayti enjoyed, no matter how established, a sort of independence, in fact. By that arrangement, she has voluntarily, and in a most essential particular, in respect to all foreign nations, changed her character, and has become, to say the least, not an independent state. Under the ac-

tual circumstances of Hayti, the President does not think that it would be proper, at this time, to recognise it as a new State. The acknowledgment, or declining to acknowledge the Independence of Hayti, is not a measure of sufficient magnitude to require that, in either of the alternatives, it should be the result of a concert between all the American Powers.

You will avail yourselves of all suitable occasions to press upon the ministers of the other American states the propriety of a free toleration of religion within their respective limits. The framers of our constitution of government have not only refrained from incorporating with the state any peculiar form of religious worship, but they have introduced an express prohibition upon the power of our Congress to make any law respecting an establishment of religion. With us, none are denied the right which belongs to all—to worship God according to the dictates of their own consciences. In our villages and cities, at the same hour, often in the same square, and by the same kind of summons, congregations of the pious and devout, of every religious denomination, are gathered together in their respective temples, and, after performing, according to their own solemn convictions, their religious duties, quietly return and mix together in the cheerful fulfilment of their domestic and social obligations.

Not unfrequently the heads of the same family, appertaining to different sects, resort to two different churches, to offer up in their own chosen way their orisons, each bringing back to the common household stock the moral instruction which both have derived from their respective pastors. In the United States, we experience no inconvenience from the absence of any religious establishment, and the universal toleration which happily prevails. We believe that none would be felt by other nations who should allow equal religious freedom. It would be deemed rash to assert that civil liberty and an established church cannot exist together in the same state; but it may be safely affirmed that history affords no example of their union where the religion of the state has not only been established, but exclusive. If any of the American powers think proper to introduce into their systems an established religion, although we should regret such a determination, we should have no right to make a formal complaint unless it should be exclusive. As the citizens of any of the American nations have a right, when here, without hindrance, to worship the Deity according to the dictates of their own consciences, our citizens ought to be allowed the same privilege when, prompted by business or inclination, they visit any of the American states. You are accordingly authorized to propose a joint declaration, to be subscribed by the ministers of all or any of the powers represented, that within their several limits there shall be free toleration of religious worship. And you will also, in any treaty or treaties that you may conclude, endeavour to have inserted an article stipulating the liberty of religious worship, in the territories of the respective parties. When this great interest is placed on the basis of such a solemn declaration, and such binding treaty stipulations, it will have all reasonable and practical security. And

this new guaranty will serve to give strength to the favourable dispositions of enlightened men in the various American states, against the influence of bigotry and superstition. The declaration on this subject in which you are authorized to unite, as well as that directed against European colonization within the territorial limits of any of the American nations, hereinbefore mentioned, does no more than announce, in respect to the United States, the existing state of their institutions and laws. Neither contracts any new obligation, on their part, nor makes any alteration as to them, in the present condition of things. The President being the organ through which this government communicates with foreign powers, and being charged with the duty of taking care that the laws be faithfully executed, is competent to authorize both declarations.

Questions of boundary, and other matters of controversy, among the new American powers, will probably present themselves, and of which an amicable adjustment may be attempted at the Congress. Your impartial and disinterested position, in relation to any such disputes, may occasion you to be called upon for your advice and umpirage. You will, whenever your assistance may be required to settle those controversies, manifest a willingness to give your best council and advice; and if it should be desired, you will also serve as arbitrators. A dispute is understood to have existed, and to remain yet unsettled, between the United Mexican States and the Central Republic, in relation to the Province of Chiapa. The President wishes you to give it a particular investigation, and if justice shall be found on the side of the Republic of the Centre, you will lend to its cause all the countenance and support which you can give, without actually committing the United States. This act of friendship on our part, is due as well on account of the high degree of respect and confidence which that Republic has, on several occasions, displayed towards the United States, as from its comparative weakness.

Finally: I have it in charge to direct your attention to the subject of the forms of government, and to the cause of free institutions on this continent. The United States never have been, and are not now animated by any spirit of propagandism. They prefer, to all other forms of government, and are perfectly contented with, their own Confederacy. Allowing no foreign interference, either in the formation, or in the conduct of their government, they are equally scrupulous in refraining from all interference in the original structure or subsequent interior movement of the governments of other independent nations. Indifferent they are not, because they cannot be indifferent to the happiness of any nation. But the interest which they are accustomed to cherish in the wisdom or folly which may mark the course of other powers, in the adoption and execution of their political systems, is rather a feeling of sympathy than a principle of action. In the present instance they would conform to their general habit of cautiously avoiding to touch on a subject so delicate; but that there is reason to believe that one European power, if not more, has been active, both in Colombia and Mexico, if not elsewhere, with a view to subvert, if possible, the ex-

isting forms of free government there established, to substitute the monarchical in place of them, and to plant on the newly erected thrones European Princes. In both instances, it is due to our sister Republics, and otherwise proper to add, that the design met with a merited and prompt repulse; but the spirit which dictated it never slumbers, and may be renewed. The plausible motive held out, and which may be repeated, is, that of a recognition of the independence of the new States, with assurances that the adoption of monarchical institutions will conciliate the great powers of Europe. The new Republics being sovereign and independent States, and exhibiting this capacity for self-government at home, being in fact acknowledged by the United States and Great Britain, and having entered into treaties and other national compacts with foreign powers, have a clear right to be recognised. From considerations of policy, the act of recognition has been delayed by some of the European States, but it cannot much longer be postponed, and they will shortly find themselves required to make the concession, from a regard to their own interest, if they would not from a sense of justice. But their recognition is not worth buying, and nothing would be more dishonourable than that the Republic should purchase, by mean compliances, the formal acknowledgment of that independence which has been actually won by so much valour, and by so many sacrifices. Having stood out against all apprehensions of an attempt of the combined powers of Europe to subdue them, it would be base and pusillanimous now, when they are in the undisturbed enjoyment of the greatest of human blessings, to yield to the secret practices or open menaces of any European power. It is not anticipated that you will have any difficulty in dissuading them from entertaining or deliberating on such propositions. You will, however, take advantage of every fit opportunity to strengthen their political faith, and to inculcate the solemn duty of every nation to reject all foreign dictation in its domestic concerns. You will also, at all proper times, manifest a readiness to satisfy inquiries as to the theory and practical operation of our Federal and State constitutions of government, and to illustrate and explain the manifold blessings which the people of the United States have enjoyed, and are continuing to enjoy, under them.

The war which has recently broken out between the republic of La Plata and the Emperor of Brazil, is a cause of the most sincere regret. To that war the United States will be strictly neutral. The parties to it should feel themselves urged no less by all the interests which belong to the recent establishment of their independence, than by principles of humanity, to bring it to a speedy close. One of the first measures which has been adopted for its prosecution by the Emperor of the Brazils, is to declare the whole coasts of his enemy, including entirely one, and a part of the other shore of the La Plata, and extending as far as Cape Horn, in a state of blockade. That he has not the requisite naval force to render valid, and to maintain, according to the principles of the public law, such a sweeping blockade, is quite evident. Persistance in it must injuriously affect the interest of neutrals in the pursuit of

their rightful commerce, if it should involve no other consequences to them. You will avail yourselves of every proper opportunity to represent to the parties how desirable it is to put an end to the war, and with what satisfaction the United States would see the blessings of peace restored. And it will occur to you, whilst remonstrating against any belligerent practices which are not strictly warranted, to draw from the fact of the Brazilian blockade fresh support to the great maritime principles to which you have been instructed to endeavour to obtain the sanction of the American nations.

I have the honour to be, gentlemen, your obedient servant,

H. CLAY.

DEPARTMENT OF STATE,
Washington, 16*th March*, 1827.

To MESSRS. JOHN SERGEANT, AND J. R. POINSETT,

Appointed Envoys Extraordinary, and Ministers Plenipotentiary to Tacubaya, &c. &c. &c.

Gentlemen:—By the appointment of Mr. Poinsett, made by and with the advice and consent of the Senate, as one of the ministers of the United States to the Congress of the American nations, expected to assemble at Tacubaya, you have become associated in that mission. Mr. Poinsett, it is, therefore, anticipated, will be disposed cordially to co-operate in the performance of those duties which have been enjoined by the instructions heretofore addressed to Mr. Anderson, and Mr. Sergeant, or to either of them, so far as they remain to be executed. And the president relies, with great confidence, on the zeal and ability of both of you, to promote, in this important service, the interests of our country.

The instructions addressed to Messrs. Anderson and Sergeant, have been sufficiently explicit as to the nature of the assembly. According to our views, it is to be considered as entirely diplomatic. No one of the represented nations is to be finally bound by any treaty, convention, or compact, to which it does not freely consent according to all the forms of its own particular government. With that indispensable qualification, the mode of conducting the conferences and deliberations of the ministers is left to your sound discretion, keeping in view the observations which have been made in your general instructions. I am induced again to advert to this topic, in consequence of a letter from the Colombian minister, under date of the 20th of November last, (a copy of which is herewith transmitted,) from the tenor of which it might probably be inferred, as his opinion, that a majority of voices in the assembly, on any given proposition, is to be decisive. We have not yet obtained copies of the treaties concluded at Panama, which are mentioned in that note. To these we have a right, and we shall continue to expect them.

We have no later information than that contained in Mr. Sergeant's despatch No. 1, under date of the 19th of January last, and its accompaniments, as to the probable time of the convention of the ministers of the several powers. The course which he adopted of announcing himself to such of them as had arrived at Mexico, is approved. From the answers he received to his note, it appears that eight months, from the 15th

of July last, were specified as the period within which the treaties concluded at Panama were to be ratified, and when it was expected the Congress would again meet. That term expired on the 15th instant. It is probable, therefore, that, about this time, the ministers of the various powers will assemble at Tacubaya. But if they should not meet before the first of June next, Mr. Sergeant may, after that day, return to the United States without further detention. In the event of his return, Mr. Poinsett will consider the duties of the joint mission as devolving on him alone; and should the Congress assemble subsequent to that period, and Mr. Sergeant should avail himself of the permission now given him to leave Mexico, Mr. Poinsett will attend the Congress in behalf of the United States.

The intelligence which has reached us from many points, as to the ambitious projects and views of Bolivar, has abated very much the strong hopes which were once entertained of the favourable results of the Congress of the American nations. If that intelligence be well founded, (as there is much reason to apprehend,) it is probable that he does not look upon the Congress in the same interesting light that he formerly did. Still the objects which are contemplated by your instructions are so highly important, that the President thinks their accomplishment ought not to be abandoned whilst any hope remains. Their value does not entirely depend upon the forms of the governments which may concur in their establishment, but exist at all times, and under every form of government.

You will, in all your conversations and intercourse with the other ministers, endeavour to strengthen them in the faith of free institutions, and to guard them against any ambitious schemes and plans, from whatever quarter they may proceed, tending to subvert liberal systems.

Mr. Rochester, having been appointed Chargé d'Affaires to Guatemala, Mr. John Speed Smith, of Kentucky, formerly a member of the House of Representatives, is appointed secretary to your mission. In the event of his acceptance, (of which advice has not yet reached the department,) he is expected to proceed from Kentucky, by the way of New-Orleans, to join you.

You are at liberty to detain the bearer of this letter a reasonable time, to convey any despatches you may wish to forward to this government. If you should not wish him to remain at Mexico for that purpose, after stopping about two weeks to recover from the fatigues of the journey and voyage, he will return to the United States with such despatches as you may confide to him.

I am, with great respect,
Your obedient servant,
H. CLAY.

CORRESPONDENCE CONCERNING THE NORTHEASTERN BOUNDARY OF THE UNITED STATES.

Mr. Clay to Mr. Vaughan.

The undersigned, Secretary of State of the United States, has the honour to inform Mr. Vaughan, his Britannic majesty's Envoy Extraordinary, and Minister Plenipotentiary, that, about the date of his note of the 21st of November last, in answer to one from the undersigned, of the 17th of the same month, it was deemed expedient to depute an agent to that portion of the state of Maine which is claimed by the British government as being part of the province of New Brunswick, to inquire into the origin of settlements made thereon, the causes of recent disturbances among the settlers, and especially into the grounds of the arrest, deportation, and detention in confinement, at Frederickton, of John Baker, a citizen of the United States. Accordingly, a Mr. S. B. Barrell was selected for the purpore, and sent on that service. About the same period, the government of Maine also appointed an agent to proceed to the disputed territory, and to Frederickton, for the purpose of making the same investigations. The undersigned postponed transmitting to Mr. Vaughan a reply to his abovementioned note, until the report of Mr. Barrell should be received. He has now the honour of laying before Mr. Vaughan a copy of that report, and also a copy of the report made by the agent of the government of Maine; and he avails himself of this occasion to submit a few observations.

The undersigned, in the actual state of the negotiation between the two governments, having for their object the settlement of the question of disputed boundary, heartily concurs with Mr. Vaughan in the sentiment expressed in the conclusion of his note, that too much vigilance cannot be exerted by the authorities on both sides, to remove misapprehension, and to control all misconduct arising out of it. The undersigned also participates with Mr. Vaughan in the regret which he feels on account of the collisions of authority to which both countries are so repeatedly exposed by the long delay which has taken place in the final adjustment of the boundary on the northeast frontier of the United States. Without meaning to allege that the British government is justly chargeable with having intentionally contributed to that delay, the undersigned is fully persuaded that Mr. Vaughan must agree that the United States has not unnecessarily prolonged it. Considering the course which the business is now likely to take, it ought to be the earnest endeavour of both governments, and it will certainly be that of the government of the United States, to avoid giving any just occasion of inquietude, until the experiment of the arbitration shall have been crowned with success, or been attended with failure. Although the reports of the two agents before referred to, establish that there was some misrepresentation in the accounts of the disturbances which had reach-

ed the government of the United States prior to Mr. Barrell's departure on his agency, and which had been communicated to Mr. Vaughan, they disclose some transactions which the President has seen with regret.

The undersigned cannot agree with Mr. Vaughan in the conclusion to which he has brought himself, that the sovereignty and jurisdiction over the territory in dispute have remained with Great Britain, because the two governments have been unable to reconcile the difference between them respecting the boundary. Nor can he assent to the proposition stated by him, that the occupation and possession of that territory was in the crown of Great Britain prior to the conclusion of the treaty of 1783, if it were his intention to describe any other than a constructive possession. Prior to that epoch, the whole country now in contest was an uninhabited waste. Being, then, an indisputed part of the territory of the King of Great Britain, he had the constructive, and the right of the actual possession. If, as the government of the United States contend, the disputed territory is included within their limits, as defined in the provisional articles of peace between the United States and Great Britain, of November, 1782, and the definitive treaty which was concluded in September of the following year, the prior right of Great Britain became, thereby, transferred to the government of the United States, and it drew after it the constructive possession of the disputed territory. The settlement on the Madawasca, the earliest that has been made within its limits, was an authorized intrusion on the property of the state of Massachusetts, to which the territory then belonged, by individuals, posterior to the treaty of 1783. That settlement of those individuals could not affect or impair, in any manner whatever, the right of the state of Massachusetts, or give any stength to the pretensions of the British government. The settlers, in consequence, probably, of their remoteness, and their quiet and peaceable conduct, do not appear for a long time to have attracted the attention of either the state of Massachusetts or that of the adjoining British province. It was not till the year 1790, that the government of New-Brunswick took upon itself to grant lands to the intruders. No knowledge of these grants is believed to have been obtained until recently, by either the government of Massachusetts or Maine, or that of the United States. The provincial government had no colour of authority to issue those grants for lands then lying within the state of Massachusetts. It cannot be admitted that they affected the rights of the United States as acquired by the treaty of peace. If, in consequence of the Madawasca settlement, a possession *de facto* was obtained by the government of New-Brunswick, it must be regarded as a possession limited by the actual occupancy of the settlers, and not extending to the uninhabited portions of the adjoining waste. Although, subsequent to the year 1790, the provincial government appears to have exercised, occasionally, a jurisdiction over the settlement, it has not been exclusive. As late as 1820, the inhabitants of the settlement were enumerated as a part of the population of the United States, by their

officers charged with the duty of taking the periodical census for which their constitution and laws provide.

The settlement of John Baker appears to have been made outside of the Madawasca settlement, upon contiguous waste lands. Other American citizens established themselves in his neighbourhood. Whatever jurisdiction the government of New-Brunswick might claim in virtue of the Madawasca settlement, being confined to it, could not be rightfully extended to Baker and his American neighbours. Even if he had been guilty of any irregularity of conduct, he was not amenable to the provincial government, but to his own. His arrest, therefore, on that disputed ground, and transportation from it to Frederickton, at a considerable distance from his family, and his confinement in a loathsome jail, cannot be justified. It is a proceeding which seems to have been adopted without regard to the rights of the United States in the territory in question, and which assumes an exclusive jurisdiction on the part of the provincial government. Nor is it compatible with that moderation and forbearance which, it has been uuderstood between the two governments, should be mutually practised, until the question of right between them was finally settled. I am charged, therefore, by the President, to demand the immediate liberation of John Baker, and a full indemnity for the injuries which he has suffered in the arrest and detention of his person.

Nor can the President view with satisfaction the exercise of jurisdiction, on the part of the provincial government, over the settlement on the Aroostook. That settlement was made only about six years ago, partly by American citizens, and partly by British subjects. The settlers supposed they were establishing themselves on American ground, and beyond the British jurisdiction. It has been only within these three or four years past, that the provincial government has undertaken to issue civil process against the settlers; and, as late as last summer, process for trespass and intrusion on the crown lands was, for the first time, issued. These proceedings cannot be reconciled with the resolution which you state to have been adopted by His Britannic Majesty's Lieutenant Governor of New-Brunswick, to maintain the disputed territory in the same state in which his excellency received it, after the conclusion of the treaty of Ghent. Nor can they be reconciled with that mutual forbearance to perform any new act of sovereignty within the disputed territory, having a tendency to strengthen the claim of the party exercising it, which it has been expected would be observed by the two governments, during the progress of their endeavours amicably to adjust their question of boundary. The undersigned must protest, in behalf of his government, against any exercise of acts of exclusive jurisdiction by the British authority, on the Madawasca, the Aroostook, or within any other part of the disputed territory, before the final settlement of that question; and he is directed to express the President's expectation that Mr. Vaughan will make such representations as will prevent, in future, any such jurisdiction from being exerted.

The undersigned requests Mr. Vaughan, on this occasion, to ac-

cept assurances of his high consideration.

H. CLAY.

DEPARTMENT OF STATE.
Washington, Feb. 20, 1828.

MR. VAUGHAN TO MR. CLAY.

Washington, February, 1818.

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of his Britannic Majesty, has the honour to acknowledge the receipt of a note from the Secretary of State of the United States, enclosing a copy of the report made by the agent of the general government, and a copy of the reports made by the agent of the government of the state of Maine, sent to inquire into the proceedings which took place, not long since, in the disputed territory within the province of New-Brunswick.

The undersigned has not any remarks to make upon the reports which have been submitted to him; but he is glad to learn, from Mr. Clay's note, that it appears, from those reports, that some misrepresentation took place in the accounts which had reached the government of the United States, respecting the recent disturbances which took place amongst the settlers in the disputed territory.

The Secretary of State expresses his dissent to the principle laid down by the undersigned, in his note of the 21st of November last, that the sovereignty and jurisdiction over the territory in dispute continue to be vested in Great Britain, until the two governments shall have reconciled their differences respecting the line of boundary. Mr. Clay observes that the United States contend that possession was transferred to them by the treaty of 1782, which places the disputed territory within their limits. Whatever may be the conviction of the government of the United States, with regard to the extent of the limits assigned to it by that treaty, those limits are still undefined, and remain unadjusted; and, notwithstanding the reports of the commissioners of Boundary, and, after repeated negotiations, remained to be settled by a reference to a friendly sovereign, it is the opinion of the undersigned that the sovereignty and jurisdiction of the disputed territory rests with Great Britain, until that portion of it designated in the treaty of 1783 shall have been finally set apart from the British possessions, as belonging to the United States.

The British settlement upon the Madawasca river is considered by Mr. Clay as an unauthorized intrusion on the property of the state of Massachusetts. When the treaty of 1783 was concluded, New-Brunswick had not been erected into a separate province, but it was included in the province of Nova Scotia. The St. Croix river was then considered to be the boundary, on the northeast, of Massachusetts, and on the West of Nova Scotia. Some difficulty might have arisen about the exact boundary between that province and Massachusetts, on account of the uncertainty of the limits of Acadia, (which now forms the province of New Brunswick) as ceded by France to Great Britain in 1713. The undersigned, however, cannot acquiesce in the pretensions of Massachusetts to the territory upon the Madawasca, which lies to the north of the St. John's, and falls into that river at a distance from its source. It remains to be seen, when the position of the northwest angle of Nova Scotia shall have been determined, whether the line

of boundary between Great Britain and the United States will intersect any portion of the Madawasca territory. In the mean time, the undersigned begs leave to express his conviction, that neither the establishment of settlements upon that river, nor the grants of land made to the settlers by the government of New-Brunswick, in 1790, can, in any shape, affect the final settlement of the boundary, or tend, as Mr. Clay seems to imagine, to strengthen the claims of Great Britain, or in any manner to invalidate the rights acquired by the United States under the treaty of 1783.

The Secretary of State observes, in his last note, that the jurisdiction exercised by the government of New-Brunswick, in the Madawasca settlement, has not been exclusive, inasmuch as an agent sent by the Governor of the State of Maine took the census of the population in 1820, as belonging to that state. The undersigned begs leave to remind Mr. Clay, that that attempt of the state of Maine to interpose its jurisdiction was considered by the British government as an encroachment, and it was the subject of a remonstrance to the government of the United States.

With regard to the arrest of John Baker, surely his outrageous conduct in stopping the mail from Canada, in hoisting the American flag, and forming a combination to transfer the territory in which he resided to the United States, made him amenable to the laws. Although his residence, as it is observed by Mr. Clay, was not actually in the Madawasca settlement, it was within the jurisdiction of New-Brunswick, and he knew it; as he had applied for, and received, in 1822, the bounty upon corn grown in newly cultivated ground, given by the government of that province. A moderate bail was demanded of Baker, for his appearance to take his trial. He did not profit by this offer of the magistrates, and thereby obtain his release from confinement, because he understood that a writ had been taken out against him by some one of his creditors. It does not appear that the proceedings have been carried on against him with any unusual severity; and after the investigation which has taken place into all the circumstances attending his arrest, the undersigned did not expect that the President of the United States would have demanded his immediate liberation, and full indemnity for the injuries he has suffered by the arrest and detention of his person. A copy of the note which the undersigned has had the honour to receive from the Secretary of State shall be immediately transmitted to his majesty's government, and to the Lieutenant Governor of New-Brunswick.

It appears that the President of the United States does not view with satisfaction the exercise of jurisdiction by the government of New-Brunswick, in a settlement upon the Aroostook river, which had its origin in the unauthorized residence of stragglers from other districts. They remained for some time unnoticed; but, within the last three or four years, civil process has been issued against the settlers by the provincial government, which Mr. Clay is at a loss to reconcile with the resolution which the undersigned has stated to have been adopted by the Lieutenant Gover-

nor of New-Brunswick, to maintain the disputed territory in the state in which it was after the conclusion of the treaty of Ghent. The undersigned is convinced that Mr. Clay will admit that no part of the disputed territory can be left without the control of any civil authority. All persons, of whatever description, who take up their residence in the disputed territory, are within the British jurisdiction, until the boundary line is adjusted, and are amenable to the government of New-Brunswick, and owe a temporary allegiance to His Majesty, so long as they remain under his protection. It is not for the Lieutenant Governer of New-Brunswick to surrender up the exercise of an ancient jurisdiction, but in strict conformity with his resolution, above alluded to. His Excellency has exercised it with great moderation, by refusing to make grants of land, and by suspending the issuing of licenses for the cutting of timber, and by strictly enjoining all magistrates under his control to prevent trespasses and intrusions of every description. The Secretary of State may rely upon the moderation with which the jurisdiction will be exercised by His Excellency over the disputed territory.

The undersigned has observed that a misconception pervades all the papers, which have fallen under his notice, from the State of Maine. The disputed territory is invariably represented as a part of that State, unjustly withheld from it; overlooking, always, the difficulties which Great Britain and the United States have encountered in appropriating and setting apart that portion which belongs to the United States under the treaty of 1783, and which have so unfortunately kept, as it were, in abeyance, the title of the United States.

The undersigned cannot conclude this note without expressing his anxious wishes that the measure, now resorted to by both Governments, of arbitration, may put at rest, for ever, the question of boundary which has lately so repeatedly occupied the attention of the Secretary of State and of the undersigned.

The undersigned requests Mr. Clay to accept the assurances of his highest consideration.

CHAS. R. VAUGHAN.

Mr. Clay to Mr. Vaughan.

Rt. Hon. CHAS. R. VAUGHAN, &c. &c. &c.

The undersigned, Secretary of State of the United States, in acknowledging the receipt, on the 20th ult. of the note of Mr. Vaughan, of the —— day of that month, in answer to that which the undersigned had the honour to address to him, transmitting the reports made by the agents of the United States and the State of Maine, would have restricted himself to a simple expression of his satisfaction with the engagement of Mr. Vaughan to lay the demand of the Government of the United States for the immediate liberation of John Baker, and a full indemnity for the injuries he had suffered by his arrest and detention, before the governments of Great Britain and the Province of New-Brunswick, but for certain opinions and principles advanced by Mr. Vaughan, to which the undersigned cannot assent. And he feels it to be necessary, to guard against any misinterpretation from his silence, expressely to state his dissent from them. In doing this, he will avoid, as much as

possible, any discussion of the respective claims of the two countries to the disputed territory. If it were necessary to enter into that argument, it would not be difficult to maintain as clear a right, on the part of the United States, to that territory, as they have to any other portion of the territory which was acknowledged by Great Britain to belong to them by the treaty of 1783. But as, by the arrangements between the two governments, the question of right has received a different disposition, it is unnecessary to give it a particular consideration here. The correspondence which the undersigned has had the honour of holding with Mr. Vaughan has related to the intermediate possession, and to acts of jurisdiction within the disputed territory, until the right is finally settled. It would furnish a just occasion for serious regret, if, whilst the settlement of that question is in amicable progress, any misunderstanding should arise between the two governments, in consequence of what must be regarded by the government of the United States as the unwarranted exercise of a right of jurisdiction by the government of the province of New-Brunswick within the disputed territory.

The undersigned cannot concur in the opinion that the limits of the treaty of 1783, being undefined and unadjusted, the sovereignty and jurisdiction of the disputed territory rests with Great Britain, until that portion of it, designated in the treaty of 1883, shall have been finally set apart from the British possessions as belonging to the United States. Mr. Vaughan's argument assumes that some other act of setting apart the territories of the United States from those of Great Britain, than the treaty of peace of 1783, was necessary; and that, until that other act should be performed, the United States could not be considered in possession. This argument would prove that the United States are not now lawfully in possession of any portion of the territory which they acquired in the war of their Independence; the treaty of 1783 being the only act of separation in virtue of which they are in possession of their territory. If, at the conclusion of the treaty of 1783, Great Britain had had the actual, and not merely constructive possession, and that actual possession had *all along* remained with her, Mr. Vaughan might have contended that the government of Great Britain had a right to exercise a jurisdiction, *de facto*, over the disputed territory. But at that epoch neither party had the actual possession of the disputed territory, which was then an uninhabited waste. Which of the parties had the right to the possession, depended upon the limits of the treaty of 1783. If, as the United States contend, those limits embraced it, they had the right both of sovereignty and to the possession, and Great Britain could not lawfully exercise either. It is true that Great Britain asserts that those limits do not comprehend the disputed territory. On that point the parties are at issue, and cannot agree. They have, however, amicably agreed to refer the decision of it to a common friend. Whilst the experiment is making for this peaceable settlement of the question, ought either of the parties to assume the exercise of sovereignty or jurisdiction within the contested territory? If he does, can he expect the other party to acquiesce in it, or to look on with indifference?

It was a mutual conviction of the irritating consequence which would ensue from the exercise of a separate jurisdiction by either of the parties, that led to the understanding, which has so long prevailed between them, to abstain from all acts of exclusive jurisdiction which might have a tendency to produce inquietude. In conformity with that understanding, licenses to cut timber from the disputed territory, granted by the provincial authority, had been revoked, and the practice of cutting and removing the timber has been understood, by the government of the United States, to have been discontinued.

It follows from the view now presented, that the undersigned cannot subscribe to the opinion, that the jurisdiction of the British government, through its provincial authority, over the disputed territory, has continued with Great Britain, notwithstanding the treaty of 1783. To maintain that opinion, Mr. Vaughan must make out, either, first, that the terms of the treaty do exclude altogether the disputed territory, or that, if they include it, *actual* possession of the disputed territory was with Great Britain in 1783. Neither proposition can be established.

Mr. Vaughan seems to think that some civil government is absolutely necessary within the disputed territory. If its utility be conceded in reference to the inhabitants, it would not be a necessary consequence that the government of New-Brunswick, and not the state of Maine, ought to exert the requisite civil authority.

The alleged irregularity of the conduct of John Baker is relied upon by Mr. Vaughan as forming a justification for his arrest, and the subsequent proceedings against him in the courts of New-Brunswick. The President is far from being disposed to sanction any acts of Mr. Baker, by which, on his private authority, he would undertake the settlement of a national dispute. He derived no power for any such acts, either from the government of the United States, or, as is believed, from the government of Maine. National disputes ought always to be adjusted by national, and not individual authority. The acts of Baker complained of, were, however, performed by him under a belief that he was within the rightful limits of the state of Maine, and with no view of violating the territory, or offending against the laws of Great Britain. This case, therefore, is very different from what it would have been, if the irregularities attributed to him had been committed on the uncontested territory of Great Britain.

The undersigned finds himself as unable to agree that the misconduct of Mr. Baker, whatever it may have been, warranted the government of New-Brunswick in taking cognizance of his case, for the purpose of trying and punishing him by British laws, as he was unprepared to admit that the want of civil government, on the part of the inhabitants of the disputed territory, created a right in the government of New-Brunswick to supply, in that respect, their necessities. In assuming that Baker rendered himself amenable to the laws of New-Brunswick, Mr. Vaughan decides the very question in controversy. He decides that the part of Maine in contest appertains to the province of New-Brunswick, and that the laws of New-Brunswick can run

into the state of Maine, as the limits of that state are understood to exist by the government of the United States. The provincial government of New-Brunswick, in the arrest and trial of Baker, for acts of his, done on the disputed territory, commits the very error which is ascribed to Baker, that of undertaking, in effect, to determine a national question, the decision of which should be left to the government of Great Britain and the United States, which are, in fact, endeavouring peaceably to settle it.

It would have been more conformable with good neighbourhood, and the respective claims of the two governments, as well as the mutual forbearance which they stand pledged to each other to practise, if a friendly representation had been made to the government of the United States of any misconduct charged against John Baker, or any other citizen of the United States, inhabiting the disputed territory, accompanied by a request for the redress called for by the nature of the case. Such was the course pursued by Sir Charles Bagot, as far back as the year 1818. In December of that year, he had an interview with the Secretary of State, in which he preferred a complaint of irregular settlements attempted by citizens of the United States on the lands in controversy. The Secretary of State, on receiving the complaint, stated that he supposed the settlers were of that class of intruders denominated squatters, meaning persons who commence settlements upon the public lands without title; that, as, by Mr. Bagot's representation, it appeared that they were entering on the disputed borders in families, peaceable means would, doubtless, be sufficient to remove them; and that, if he, Mr. Bagot, would procure and communicate their names to the Secretary of State, he would invite the governor of Massachusetts to take the necessary measures for restraining them. But their names were never, in fact, disclosed to this government. Among the papers recently communicated by the government of New-Brunswick to Mr. Barrell, the agent of the United States, the President has observed, with regret and surprise, a letter from Mr. Bagot to the lieutenant governor of the province, bearing date the 8th of December, 1818, in which, after referring to the above interview, Mr. Bagot gives it as his opinion that the government of New-Brunswick might remove the settlers by force. This conclusion is not only unwarranted by any thing which passed at that interview, but, I am directed to say, is contrary to that which the government of the United States had reason to expect would have resulted from it. So far from conceding a right in the government of New-Brunswick forcibly to remove those persons, their names were requested, to enable their own government to operate upon them, if necessary. In the letter from Mr. Bagot to the lieutenant governor of New-Brunswick, he did, agreeably to the request of the Secretary of State, ask for their names, whilst the advice that the government of New-Brunswick should forcibly remove them as intruders obviously superseded the only practical purpose for which their names had been desired, that the governor of Massachusetts might be called upon by peaceable means, and by his lawful authority, to restrain them.

The enumeration of the settlers on the Madawasca, as a part of the population of the United States, which took place in 1820, was not under the authority of the state of Maine; it was made in virtue of the laws of the United States, and by officers duly commissioned by them. Mr. Vaughan says, there was a remonstrance against it at the time; no trace of any such remonstrance is discernible in the records of this department.

In the note which Mr. Vaughan addressed to the undersigned, on the 21st day of November last, it was stated that the Lieut. Governor of New-Brunswick had resolved to maintain the disputed territory in the state in which it was at the conclusion of the treaty of Ghent: that treaty was signed on the 24th of December, 1814, and the exchange of its ratifications was made on the 17th day of February, of the ensuing year. More than seven years thereafter, and four years after the interview between Sir Charles Bagot and the Secretary of State, certain persons, without authority, settled themselves on the waste and uninhabited lands of the Aroostook, within the disputed territory, supposing that they were occupying American ground. Within only three or four years past, the provincial government has undertaken to issue civil process against the settlers, for the purpose of enforcing the collection of debts, and the performance of other social duties. The undersigned, in his note of the 20th ultimo, has stated that he could not reconcile this exercise of jurisdiction with the above resolution of the Lieutenant Governor of New-Brunswick, and he is still unable to perceive their compatibility. If the Lieut. Governor had applied to the government of the United States, to remove the settlers, he would have manifested a disposition to preserve the disputed territory in the state in which it was at the conclusion of the treaty of Ghent. But, by treating the settlers as British subjects, and enforcing on them British laws, there is, at the same time, a manifest departure from the resolution formed by the Lieut. Governor, and a disregard of the lawful rights of the United States. If a succession of illegal settlements can be made within the territory, and of these unauthorized intrusions lay a just ground for the exercise of British authority, and the enforcement of British laws, it is obvious that, so far from maintaining the country in the uninhabited state in which it was at the date of the Treaty of Ghent, the whole of it may become peopled, and be brought, with its inhabitants, under British subjection.

Mr. Vaughan supposes that the acts of British authority, to which the undersigned, in the course of this correspondence, has had occasion to object, can in no shape affect the final settlement of the boundary, nor tend to strengthen the claims of Great Britain, nor in any manner to invalidate the rights of the United States. If there were an absolute certainty of a speedy settlement of the boundary within a definite time, Mr. Vaughan might be correct in supposing that the rights of the respective parties would not be ultimately affected by those acts of jurisdiction. But it is now near half a century since the conclusion of the treaty of peace, out of which the controversy grows, and it is more than thirteen years since the final ratification of that of Ghent, providing

a mode of amicably settling the dispute. It remains unadjusted. Mr. Vaughan, himself, has repeatedly expressed regret, in which the undersigned has fully participated, on account of the delay. Judging from past experience, as well as the uncertainty of human affairs in general, we are far from being sure when a decision will take place. If, in the mean time, Great Britain were to be allowed quietly to possess herself of the disputed territory, and to extend her sway over it, she would have no motive for co-operating in quickening the termination of the settlement of the question. Without imputing to her a disposition to procrastination, she would, in such a state of things, be in the substantial enjoyment of all the advantages of a decision of the controversy in her favour. The President of the United States cannot consent to this unequal condition of the parties: and the undersigned, in conclusion, is charged again to protest against the exercise of all and every act of exclusive jurisdiction, on the part of the government of the province of New-Brunswick; and to announce to Mr. Vaughan, that that government will be responsible for all the consequences, whatever they may be, to which any of those acts of jurisdiction may lead.

The undersigned requests Mr. Vaughan to accept the renewed assurances of his high consideration. H. CLAY.

DEPARTMENT OF STATE,
Washington, 17*th March*, 1828.

Mr. Vaughan to Mr. Clay.

The Hon. HENRY CLAY, &c. &c. &c.—The undersigned, His Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, has the honour to acknowledge the receipt of the note of the Secretary of State of the United States, dated the 17th instant, in which, in order to guard against any misrepresention of his silence, he has taken occasion to express his decided dissent from the principles and opinions advanced by the undersigned, in justification of certain acts of jurisdiction which have been exercised in the disputed territory by the provincial authorities of New Brunswick.

As it is the intention of the undersigned to submit to the consideration of His Majesty's government the correspondence which has taken place between the Secretary of State of the United States and himself, he is not disposed to prolong the discussion respecting the exercise of jurisdiction in the disputed territory.

When he received the complaints against the conduct of the Lieutenant Governor of New-Brunswick, he thought it his duty to suggest the grounds upon which that conduct might be justified, and the irritation might be mitigated which was likely to arise out of it.

The undersigned is at a loss to understand the distinction made by Mr. Clay, between the actual and constructive possession of the disputed territory, previously to the conclusion of the treaty of 1783. Though a part of that territory was uninhabited, and in a state of waste, so far from neither party having the actual possession, the sovereignty and possession of the entire Province of Nova Scotia was vested indisputably in His Britannic Majesty, and it is the received opinion that the Plenipotentiaries engaged in concluding the treaty of 1783, did intend, and did agree to leave untouched, the rights of

His Majesty over the province of Nova Scotia.

The boundary, from the mouth of the river St. Croix to its sources, is clearly defined; the right continuation of the line entirely depends upon the position of the northwest angle of Nova Scotia, which the British commissioners of boundary, under the fifth article of the treaty of Ghent, have placed at Mars Hill, and the American commissioners have placed at a great distance to the northward, and not far from the right bank of the river St. Lawrence.

The undersigned agrees with Mr. Clay in wishing to avoid any discussion of the claims of the respective governments; but he has ventured to point out the very great difference between the commissioners of boundary, as he conceives that, until that difference shall be reconciled, jurisdiction must continue to be exercised within the disputed limits by the original possessors. A joint jurisdiction appears to the undersigned inadmissible, as it must prove impracticable.

The undersigned cannot acquiesce in the opinion given by Mr. Clay, that the issuing of legal process, within the last few years, in a settlement upon the river Aroostook, formed originally in an unauthorized manner by stragglers from other districts, is to be considered as an infringement of the engagement of the Lieutenant Governor of New-Brunswick to preserve the disputed territory in the state in which it was at the conclusion of the treaty of Ghent. These settlements were established previously to the government of New-Brunswick being confided to Sir Howard Douglas; and the undersigned conceives that it was not optional in his excellency to exercise, or not, jurisdiction within the limits of his province.

Proceedings in a tract of land upon the river Madawasca, in which a settlement was established soon after the treaty of 1783, by French Acadians, have furnished, repeatedly, cause of remonstrance to both governments. From the date of 1786, the laws by which those settlers have been governed, and the magistrates by whom those laws have been executed, have been derived from New-Brunswick. Whether any, and what part of that settlement belongs to the United States, depends upon the provisions of the treaty of 1783. Until the two governments can agree upon the true intent of that treaty, possession and actual jurisdiction remains with Great Britain.

It is true that, in 1820, there was an attempt to invalidate that jurisdiction, when the marshal of the state of Maine sent an agent to enumerate the population of that settlement, under a law enacted by the general government of the United States. The undersigned learns, with regret, that there is no record in the department of state of a remonstrance against that proceeding by the British government, as he had asserted. Such was the conviction upon his mind, justified by the frequent remonstrances which he has been called upon to make, since the summer of 1825, against proceedings of agents from the state of Maine, authorized to sell lands, and to lay out roads and townships in the same district.

With regard to the arrest of Baker, the Secretary of State, in his last note, seems to think, that as he committed the outrage for which he was taken up under a conviction that he was upon ter-

ritory belonging to the United States, a representation should have been made of his offence to the government of the latter.

The undersigned has only to refer the Secretary of State to his note dated the 27th February, where it is shown that Baker was perfectly aware of his residing within the jurisdiction of New-Brunswick, as he had received the provincial bounty for corn raised upon land newly brought into cultivation.

The undersigned regrets that he should have found himself under the necessity of making the foregoing observations; and he cannot conclude without expressing his earnest wish that the reference to arbitration may relieve the Secretary of State, and the undersigned, from any further discussion relative to the boundary on the north-eastern frontier of the United States.

The undersigned avails himself of this occasion to renew to Mr. Clay the assurance of his distinguished consideration.

CHAS. R. VAUGHAN.

Washington, March 25, 1828.

MR. CLAY TO MR. LAWRENCE.

Department of State,
Washington, March 31, 1828.

Wm. B. Lawrence, Chargé d'Affaires, London.

SIR:—I transmit herewith a copy of a correspondence which has passed between Mr. Vaughan, the British minister, and this department, respecting the exercise of jurisdiction, on the part of the province of New-Brunswick, within the territory respectively claimed by the United States and Great Britain, on our northeastern border. In the course of it you will remark, that we have demanded the liberation of John Baker, a citizen of the United States, and full indemnity for the wrongs which he has suffered by the seizure of his person within the limits of the state of Maine, and his subsequent abduction and confinement at Frederickton in jail. We have also demanded, that the government of New-Brunswick shall cease from the exercise of all and every act of exclusive jurisdiction within the disputed territory, until the question of right is settled by the two governments. The considerations which have led to those demands are so fully set out in the correspondence, that it is not deemed necessary now to repeat them. The President charges me to instruct you to address an official note to the British government, calling upon it to interpose its authority with the provincial government to enforce a compliance with both demands. The government of the United States cannot consent to the exercise of any separate British jurisdiction within any part of the state of Maine, as the limits of that state are defined by the treaty of 1783, prior to the decision of the question of title. And if there be a perseverance in the exercise of such jurisdiction, this government will not hold itself responsible for the consequences. It may, and probably will be urged, that if the province of New-Brunswick should abstain from exerting its authority over the inhabitants situated on the controverted ground, disorder and anarchy amongst them will ensue. Should such an argument be brought forward, you will reply, that the inhabitants will, no doubt, institute some form of government themselves, adapted to

their condition, as they did for a long time on the Madawaska; that whether they do or not, however, it will be competent to the governments of Maine and New-Brunswick, within their respective acknowledged limits, to guard against any disorders; that the government of the United States cannot consent to the exercise of any exclusive British authority within the contested territory, founded on the plea of necessity; and that many of the settlers being intruders upon the soil, can have no right to complain of any disorders among themselves, resulting from their own unauthorized intrusion. The President hopes that the British government, participating in the desire which he most anxiously feels to avoid all collision on account of a temporary occupation of the territory in contest, will effectually interpose its authority to restrain the provincial government from the exercise of any jurisdiction over it. Such an interposition alone will supersede those precautionary measures which this government will otherwise feel itself constrained to adopt.

I also transmit herewith copies of the report of Mr. Barrell, and of Mr. Davis, who were respectively deputed by the governments of the United States, and the state of Maine, to proceed to the disputed territory, and to ascertain on the spot the causes of the recent disturbances which have occurred there.

I am, respectfully, your obedient servant, H. CLAY.

MR. LAWRENCE TO LORD DUDLEY.

Rt. hon. the Earl of Dudley, &c.

The undersigned, chargé d'affairs of the United States of America, regrets that he is compelled to call to the notice of his majesty's principal Secretary of State for foreign affairs, to acts on the part of the government of the province of New-Brunswick, within the territory claimed by the United States and Great Britain respectively, not only wholly inconsistent with that mutual forbearance which, it has been understood, should govern the proceedings of both countries during the pendency of the question of boundaries, for the decision of which arrangements have recently been made, but of a character to lead, by inviting retaliation, to difficulties of the most serious nature.

The proceedings complained of, to which it will be the duty of the undersigned particularly to refer, took place in settlements near the Aroostook and St. John's rivers, within the territory which is, and always has been, considered by the United States as a part of the present state, formerly district, of Maine. It appears from official documents, that, in this section of country, various attempts to exercise exclusive jurisdiction have been made by the Lieutenant Governor of New-Brunswick; that American citizens residing within the territory in dispute have been subjected to an alien tax; that they have been compelled to serve in the British militia; that the provincial government has undertaken to issue civil process against them for enforcing the collection of debts, and for other purposes; that they have been summoned to appear before the tribunals of New-Brunswick for intrusion on the land occupied by them, as if it was the uncontested property of the British crown; and that they have been prosecuted before these foreign

courts for alleged political offences, which, if punishable at all, were only cognizable by the authorities of their own country.

These attacks on the rights of citizens of the United States having formed the subject of a correspondence between the British minister at Washington and the American Secretary of State, which it is understood has been transmitted to Lord Dudley, the undersigned does not deem it necessary to enter into the details of the different individual acts of exclusive jurisdiction that have been matters of complaint, but hastens to a case which he is instructed to bring particularly under the consideration of his majesty's government, with a view to the redress of which it may be susceptible. John Baker, a citizen of the United States, residing on a tract of land situated at or near the junction of the Meriumticook with the St. John's river, and held by him under a deed from the states of Massachusetts and Maine, was arrested in his own domicile, on the 25th of September last, under circumstances of aggravation. While Mr. Baker and his family were asleep, his house was surrounded by an armed force, and entered by a person of high official character in the province of New-Brunswick, by the command of whom Mr. Baker was seized and conveyed to Frederickton, and their committed to jail, where he is still confined on a charge of an alleged misdemeanour, growing out of a denial of British jurisdiction in the territory where he had settled, as above stated, under the authority of a grant from two states of the American union. This transaction having received the special consideration of the President of the United States, the undersigned has been charged to call upon the government of Great Britain to interpose its authority with the provincial government, in order to the liberation of Mr. Baker, and to the granting to this American citizen a full indemnity for the wrongs which he has suffered by the seizure of his person within the limits of the state of Maine, and a subsequent abduction and confinement in jail at Frederickton.

The undersigned is further instructed to require, that the government of New-Brunswick shall cease from the exercise of all and every act of exclusive jurisdiction within the disputed territory, until the question of right is settled by the two governments of Great Britain and the United States.

The motives which have led to these demands may be sufficiently inferred from a consideration of the occurrences already cited. In declaring, through the undersigned, that it cannot consent to the exercise of any separate British jurisdiction, within any part of the state of Maine, as it understands the limits of that state to be defined by the treaty of 1783, prior to the decision of the question of title, the government of the United States is only protesting against unjustifiable encroachments on its sovereignty, and asking from Great Britain what it is willing on its side to accord—that forbearance which the present state of the controversy most strongly inculcates. Indeed, it is only by adopting such a course that the collisions, which would arise from an attempt by each party to give effect to its own pretensions, can be avoided. The importance of abstaining from any act, which might jeopard the amicable relations between the two powers, was

early perceived; and instances have not been wanting in which they have both been restrained by considerations of prudence and mutual respect, from exercising acts of exclusive jurisdiction within the disputed territory. To a complaint made so far back as the year 1818, by Mr. Bagot, at that time his majesty's minister in America, of irregular settlements attempted by citizens of the United States on the lands in controversy, the most ready attention was paid. On the other hand, licenses to cut timber, granted by the provincial authorities, have been revoked, and the practice of cutting and removing the timber has been understood by the government of the United States to have been discontinued. Recent cases have also occurred, in which the interposition of the American government, requested by Mr. Vaughan, has been promptly accorded in the spirit of that rule, of the expediency of which no better evidence can be required, than the necessity which has given rise to the present communication.

The undersigned purposely avoids any observations which can lead to a premature discussion on points which are to be submitted to a tribunal selected by the two powers. However unanswerable he may conceive the arguments by which the claim of his country to the territory in question may be sustained, he is aware that it can be attended with no advantage to adduce them on the present occasion.

The undersigned also regards as inadmissible all attempts to defend the exercise of British authority, in the territory referred to, during the time which may intervene before the decision of the arbiter is made, by asserting a title derived from possession. Considering the grounds on which the claims of the United States are founded, it is not perceived how arguments drawn either from first occupancy or immemorial possession can be made to bear on the final determination of the principal subject in discussion between the two countries, or how they can affect the question of temporary jurisdiction. Before the independence of the United States, not only the territory in dispute, but the whole of the adjoining province and state, was the property of a common sovereign. At the time of the division of the empire, the United States and Great Britain defined, in express terms, their respective territorial limits, and it will not, it is presumed, be asserted that, on concluding the treaty of 1783, jurisdiction of the one party over the country allotted to it was less complete than that which was granted to the other over its territory. The treaty by which the separation of the dominions of the two powers was effected, may be assimilated to a deed of partition between individuals holding property in common. From the exchange of ratifications, the only doubts which could arise were necessarily restricted to the interpretation of its language. Nor has any thing occurred since the revolutionary war to vary the rights of Great Britain and America. The object of the 5th article of the treaty of Ghent was merely to direct the practical business of surveying and marking out the boundary line, in order to give effect to previous stipulations.

To avoid, however, any misconstruction that might be drawn from his silence on the subject of a pos-

sessory title, the undersigned deems it proper to declare that New-Brunswick can adduce no claims by which a jurisdiction derived from prescription, or the first occupancy of the country, can be sustained; and he is far from admitting that, in this view of this case, the pretensions of the United States are less valid than those of Great Britain.

It appears, from the best information that can be obtained, that no settlement had been made in the territory at present in dispute, prior to the American revolution; that subsequently to that event, a small one was formed at or near the Madawaska, by French from Nova Scotia, who had always previously resisted the English authority; and that, though some grants of land may have been made to these settlers, by the provincial government, before the determination of the river St. Croix, in pursuance of the treaty of 1794, the acts of authority which took place were few and doubtful, nor is it believed that they were, till very recently, known to, much less acquiesced in by Massachusetts, to whom, till the separation of Maine, the jurisdiction as well as soil belonged. There was little occasion for the employment of criminal process among the relics of a primitive population, as these settlers were represented to be of a "mild, frugal, industrious, and pious character," desirous of fiuding a refuge under the patriarchal and spiritual power of their religion. For the arrangement of their civil affairs of every description, including their accidental disputes and differences among themselves, they were in the habit of having recourse to a tribunal of their own establishment, formed of one or two arbiters associated with the Catholic priest.

The settlement on the Aroostook was made within the last six years, partly by citizens of the United States, partly by British subjects, but with an impression, entertained by the whole community, that they were establishing themselves on American territory. It was not, indeed, till within three or four years, that the provincial government undertook to subject these settlers to civil process; and last summer, for the first time, proceedings for trespass and intrusion on the crown lands were instituted against them.

The opinion of Great Britain, as to the practical jurisdiction exercised over the territory in dispute, so late as the year 1814, may be seen by a reference to the proceedings at Ghent. When proposing a revision of the boundary line of Maine, with reference to convenience, and asking the tract now contested as a cession, for which compensation was elsewhere to be made, it is asserted by the English plenipotentiaries, "that the greater part of the territory in question is actually unoccupied;" and strenuous as were the efforts of his majesty's ministers to adjust such a variation of line as might secure a direct communication between Quebec and Halifax, it no where appears, that a fact so important to their object as the actual settlement of the country by persons recognising British authority, was conceived to exist.

At as early a period as the gradual advance of population required, the usual preliminary measures were taken by Massachusetts, with a view to the settlement of the vacant lands on her eastern frontier.

In 1801, a grant of Mars Hill was made to certain soldiers of the revolution by a public act of the legislature of the state, which was followed by similar proceedings in favour of others. That the country was not occupied, in conformity to these grants, is to be ascribed to the delays usually attendant upon the settlement of an exposed frontier, and to interruptions growing out of apprehensions of hostilities with the neighbouring province, which were realized by the declaration of war made by the United States against Great Britain in 1812. Not only have many acts of authority in the territory now in dispute been subsequently exercised by the states of Massachusetts and Maine, but in 1820, the enumeration of the settlers on the Madawaska took place under the supreme authority of the United States, and without, as far as can be ascertained, any remonstrance on the part of Great Britain, or of the province of New-Brunswick.

In the case of the land on which his unfortunate fellow citizen, now imprisoned at Fredrickton, was arrested, the undersigned would remark, that though it is situated in a section of country to which the general description of Madawaska is applied, the territory on which Mr. Baker and other Americans have established themselves, is to the west of the ancient settlement of the French Acadians, and it is believed that no part of the country where they reside, that is to say, of the track on the St. John's between the Meriumpticook and St. Francis rivers, has ever been in the possession of persons acknowledging allegiance to the British government. It thus appears that, to justify the unwarranted exercise of power, specially complained of, is wanting even the apology of former usage, unsatisfactory as that would be.

The undersigned is not ignorant of the inconvenience which may arise from the disorder and anarchy to which the inhabitants of the controverted district may be exposed, should no authority be exercised over them, either by the United States or the neighbouring British province. This is, however, an evil, to remedy which does not necessarily demand the interposition of New-Brunswick more than of the state of Maine. It is an inconvenience which the United States cannot consent to remove by subjecting American territory to a foreign jurisdiction. It is believed that, should the settlers be left to themselves, they will institute some form of government adapted to their condition, as was done for a long time on the Madawaska; that whether they do or not, it will be competent to the governments of Maine and New-Brunswick, within their respective acknowledged limits, to guard against any disorders. At all events, the government of the United States cannot consent to the exercise of any exclusive British authority within the contested territory, founded on the plea of necessity; and, as many of the settlers are intruders on the soil, they can have no right to complain of any disorders among themselves, resulting from their own unauthorized acts of intrusion.

The undersigned, on this occasion, cannot avoid observing, that the inconveniences which confessedly arise from the unsettled state of the boundary between the do-

minions of the United States and Great Britain, constitute a most powerful reason for the adoption of every measure calculated to insure a prompt decision of the main question at issue. A convention, formed with a view of submitting the conflicting decisions of the commissioners under the fifth article of the treaty of Ghent to the arbitration of a friendly sovereign or state, having received the assent of both the high contracting parties, become obligatory on them by an exchange of their respective ratifications on the second of April last. In the same official communication in which the undersigned acquainted the earl of Dudley with his authority to exchange the ratification of the president of the United States for that of the king, he announced his having received iustructions in relation to the further arrangements contemplated by the convention; and no effort on the part of the United States, which could, with propriety, be made, has been wanting to fulfil, literally, the stipulations by which the contracting parties engaged to proceed in concert to the choice of a friendly sovereign or state, as soon as the ratifications should be exchanged.

The undersigned would fail in obedience to his instructions, were he to conclude this note without declaring to lord Dudley that, while the president hopes that the British government, participating in the desire which he most anxiously feels to avoid all collision on account of the temporary occupation of the territory in contest, will effectually interpose its authority to restrain the provincial government from the exercise of any jurisdiction over it, such an interposition alone will supersede those precautionary measures which the government of the United States will otherwise feel itself constrained to adopt.

The undersigned has the honour to renew to lord Dudley the assurance of his highest consideration.

W. B. LAWRENCE.

16, *Lower Seymour-street*,
5th May, 1828.

Mr. Lawrence to Mr. Clay.
Legation of the U. S.
London, 26th June, 1828.

Sir,—After having, at our conference on the 19th instant, disposed of the business in relation to the arbiter, lord Aberdeen directed the conversation to the subject of the jurisdiction to be exercised over the disputed territory pending the suit. He seemed to consider an exclusive authority derived from a regular government to be indispensable; and subsequently proceeded to maintain that to Great Britain this jurisdiction belonged, at least till his majesty was divested of it by the decision of the arbiter.

In replying to the observations on the first point, I had little more to do than to repeat the explanations with which you had furnished me, and of which I had availed myself in my official note to lord Dudley. I cited the government which the settlers on the Madawaska had established, in order to point out how the evils of a temporary anarchy might be, in a great degree, obviated, without the interposition of either Maine or New-Brunswick. I referred, as I had done in conversation with his lordship's predecessor, to the opinion expressed last summer by Mr. Canning, in an interview with Mr.

Gallatin, and to the convention respecting the territory west of the Rocky Mountains. Lord Aberdeen here inquired whether I could enter into a similar arrangement with regard to the country now under consideration. I observed that my remark had been made merely by way of illustration; that I had, by order of the president, made a demand for the redress of a specific injury committed on an American citizen, and had further required that this country should abstain from the exercise of exclusive jurisdiction in a territory which we maintained belonged to the United States; that no answer had been returned to my reclamations; and that, therefore, in no event, could a new proposition be expected from me; that it would be competent for him, in replying to my note, to make any offer or suggestion he might think fit as to the best mode of obviating inconveniences from a disputed title, till the judgment of the king of the Netherlands is obtained; and that his proposals, if it should not be in my power to accept them, would be transmitted to my government, who would undoubtedly give them a respectful consideration.

The other topic on which lord Aberdeen touched, gave rise to a more extended discussion. Taking the same view as Mr. Vaughan had done in his correspondence with you, he maintained that, whatever might be the true boundary, the jurisdiction over the disputed territory remained with Great Britain, till our title was completed by an absolute delivery of possession; observing, that this was the rule of the law of nations in all cases of cession.

I answered, that the principle for which he contended, and with which I was acquainted, was adopted for the regulation of a third power, or of individuals, in order to prevent the inconvenience which would result in an established community, from doubts existing as to the period when a transfer of authority took place, and a new set of duties and obligations commenced; that in no case could one of the contracting parties reply to the complaint of the exercise of jurisdiction in the territory, which the other regarded as ceded to it, the fact that it had never delivered up the possession. If it has a claim of right, on that right, and not on the possession, must it support itself. If otherwise, as the withholding of the possession after its being demanded, is *per se*, a continued injury, to adduce it, would be to rely on one's own wrong. I further remarked that, even considering the treaty of 1783 as one of *cession*, every delivery has taken place of which the subject matter was susceptible. The territory now disputed was never held by Great Britain like a town or fortress. The possession in the crown, anterior to the revolution, was only constructive, of which, assuredly, the renunciation in the treaty was fully competent to divest it; that there had been no uninterrupted exercise of any authority by the province of Nova Scotia or New-Brunswick, since the independence of the United States; but that, on the contrary, as had been elsewhere stated, as much at least had been done on our side as on theirs, towards obtaining a title by occupancy.

I then proceeded to say, that I had thought proper to show that, even on the principle assumed by

this government, its claim of exclusive jurisdiction was untenable; but that I totally denied that we held any portion of the territory embraced within the original states as a "*grant*" or "*cession*" from a foreign power, in the sense which had been attributed to those terms.

After assimilating the state of things resulting from our revolution, as was done in my official note, to a division of the empire, I remarked that there was nothing in the form of the treaty of peace, or in the circumstances under which it was negotiated, to lead to the conclusion that on it depended our claims to territorial sovereignty. Even anterior to our separation from the mother country, though we acknowledged the authority of the king of Great Britain, we had not acquiesced in a parliamentary right to interfere with our internal regulations; an attempt to assume this power having been, indeed, one of the causes of the war. From the declaration of independence, and long before its recognition by England, we concluded treaties with foreign states, and exercised all the other prerogatives of an established government. I also adverted to the terms, as well of the provisional articles of 1782 as of the definitive treaty of the succeeding year, in both of which the contracting parties treated on the footing of the most perfect equality; the United States being considered in the full possession of the usual attributes of national sovereignty. A reference to the treaties with France and Spain, with respect to Louisiana and Florida, will show that, where real *cessions* were made, a different language was employed than in that of 1783, where the terms "relinquishes all claims to the government, propriety, and territorial rights," imply a renunciation of what is no longer in possession. Lord Aberdeen here interrupted me, and said that the treaty was in the nature of a grant or cession, because England gave every thing and received nothing. To this I replied, that it was not permited to open a solemn instrument, by which an agreement had been fairly and honestly affected between individuals; much less could it be done in the transactions between states in order to inquire into the consideration mutually given and received, with a view to change its legal character; and that it was, therefore, unnecessary for me to say any thing as to the object which England had in view in saving further war expenditure, *securing her remaining provinces*, and obtaining the other benefits of peace; and I would only refer to the face of the instrument itself to ascertain its nature. If, I added, by tracing the boundaries in the treaty, England ceded to us the territory on one side of the line, as deseribed in the second article, we *ceded* to her the territory on the other side, on which, indeed, we had, at different periods of the war, more or less pretension. The most correct way, however, of viewing the subject was not to consider that the treaty made grants or cessions to either party, but that the line was indicated, as is expressed in the article itself, to prevent future disputes, a motive which frequently has led to a convention of limits between two governments of equal antiquity.

As, however, lord Aberdeen still intimated that, whatever view other nations might take of the question, it could not be expected that Great

Britain would consider the sovereignty of the United States as existing anterior to 1783, or regard the recognition of independence, so far as territory was concerned, in any other light than a cession, I observed, that, the main question in dispute between the countries having been disposed of, it was desirable that difficulties as to temporary jurisdiction should not be occasioned by the discussion of an abstract proposition. In the inference which it had been attempted to draw from the principle of cession, connected as it was with the character which had been ascribed to the treaty of 1783, I felt confident that my government could not acquiesce. If admitted, it might be construed so as to involve the most monstrous consequences, and perhaps be applied in other cases than in the one under consideration. There was, however, another view of the subject, which I would suggest. The independence of the United States, in general, is not only acknowledged by the treaty, but also that of each state, by name, Massachusetts being enumerated with the others. If we divest the question of its national character, and regard it as a dispute between Maine and New-Brunswick, succeeding to the respective rights of Massachusetts and Nova Scotia, the argument from the principle of cession would operate altogether in our favour; for it can hardly be pretended that, when Nova Scotia, after having been annexed to Massachusetts under the charter of William and Mary, was transferred to a separate provincial government, and subsequently to the French, there was, in either case, any other delivery of possession of the unsettled territory than took place on the conclusion of our revolutionary war.

I cannot flatter myself that I have been able to change the views of lord Aberdeen, but it is proper for me to add, that he said that he would give to my observations a full consideration, and requested me not to regard what had fallen from him as the final opinion of the British government.

I have the honour to be, with the greatest respect, sir, your most obedient servant,

W. B. LAWRENCE.

HON. HENRY CLAY,
Secretary of State, Washington.

LORD ABERDEEN TO MR. LAWRENCE.

Foreign Office, Aug. 14, 1828.

The undersigned, his majesty's principal secretary of state for foreign affairs, has the honour to acknowledge the receipt of the note which Mr. Lawrence, chargé d'affairs of the United States of America, addressed to his majesty's principal secretary of state for foreign affairs on the 5th of May, containing representations upon certain occurrences in that district on the north-eastern frontier of the United States, the right of possession of which is now, by mutual agreement of the two countries, and in compliance with the provisions of the treaty of Ghent, referred to the arbitration of a friendly power.

Mr. Lawrence's representations, and the demands founded upon them, may be conveniently divided into two heads.

1st. The representations against the arrest of John Baker, a citizen of the United States, and residing within the said territory, and his removal by the provincial authorities of New-Brunswick to the capital

of that province for trial, on a charge of misdemeanor, and the demand for the "liberation of Mr. Baker, and for the granting to him a full indemnity for the wrongs which he has suffered by the seizure of his person within the limits of the state of Maine, and his subsequent abduction and confinement in the jail of Frederickton."

2d. The representations against the exercise of jurisdiction by British authorities within the territory in question, and the demand "that the government of New-Brunswick shall cease from the exercise of all and every act of exclusive jurisdiction within the disputed terterritory, until the question of right is settled between the two governments of Great Britain and the United States."

The undersigned deems it to be his duty to remark, in the outset, with reference to the designation which Mr. Lawrence has given to the place wherein John Baker was arrested, as being "within the limits of the state of Maine," and with reference also to the phrase "American territory," applied by Mr. Lawrence in another part of his note, to the district in question, that if the United States consider the tract of country which forms the subject of the arbitration, now in progress, as unquestionably their own, the British government are, on their side, as firmly convinced of the justice of their claim to designate those lands as territory belonging to the crown of Great Britain.

This, however, is not the point for present consideration. The question of sovereignty, which depends upon the definition of the true frontier line between the two countries, under the treaty of 1783, having been referred, agreeably to the provisions of the treaty of Ghent, to the arbitration of a friendly state, it is a question of actual jurisdiction alone which can now be discussed, without interfering with the province of the arbitrator; and between these questions of sovereignty and the actual exercise of jurisdictiction, the undersigned conceives there is a broad and clear distinction.

With these preliminary observations, the undersigned will proceed to remark upon the first demand made by Mr. Lawrence; and, if it has been a source of regret to the undersigned that the various and pressing calls upon the attention of his majesty's government, at this season of the year, have prevented him from returning an earlier answer to Mr. Lawrence's note addressed to his predecessor, the regret is materially diminished by the consideration that this delay has enabled the undersigned to put Mr. Lawrence in possession of the proceedings on the trial of John Baker, at Frederickton, in New-Brunswick, (a copy of which he has now the honour to enclose,) which he feels persuaded will, in conjunction with the remarks which he has to offer upon them, satisfy Mr. Lawrence that the prosecution instituted against John Baker by the government of New-Brunswick, was rendered indispensably necessary by the acts of that individual; that it has been conducted with a scrupulous regard to justice; that the sentence which has been passed upon him, is, under all the circumstances of the case, a lenient one; and that, in the whole course of these proceedings, no privilege

which Baker could justly claim under the law of nations, has been violated.

Postponing, for the present, any answer to Mr. Lawrence's remarks on the general question of jurisdiction within the district in which John Baker resided at the period of his arrest, and assuming, in this place, that such jurisdiction did belong to the government of New-Brunswiek, the undersigned will proceed to show, from the history of Baker himself, that the exercise of it, in the particular case of that individual, is singularly free from any possible imputation of hardship or severity.

Mr. Lawrence will see, from the report of Mr. Barrell, the agent specially appointed by the government of the United States to inquire into this transaction, (which report has been officially communicated to his majesty's government, and is doubtless in Mr. Lawrence's possession,) that John Baker, who had, from the year 1816, until 1820, resided in the British provinces of New-Brunswick and Canada, came in the latter year to reside in the Madawasca settlement, where he had joined his brother Nathan, then carrying on trade in connexion with a British merchant of the name of Nevers, established at the capital of New-Brunswick; and that, after the death of his brother, in 1821, John Baker continued to occupy the land on which his brother had originally settled, and to carry on the same business as before, under the said Nevers. It further appears, as well from Mr. Barrell's statement, as from the evidence on Baker's trial, that Nathan Baker had, so long ago as the year 1819, formally admitted the jurisdiction of the government of New-Brunswick over his said possession; that John Baker's partner, Nevers, with Baker's concurrence, applied to the government of New-Brunswick for a grant of the same land, for the benefit of John Baker; that, in 1822, Baker himself applied for and received from the government of New-Brunswick the provincial bounty for the cultivation of grain upon that land; and that, so late as the year 1825, he had voluntarily applied to the British authorities for the enforcement of the British laws among the American settlers, both in civil and criminal matters; from all which circumstances, it is manifest that the seditious practices for which Baker was prosecuted, were not committed in ignorance of the authority which had uniformly been asserted and exercised by the government of New-Brunswick, and of which he had himself, in common with the other settlers, claimed the benefit and protection.

It must be wholly unnecessary for the undersigned to insist upon the serious nature of the offences themselves, with which John Baker was charged, and of which he was found guilty. The several acts of outrage and sedition proved against him on the trial were such as no government actually exercising jurisdiction, and therefore responsible for the peace and security of the community existing under its protection, could allow to pass unpunished, whether the perpetrators of offences happened to be its own subjects, or aliens settled within its jurisdiction, and therefore owing local and temporary obedience to its laws.

Such being the facts more immediately relating to the individual Baker himself, the undersigned

has now to beg the attention of Mr. Lawrence to those which relate to the settlement in which he resided.

It is shown by the report of Mr. Barrell, and confirmed by the evidence on Baker's trial, that the Madawaska settlement was formed soon after the treaty of 1783, by British subjects, descendants of the original French colonists of New-Brunswick. It is stated on oath by Simon Hibert, a witness on the trial, who has lived forty years in the settlement, and had received a grant of land from the provincial government two or three years after he settled there, that he considered himself to have always lived under the government of New-Brunswick, and that all the Madawaska settlers lived under the same government. Testimony to the same effect is given by Mr. Fraser, a magistrate, who has been acquainted with the Madawaska settlers since 1787; and who further proves that the settlers had, to his own knowledge, for a long series of years, voted at elections like other subjects of the province of New-Brunswick; and finally, Mr. Barrell reports, that "the laws of New-Brunswick appear to have been always in force since the origin of the settlement; and that the settlers have acquiesced in the exercise of British authority among them, and have for many years had an organized militia."

It is further proved, by the evidence on the trial, and is admitted by Mr. Barrell, that the lands on which Baker resided form part of the Madawaska settlement; and the acts of Baker himself, and of his brother, who preceded him, show that they considered the land possessed by them successively to be situate under the authority of the government of New-Brunswick.

It is, moreover, not an immaterial fact, that the settlement thus originally formed, upwards of forty years ago, by settlers from New-Brunswick, was found by Mr. Barrell, at the period of his visit in November last, to contain, out of a population of 2000 souls, not more than twenty-five American settlers.

This exposition of the substance of the information collected by the agent of the United States, corroborated as it is by the evidence on oath given before the Supreme Court at Frederickton, together with the detailed narrative of the proceedings on the trial, will, the undersigned trusts, satisfy Mr. Lawrence that the opinion which he expressed in his note, "that no part of the tract in which Baker resided had ever been in the possession of persons acknowledging allegiance to the British government," is founded in error; and that full and substantial justice has been done to Mr. Baker. The undersigned will, therefore, proceed to the second point to which he has proposed to advert, namely, Mr. Lawrence's demand, "that the government of New-Brunswick should cease from the exercise of all and every act of exclusive jurisdiction within the disputed territory."

The consideration of this question naturally brings before the undersigned, Mr. Lawrence's assertion, "that New-Brunswick can adduce no claims by which a jurisdiction derived from prescription, or first occupancy of the country, can be sustained."

The reply to this allegation has been in a great measure antici-

pated in the course of the preceding observations on the case of John Baker. But the undersigned desires to call the attention of Mr. Lawrence more distinctly to the following important facts:

First, to the fact, (which the undersigned will state in Mr. Lawrence's own words,) that "before the independence of the United States, not only the territory in dispute, but the whole of the adjoining province and state, was the property of a common sovereign."

Secondly, to the fact, that the United States rest their claim to the possession of the territory upon the treaty of 1783; by which treaty the independence of the United States was recognised by Great Britain, and their boundaries attempted to be defined; thereby, in effect, admitting the previous title of Great Britain to the territory in question.

And, in the third place, to the facts, (which have either been proved upon oath, on Baker's trial, or admitted by Mr. Barrell, the agent of the United States,) that no actual delivery of the territory into the possession of the United States has hitherto taken place; that from and immediately after the conclusion of the treaty of 1783, whatever rights of sovereignty have been exercised in that territory, have, until the recent attempts of the state of Maine, been exercised by Great Britain; that the first settlers were colonial subjects of his majesty; that the inhabitants have always hitherto been treated as British subjects; that they have for many years voted at elections, like the other natives of the province; that they have long had an organized militia, and have considered themselves to be living under British protection and jurisdiction; and that, until a very recent period, the right of Great Britain to exercise acts of sovereignty within this territory has never been called in question by the government of the United States. Even in the representation addressed by Mr. Clay to his majesty's Chargé d'Affaires at Washington, on the 27th of March, 1825, (which contained the first objection of any kind advanced by the government of the United States to the proceedings of the British in the district jointly claimed by the two governments,) that objection was not directed against the exercise of jurisdiction on the part of Great Britain, (which was then, and had long been notorious,) but against the depredations of individuals, such as the cutting of wood, and other acts tending to render the district of less value to the party to whom it should finally be assigned.

In the face of this accumulated evidence, that Great Britain has never yet been practically divested of her ancient right of jurisdiction, it cannot reasonably be contended that the national character of the territory has undergone any change since the period antecedent to the treaty of 1783. It has, indeed, been formally admitted both by Great Britain and the United States, that the right of eventual sovereignty over that district is a question remaining in doubt; but it is consistent with an acknowledged rule of law, that where such a doubt exists, the party who has once clearly had a right, and who has retained actual possession, shall continue to hold it until the question at issue may be decided. This territory, therefore, ought, upon every principle, to be con-

sidered, for the present at least, as subject to the authority and jurisdiction of Great Britain; unless treaties subsequent to that of 1783, shall have imposed an obligation on her to pursue a different line of conduct with respect to it.

None of the treaties, however, posterior to that of 1783, allude to the question of jurisdiction; and from their silence on this point, it may fairly be inferred, that the United States, who cannot be supposed to have been ignorant of the acts of British authority which had been exercised throughout the territory in question, for so many years, did not entertain any doubt of the right of Great Britain in that respect. For, if such had been the case, they would surely have stipulated for the introduction into the latter treaties, especially into that of Ghent, of some provision respecting the exercise of that authority against which Mr. Lawrence is now instructed to protest.

The undersigned cannot acquiesce in Mr. Lawrence's extension to this question of jurisdiction of that rule of forbearance which has been inculcated on both sides, with regard to the exercise of other acts of sovereignty not necessary for the due administration of the territory now under consideration. With respect to such jurisdiction, the undersigned must be permitted to observe, that the circumstances of the two countries are extremely different. The United States have never been in possession of the territory; their title to it, under the treaty of 1783, is not admitted by Great Britain; and every act of jurisdiction done by the United States is an assumption of an authority which they did not previously possess. On the other hand, Great Britain has never parted with possession; the jurisdiction which she now exercises is the same which belonged to her before the treaty of 1783, and which she has, ever since that period, continued to exercise within the limits of the territory in question. The undersigned need hardly point out to Mr. Lawrence, that there is a very material difference between suspending a jurisdiction hitherto exercised, and forbearing to introduce a jurisdiction hitherto unknown; and that while the United States offer to forbear from *assuming* a jurisdiction which they have never exercised, they are demanding that Great Britain should *lay down* a jurisdiction which she has ever maintained; and it may be proper here to notice the erroneous opinion to which his majesty's government, in common with the government of the United States, are disposed to ascribe the recent attempts of the state of Maine to introduce its authority along the frontier in question, viz. that forbearance on the side of the United States might be construed into an admission of the right of Great Britain to the possession of the frontier which she claims. Such apprehensions are without foundation. No such inference could fairly be drawn from such forbearance. But were it otherwise, how much more would the position of Great Britain be prejudiced by her relinquishment of a jurisdiction hitherto invariably maintained?

The extent of obligation which, in the opinion of his majesty's government, is imposed upon both parties by the treaty of Ghent, with regard to this territory, is, that the question of title shall

remain precisely in the same state in which it stood at the date of that treaty; and that neither party shall do any act within its limits, by which the claim of the other, as it then stood, may be prejudiced, or by which the country may be rendered less valuable to that state to which the possession of it may be ultimately awarded.

It is with this view that the provincial government of New-Brunswick have, with the approbation of the British government, discontinued from issuing licenses for cutting wood within the district, and have abstained from all other acts not absolutely necessary for the peaceable government of the country; and the undersigned is happy to have this opportunity of acknowledging the existence of a corresponding disposition on the part of the general government of the United States.

The United States further propose, that, until the arbitrator shall have given his decision, neither power shall exercise any jurisdiction in the territory. His majesty's government are persuaded that the government of the United States will, on further consideration, see the manifold and serious injuries which would result to both powers from the proposed arrangement. It would make the districts along the frontier a common refuge for the outcasts of both nations, and introduce among the present inhabitants, who have long lived happily under the jurisdiction of Great Britain, lawless habits, from which it would hereafter be extremely difficult to reclaim them. It would thus render those districts of less value to the state to which they may be ultimately assigned; while, by the pernicious contact and example of a vitiated population, it would materially endanger the tranquillity and good government of the adjoining dominions of his majesty, and of the United States.

In declining, however, to accede to this proposition of the United States, the undersigned fulfils, with pleasure, the commands of his sovereign, in disclaiming, at the same time, in the most unequivocal manner, all intention of influencing the decision of the arbiter by any argument founded upon the continued exercise of this jurisdiction, since the period at which the right was first questioned by the United States.

The undersigned will conclude by observing, that, as no practical inconvenience has been alleged by Mr. Lawrence to exist, and as his majesty has renounced any advantage which might be derived in the discussion from the continued exercise of jurisdiction during the period of arbitration, the British government conceive that, under all the circumstances, it would clearly be more just, as well as more to the advantage of both countries, to allow the whole question to remain upon the footing on which it has hitherto stood, until its final settlement by the award of the arbitrator.

The undersigned requests Mr. Lawrence to accept the assurances of his high consideration.

ABERDEEN.

WILLIAM B. LAWRENCE, Esq. &c. &c. &c.

MR. LAWRENCE TO LORD ABERDEEN.

The right hon. the Earl of Aberdeen, &c. &c. &c.

The undersigned, chargé d'affairs of the United States of America, had the honour to receive, on

the 14th inst. the note which the Earl of Aberdeen, his majesty's principal Secretary of State for foreign affairs, addressed to him in reply to an official communication made by the undersigned, on the 5th of May, to the then principal Secretary of State for foreign affairs, respecting certain acts of the authorities of New-Brunswick, deemed by the government of the United States infractions on their rights of territorial sovereignty.

The two specific demands, which, in consequence of the occurrences in question, the undersigned, by the President's orders, presented to the consideration of his majesty's government, are severally discussed by Lord Aberdeen.

On the subject of the first of them, viz.: "the liberation of Mr. Baker, and the granting to him of a full indemnity for the wrongs which he has suffered," the undersigned does not deem it expedient, under existing circumstances, to add any thing to the representations heretofore urged. The grounds on which this demand was made, are believed to have been sufficiently set forth in his former note; and it would not be proper for him to comment on the British counter-statement without being acquainted with the President's views respecting certain proceedings in New-Brunswick, officially communicated by Lord Aberdeen, and which have occurred subsequently to the date of the instructions under which he is acting.

Having thus assigned the reason for his silence, which is applicable as well to the inferences which have been deduced from "the trial of John Baker," as to the transaction itself, it can hardly be necessary to remind Lord Aberdeen that, if the views which the United States take of their rights of territorial sovereignty be correct, all the proceedings referred to must be admitted to have been before a tribunal wholly without jurisdiction. This topic will not, however, be further enlarged on, as it is presumed that it is not proposed to conclude, by the sentence of a municipal court, the rights of a foreign power; and that no greater force is attached to the statements alluded to by Lord Aberdeen, as having been given in the course of the trial, than would be attributed to any other declarations made under the solemnity of an oath.

How far the United States may regard it as an aggravation of their original complaint, that the prosecution in New-Brunswick was proceeded with during the pendency of a diplomatic discussion on the right to arrest Mr. Baker, and that he was brought to trial more than two months after a formal demand for his release had been made by the American government to the British minister residing at Washington, must rest with the President to decide.

On the reply of the Earl of Aberdeen to the second demand of the United States, viz.: "that New-Brunswick should cease from the exercise of all and every act of exclusive jurisdiction within the disputed territory, until the question of right is settled between the two governments of the United States and Great Britain," it is the duty of the undersigned to offer a few considerations, which, he conceives, are calculated materially to affect the grounds on which the application of his government has been resisted. He is particularly induced to submit these remarks at this

time, from the circumstance, that as they embrace the substance of observations which he had the honour to make to Lord Aberdeen in conference, they will come with more propriety from him than from the distinguished citizen to whom the interests of the United States at this important court are about to be confided, who, however superior his advantages in other respects, must necessarily be unacquainted with what may have passed in personal interviews between his predecessors in office and his majesty's ministers.

The second demand of the United States is considered in connexion with the remark incidentally introduced in the former note of the undersigned, "that New-Brunswick can adduce no claims by which the jurisdiction derived from prescription or first occupancy of the country can be sustained."

Without repeating here what has been said on a former occasion, respecting the inapplicability of a title founded on possession, even could such a one be established, to the question in controversy, the undersigned will proceed briefly to examine the grounds on which the allegation taken from his note is attempted to be controverted. The three reasons on which the dissent of his majesty's Secretary of State is founded, will be examined in the order in which they are presented.

The first of them is, "that, before the independence of the United States, not only the territory in dispute, but the whole of the adjoining province and state, was the property of a common sovereign." To the truth of the statement, which is indeed expressed in the words of the undersigned, no exception is taken; but as the inference which Lord Aberdeen would draw from it is not explained, he may be permitted to remark, that it is not perceived how this historical fact contributes more towards establishing a title in New-Brunswick than in the state of Maine.

To use the words of a celebrated authority, "when a nation takes possession of a distant country, and settles a colony there, that country, though separated from the principal establishment or mother country, naturally becomes a part of the state, equally with its ancient possessions."

From the principle here established, that the political condition of the people or the mother country, and of the colonies, during their union, is the same, the inference is unavoidable, that, when a division of the empire takes place, the previous rights of the common sovereign, on matters equally affecting both of the states, accrue as well to the one as to the other of them.

From the possession of the disputed territory by his Britannic majesty anterior to 1776, a title by prescription or first occupancy might, therefore, with the same propriety, be asserted for Massachusetts, of which the present state of Maine was then a component part, as for Nova Scotia, through which latter province the pretensions of New-Brunswick are deduced.

On the second point, the undersigned conceives it proper to state, that he cannot admit "that the United States rest their claim to the possession of the territory upon the treaty of 1783," in any other sense than that in which his Britannic majesty founds, on the same treaty, his claims to New-Brunswick. By

the instrument, in question, which, besides being a treaty of peace, was one of partition and boundaries, the title of the United States was strengthened and confirmed, but it was not created. It had existed from the settlement of the country. Where this treaty is applicable, it, equally with all other conventional agreements between nations, is of paramount authority, and many of its provisions are, from their nature, of a permanent character; but its conclusion, though it created new claims to territory, did not destroy any prior right of the people of the United States that was not expressly renounced by it.

The title to the district in controversy, as well as to all the territory embraced in the original states, is founded, independently of treaty, on the rights which belonged to that portion of his Britannic majesty's subjects who settled in his ancient colony, now embraced in the American union, and upon the sovereignty maintained by the United States in their national character, since the 4th July, 1776.

To the general rights of colonists under the law of nations, allusion has already been made. To the particular situation of the inhabitants of the country, now comprised in the United States, it is therefore not necessary further to refer, than merely to recall to the recollection of Lord Aberdeen, that they were not a conquered people, but subjects of the king of Great Britain, enjoying the same rights with Englishmen; and, although they acknowledged the authority of a common sovereign, the right of the parliament of the mother country, in which they were unrepresented, to interfere in their internal concerns, was never acquiesced in.

From the Declaration of Independence in 1776, the claims of the United States, in their national character, to all the territory within the limits of the former thirteen colonies, are dated. Of the fact of their being in possession of sovereignty, comprising, of course, the rights of territorial jurisdiction, no further proof can be required, than that they exercised all its highest prerogatives. Nor were these confined to the limits of their own country. Treaties of amity and commerce, and of alliance, were made with France as early as 1778, and similar arrangements were entered into by the United States with other foreign powers, before any settlement of boundary was attempted to be defined by convention between the American states and the adjacent provinces.

The terms, as well of the provisional article of 1782, as of the definitive treaty of the succeeding year, may be cited in confirmation of the view here taken. By the first article of both these instruments, "his Britannic majesty acknowledges the said United States, viz.: New-Hampshire, Massachusetts Bay, &c. &c. &c. to be free, sovereign, and independent states: that he treats with them as such; and for himself, his heirs and successors, relinquishes all claims to the government, propriety, and territorial rights of the same, and every part thereof."

This language is sufficiently different from that employed where it is intended to convey territory by a grant in a treaty, to forbid the application of the rules in the cases of cession to the renunciation of his claims made by his Britannic majesty.

If, by tracing the limits in the

treaty by which the boundaries of the United States were attempted to be defined, England ceded to them the territory on the one side of the line, the possessions of Great Britain on the other side must be considered as held under a cession from the United States. On these provinces, indeed, the independent states of America had more or less pretensions at different times during the war; and they were also entitled to prefer claims to a portion of them, founded on their being an acquisition from France at the time they formed an integral part of the empire.

There is, however, nothing in a treaty of partition or boundaries that conflicts with the idea of a perfect equality between the contracting parties. For the purpose of preventing all future disputes, the avowed object of the 2d article of the treaty of 1783, such conventions are frequently entered into between two nations of the same antiquity.

As it is believed that the exposition which has been given is sufficient to show that the character of the right which the United States are entitled to advance under the treaty of 1783, does not imply any "admission of the previous title of Great Britain to the territory in question," considered distinct from that of Massachusetts, the undersigned may now proceed to examine the allegation made in the third place by Lord Aberdeen, "that no actual delivery of the territory into the possession of the United States has hitherto taken place," and the further assertion, that, since the treaty of 1783, until the recent attempts of the state of Maine, the rights of sovereignty have been exclusively exercised by Great Britain.

It may be here proper to remark, that the delivery necessary to effect a transfer of possession is necessarily dependent, as well upon the circumstances under which property is held, as upon the nature of that property itself.

With respect to a town or fortress, the delivery is made by certain distinct sensible acts. This is important in an established community, in order to prevent the inconvenience which would result from doubts arising as to the period when the transfer of authority took place, and a new set of duties and obligations commenced. The same motives do not, however, exist with regard to an uncultivated wilderness, and with no propriety can the rules which govern in the one case be applied to the other.

Without insisting in this part of the argument that, from the possession of the "common sovereign," independent of that of the provincial authorities, anterior to the revolution, no title in favor of New-Brunswick could be derived, which would not equally accrue to Maine, it is sufficient to observe, that it is admitted on all sides, that the first settlements were formed within the last forty years, and that consequently, by the possession, at the conclusion of the treaty of 1783, to whichever party it legally belonged, was only a constructive one. If the preceding views are correct, the constructive possession in question was in the United States long before the date of the treaty, and no further acts were or could have been required to complete any title that might then have been confirmed to the American union. But had any

ceremonies been necessary, assuredly the solemn one of making the treaty would have been sufficient; and looking to the fact that the district was then wholly uninhabited, it is difficult to conjecture what other formal surrender could have been conveniently devised.

It is also to be noticed in discussing this point, that the treaty of 1783, which is long prior in date to the present federal constitution, was not made with the national government exclusively, but, as appears by the article already cited, the states were recognised by it as distinct, independent communities. When it is borne in mind that they are all enumerated by their ancient colonial names, and that "the northwest angle of Nova Scotia" is also introduced as one of the points of the boundary, it is, without other corroborating considerations, sufficiently obvious that the former boundaries between Massachusetts and Nova Scotia were intended to be retained. Under these circumstances, it is not immaterial that Nova Scotia (including, of course, the territory in dispute, if it belongs to that province,) was, by a charter of William and Mary, incorporated in the colony of Massachusetts bay. By what other mode of transfer, it may be asked, than that adopted in the case of the U. States, was that ancient possession of Massachusetts divested, either in favour of the separate provincial government afterwards established there, or of the French to whom it was restored in 1697? If no actual delivery of the uncultivated lands was made on these occasions, according to the reasoning of lord Aberdeen, the former constructive possession of Massachusetts remain at this day in full force.

Conceiving that sufficient has been said to prove that the Americans, supposing them to have a claim of right, either had the constructive possession at the period of the ratification of the treaty of 1783, or that every transfer was made of which the subject matter is susceptible, it only remains, on this head, to speak of the possession subsequent to the peace of 1783.

From the nature of things, a title founded on "immemorial prescription" cannot exist among the descendants of Europeans established in America; but as it is implied even in a title by "ordinary prescription," that "the proprietor cannot allege an invincible ignorance; that he cannot justify his silence by lawful and solid reasons; and that he has neglected his right, or kept silence during a considerable number of years," it would seem that while the officers of the two governments were actually employed in ascertaining the boundary, no new prescriptive title could accrue.

Without, therefore, noticing any establishment founded during the period that the business of surveying and marking out the boundary line was in actual progress, it may be well to consider for a moment the character of the settlement through which the British claim of possession is derived.

The first inhabitants near the Madawaska river were, as was formerly stated, French Acadians, or, in the words of Lord Aberdeen, "descendants of the original French colonists of New-Brunswick;" but as this people had, from the period of their subjugation by the joint arms of England and America, to the formation of their settlement,

uniformly resisted the authority of their conquerors, it is not apparent how they are to be considered "British subjects." The claim which either Maine or New-Brunswick has on their obedience is only one founded on local allegiance; and the existence of this right cannot be established in behalf of either party, except by an assumption of the point in controversy. It can, therefore, hardly be seriously contended that such a settlement, aided by the recent attempts of New-Brunswick to introduce its authority by enrolling the militia, and serving process along the frontier, affords evidence of a possession as against claimants under a title confirmed by treaty, not only of the land actually occupied by the individuals in question, but of an extent of country embracing several millions of acres.

The undersigned has already disavowed for his government, any knowledge of, much less acquiescense in, these irregular intrusions on the soil; and to avoid repetition, he also refers to his former note for an enumeration of the acts of sovereignty exercised by the American governments.

The objections offered to his allegation, "that New-Brunswick can adduce no claims by which a jurisdiction derived from prescription or first occupancy of the country can be established," have now been met; and in maintaining a position, from the attempt to controvert which Lord Aberdeen has drawn important inferences, the undersigned has treated somewhat at length a topic, which, in his previous communication, was only incidentally noticed. He then conceived that it would prevent protracted discussion, and perhaps render unnecessary the introduction of principles on which there was danger that the two governments might not agree, to begin the deductions of the rights of the powers from the treaty of partition, by which a separation of their dominions was affected.

This method seemed also the most expedient, as so far as the treaty was applicable, it, from its nature, precluded all reference to pre-existing titles, which became merged in it; and it was believed that the ground which it occupied covered the whole matter in controversy. The undersigned felt that he might then, without entering at all into the facts respecting the settlement of the country, have contented himself with the remark, that "considering the grounds on which the claims of the United States are founded, it is not perceived how arguments, drawn either from the first occupancy, or immemorial possession, can be made to bear on the principal subject in discussion between the two countries, or how they can affect the question of temporary jurisdiction."

The course of reasoning, however, which Lord Aberdeen has adopted, does not now leave the undersigned at liberty to omit the preceding exposition; and he trusts that he has shown that there is no room for the application of the rule of law cited by the British secretary of state, viz. "that where a doubt exists, the party who has once clearly had a right, and who has retained actual possession, shall continue to hold it until the question at issue may be decided."

It is a sufficient reply to the inference deduced from the silence of the treaty of Ghent, and of pre

vious treaties, as to the exercise of jurisdiction by Great Britain, that it is evident from the proceedings on the occasion particularly mentioned, that the impression was entertained "that the greater part of the territory in question was then unoccupied;" nor does it appear that the French settlement, on which the British possession is now supported, was at that time known to the plenipotentiaries of either power.

The undersigned learns with regret, that the United States must consider themselves mistaken in the opinion which they had formed of the rule of forbearance inculcated on both sides. They had supposed that by it the parties stood pledged to each other to abstain from the performance of any new acts which might be construed into an exercise of the rights of sovereignty or soil over the disputed territory. As explained by lord Aberdeen, the mutual restriction would apply exclusively to the exercise of the presumed rights of the respective parties as proprietors of the soil, not to their pretensions as sovereigns of the territory.

It is difficult to reconcile with the idea now conveyed, the assurance given early in the last year by the British minister at Washington, "that the lieutenant governor of New-Brunswick cautiously abstains, on his part, from exercising any authority in the disputed territory, which could invite an encroachment as a measure of retaliation." And presuming that no more was intended to be asked from the American government than his majesty's authorities were prepared to grant in return, the undersigned cannot understand on what principle, consistent with the rule they contended for, complaints were urged by Mr. Vaughan, respecting the laying out of land into townships, and marking out roads, by the agents of Maine and Massachusetts. Had the impression of the government of the United States been the same with that of his majesty's government, as now explained, it is not probable that the disparity in numbers between the American citizens and French Acadians, in the disputed territory, relied on by lord Aberdeen as a material fact, would have at this time existed.

But, as the conclusion of lord Aberdeen on the demand of the American government is founded on the opinion "that the circumstances of the two countries are extremely different," and as it is believed that this supposition has been proved to be erroneous, the undersigned still flatters himself that on a fuller examination, all objection will cease to a proposition which has for its motive the prevention of dangerous collisions between neighbouring and friendly powers, and that his majesty's government will admit the propriety of abstaining from a jurisdiction, the exercise of which, if persevered in, may lead to consequences for which the undersigned is instructed to declare that the government of the United States cannot hold themselves responsible.

The undersigned takes the liberty of observing, that great as may be the inconveniences of an absence of exclusive jurisdiction on the frontiers, they have not been, on other occasions, deemed, either by the United States or Great Britain, of sufficient magnitude to induce

sacrifices of territorial claims, as is abundantly evinced by conventions entered into by them respecting their territory.

He would also adduce a fact that has fallen within the scope of his official knowledge, which shows that the opinion of the President was, at no very remote period, participated in by one of Lord Aberdeen's predecessors in office, at the time referred to, at the head of his majesty's government. Mr. Gallatin, in a despatch to the Secretary of State of the United States, dated in July, 1827, after speaking of a conference with the First Lord of the Treasury respecting the northeastern boundary, observes, that "Mr. Canning also suggested the propriety of abstaining on both sides, pending the suit, from any act of sovereignty over the contested territory."

That such a stipulation was not introduced into the late arbitration convention, is probably to be attributed to the supposed adequacy of the existing understanding between the parties, and to the fact that no collisions of importance, not disavowed, had then occurred.

Considering the protracted discussion on the case of Mr. Baker, and the several other grievances alluded to in the note of the 5th of May, or brought into view by the correspondence at Washington, the undersigned cannot account for the conclusion to which Lord Aberdeen has arrived, "that no practical inconvenience has been alledged by Mr. Lawrence to exist." He would observe, on the remark which Lord Aberdeen founds on this allegation, that, if British jurisdiction has been heretofore occasionally exercised in cases prejudicial to the rights of the United States, their omitting to notice these occurrences in a remote section of their dominions, and of which they were ignorant, is wholly different from their acquiescing in a transaction where their authority, appealed to by an American citizen, has been openly set at defiance.

The undersigned doubts not that the government of the United States will do full justice to the spirit in which Lord Aberdeen disclaims, by command of his sovereign, all intention of influencing the decision of the arbitrator by any exercise of jurisdiction over the disputed territory; and he takes this opportunity to remark, that it has not been his intention, either on the present or other occasions, by any designation which he may, for convenience, or for the purpose of expressing the conviction of his government on that subject, have given to the district, to assume as uncontroverted any of the points in dispute. He is fully aware that, in the face of a solemn instrument, to which his country is a party, setting forth that differences as to the settlement of the boundary in question do exist, and agreeing to refer them to the decision of a friendly sovereign or state, such an attempt, if made, would be worse than useless.

He has, moreover, endeavoured, as far as practicable, to abstain from any investigation of the question of right—the true province of the arbiter. He can only now add his regret, that there is not the same accordance of views between their respective governments on the subject to which this note relates, as was on a recent occasion happily found to exist on a more

important business, affecting the same territory, which the undersigned had the satisfaction to arrange with Lord Aberdeen.

The undersigned renews to Lord Aberdeen the assurances of his highest consideration.

W. B. LAWRENCE.

16, *Lower Seymour-street*,
August 22, 1828.

INUNDATED LANDS ON THE MISSISSIPPI.

Letter from the Secretary of the Treasury, transmitting to congress the information required by a resolution of the house of the 24th December last, in relation to lands on the Mississippi, in the state of Louisiana, which are rendered unfit for cultivation by the inundations of said river.

GENERAL LAND OFFICE,
January 12, 1829.

Sir, In compliance with a resolution of the house of representatives, "directing the Secretary of the Treasury to communicate to this house any information in his possession, showing the quantity and quality of the public lands in the state of Louisiana which are rendered unfit for cultivation from the inundations of the Mississippi, and the value of said lands when reclaimed, and the probable cost of reclaiming them," I have the honour to report, that the Mississippi, in its course between the 33d degree of north latitude, the northern boundary of Louisiana, and the Gulf of Mexico, inundates, when at its greatest height, a tract of country, the superficial area of which may be estimated at 5,429,260 acres: that portion of the couutry thus inundated which lies below the 31st degree of latitude may be estimated at 3,183,580 acres; and that portion above the 31st degree of north latitude may be estimated at 2,245,680 acres, of which 398,000 acres lie in the state of Mississippi. This estimate includes the whole of the country which is subject to inundation by the Mississippi and the waters of the gulf. A portion of this area, however, including both banks of the Mississippi, from some distance below New-Orleans to Baton Rouge, and the west bank nearly up to the 31st degree of latitude, and both sides of the Lafourche for about fifty miles from the Mississippi, has, by means of levees or embankments, been reclaimed at the expense of individuals. The strips of lands thus reclaimed are of limited extent; and, estimating their amount as equal to the depth of forty acres on each side of the Mississippi and Lafourche for the distance above stated, they will amount to about 500,000 acres, which, deducted from 3,183,580 acres, will leave the quantity of 2,683,580 acres below the 31st degree of latitude, which is now subject to annual or occasional inundations; this added to the quantity of inundated lands above the 31st degree of latitude, makes the whole quantity of lands within the area stated, and not protected by embankments, equal to 4,929,160 acres.

By deepening and clearing out the existing natural channels, and by opening other artificial ones, through which the surplus water, that the bed of the Mississippi is not of sufficient capacity to take off, may be discharged into the gulf; with the aid of embankments and natural or artificial reservoirs, and by the use of machinery (worked in the commencement by steam, and as the country becomes open and cleared of timber by windmills,) to take off the rain water that may fall during the period that the Mississippi may be above its natural banks, it is believed that the whole of this country may be reclaimed, and made in the highest degree productive.

The immense value of this district of country when reclaimed, is not to be estimated so much by the extent of its superfices as by the extraordinary and inexhaustible quality of the soil, the richness of its products, and the extent of the population it would be capable of sustaining. Every acre of this land lying below the 31st degree of north latitude might be made to produce three thousand weight of sugar; and the whole of it is particularly adapted to the production of the most luxuriant crops of rice, indigo and cotton. Good sugar lands on the Mississippi, partially cleared, may be estimated as worth $100 per acre, and rapidly advancing in value. The rice lands of South Carolina, from their limited quantity, are of greater value. It is believed that the exchangeable value of the maximum products of these lands, when placed in a high state of cultivation, would be adequate to the comfortable support of 2,250,000 people, giving a population of one individual for every two acres; and it is highly probable that the population would rapidly accumulate to such an extent as to banish every kind of labour from agriculture except that of the human species, as is now the case in many of the best districts of China; and this result would also have been produced in many parts of Holland, had not that country become, from the nature of its climate, a grazing country.

The alluvial lands of Louisiana may be divided into two portions; the first, extending from the 33d to the 31st degree of north latitude, in a direction west of south, may be termed the upper plain, is 120 miles in length, and generally from 25 to 80 miles in breadth, and, at particular points, is of still greater width. That portion below the 31st degree of north latitude, may be termed the lower plain. It extends in a direction from north-west to south-east for about 240 miles, to the mouth of the Mississippi; is compressed at its northern point, but opening rapidly, it forms at its base a semi-circle, as it protrudes into the gulf of Mexico, of 200 miles in extent, from the Chafalaya to the Rigoletts. The elevation of the plain at the 33d degree of north latitude, above the common tide waters of the gulf of Mexico, must exceed one hundred and thirty feet.

This plain embraces lands of various descriptions, which may be arranged into four classes:

The first class, which is probably equal in quantity to two thirds of the whole, is covered with heavy timber, and an almost impenetrable undergrowth of cane and other shrubbery. This portion, from natural causes, is rapid-

ly drained as fast as the waters retire within their natural channels, and, possessing a soil of the greatest fertility, tempts the settler, after a few years of low water, to make an establishment, from which he is driven off by the first extraordinary flood.

The second class consists of cyprus swamps: these are basins, or depressions of the surface, from which there is no natural outlet; and which filling with water during the floods, remain covered by it until the water be evaporated, or be gradually absorbed by the earth. The beds of these depressions being very universally above the common low water mark of the rivers and bayous, they may be readily drained, and would then be more conveniently converted into rice fields than any other portions of the plain.

The third class embraces the sea marsh, which is a belt of land extending along the Gulf of Mexico, from the Chafalaya to the Rigoletts. This belt is but partially covered by the common tides, but is subject to inundation from the high waters of the gulf during the autumnal equinoctial gales; it is generally without timber.

The fourth class consists of small bodies of prairie lands, dispersed through different portions of the plain; these pieces of land, generally the most elevated spots, are without timber, but of great fertility.

The alluvial plain of Louisiana, and that of Egypt, having been created by the deposite of large rivers watering immense extents of country, and disemboguing themselves into shallow oceans, moderately elevated by the tide, but which, from the influence of the winds, are constantly tending in a rapid manner to throw up obstructions at the mouths of all water courses emptying into them, it is fairly to be inferred that the alluvial plain of Egypt has, in time past, been as much subject to inundation from the waters of the Nile, as that of Louisiana now is from those of the Mississippi, and that the floods of the Nile have not only been controlled and restricted within its banks by the labour and ingenuity of man, but have been regulated and directed to the irrigation and improvement of the soil of the adjacent plain: a work better entitled to have been handed down to posterity by the erection of those massive monuments, the pyramids of Egypt, than any other event that could have occurred in the history of that country.

That the labour and ingenuity of man are adequate to produce the same result in relation to the Mississippi river and the plain of Louisiana, is a position not to be doubted; and it is believed that there are circumstances incident to the topography of this plain, that will facilitate such results.

The Mississippi river, on entering this plain at the 33d degree of north latitude, crosses it diagonally to the high lands a little below the mouth of the Yazoo; from thence it winds along the highlands of the states of Mississippi and Louisiana to Baton Rouge, leaving in this distance, the alluvial lands on its western branch; from a point a little below Baton Rouge it takes an easterly course through the alluvial plain, and nearly parallel to the shores of the Gulf of Mexico, until it reaches the English Turn: and from thence, bending to the south, it disembogues itself into the Gulf of Mexico by six or seven different channels. The banks of the Mis-

sissippi, which are but two or three feet above the common tide water near its mouth, gradually ascend with the plain of which they constitute the highest ridges, to the 33d degree of north latitude, where they are elevated above the low water mark of the river thirty or forty feet. The banks are, however, subject to be overflowed throughout this distance, except at those points protected by levees or embankments; this arises from a law incident to running water courses of considerable length, which is, that the floods in them acquire their greatest elevation as you approach a point nearly equidistant from their mouths and sources. The depth of the Mississippi is from 120 to 200 feet, decreasing as you approach very near the mouth, to a moderate depth. Exclusive of a number of small bayous, there are three large natural canals or channels, by which the surplus waters of the Mississippi are taken off to the gulf. The first of these above New-Orleans, is Lafourche, which, leaving the river at Donaldsonville, reaches the gulf in a tolerably direct course of about ninety miles. The Lafourche is about 100 yards wide; its bed is nearly on a level with the low water mark where it leaves the river; its banks are high, and protected by slight levees; and in high floods it takes off a large column of water. Above Lafourche the Bayou Manchac, or Iberville, connecting with the lakes Maurepas and Ponchartrain, takes off into the gulf, through the Rigoletts and other passes, a considerable portion of the surplus waters of the Mississippi; the bed of this bayou is 14 feet above the level of the low water of the Mississippi, and as it reaches tide water in a much shorter distance than the Mississippi itself, it would take of a large column of water if its channel was not very much obstructed.* Nearly opposite to Manchac, but lower down the river, is Bayou Plaquemine, a cut off from the Mississippi to the Chafalaya; but as there is a considerable declination, in this part of the plain, of the alluvial lands, and being unobstructed in its passage, it is rapid, and takes off a large body of water; where it leaves the river, however, its bed is five feet above the level of the low water mark. About 88 miles above Manchac, and just below the 31st degree of latitude, is the Chafalaya. This is one of the ancient channels of the Mississippi river, and being very deep, carries off at all times great quantities of water; and were its obstructions removed, it would probably carry off a much larger quantity. As the distance from the point where the Chafalaya leaves the Mississippi, along its channel, to the gulf, is only 132 miles, and that which the Mississippi traverses from the point of separation to the gulf is 318, it is evident that a given column of water may be passed off in much less time through the channel of the latter stream. From this topographical description of that portion of the plain south of the 31st degree of latitude, it is evident, that, independent of the general and gradual declination of this plain descending with the Mississippi, it also has a more rapid declination towards the Lakes Maurepas and Ponchartrain on the east, and to-

* The difference between the highest elevation of the waters at the afflux of the Manchac, and the lowest level of the tide in Ponchartrain, is from 27 to 80 feet.

wards the valley of the great Lake of Attakapas on the west, and it may, as to its form and configuration, be compared to the convex surface of a flattened scollop shell, having one of its sides very much curved, and the surface of the other somewhat indented; there is, therefore, good reason to believe that, by conforming to the unerring indications of nature, and aiding her in those operations which she has commenced, this plain may be reclaimed from inundation.

The quantity of water which has been drawn off from the Mississippi, through the Iberville, the Bayou Lafourche and the Chafalaya, has so reduced the volume of water which passes off through the Mississippi proper, that individual enterprise has been enabled to throw up embankments along the whole course of that river, from a point a little below that where the Cafalaya leaves the Mississippi nearly to its mouth, and for forty or fifty miles on each side of the Lafourche; the lands thus reclaimed will not, however, average forty acres in depth, fit for cultivation, and may be estimated at 400,000 acres. This is certainly the most productive body of land in the United States, and will be in a very short period, if it is not at present, as productive as any other known tract of country of equal extent.

If the waters drawn off in any given time from the Mississippi through the natural channels, now formed, were delivered into the gulf through those channels in the same given time, then they would not overflow their natural banks, and the adjacent lands would be reclaimed; but this is not the fact; and the object can only be accomplished by increasing the capacity and number of outlets of the natural channels by which the water is now disembogued, and by forming other artificial ones, if necessary, by which the volume of water that enters into the lower plain of Louisiana, in any given time, may be discharged into the gulf of Mexico within the same time. If that volume were ascertained with any tolerable degree of accuracy, then the number and capacity of the channels necessary for taking it off into the gulf might be calculated with sufficient certainty. A reference to the map of that country will show that the rivers which discharge themselves into the lower plain of Louisiana, and whose waters are carried to the gulf in common with those of the Mississippi, drain but a small tract of upland country; for Pearl river, and, if necessary, at a very moderate expense, the Teche, may be thrown into the ocean by separate and distinct channels.

At the thirty-first degree of north latitude, and near to the point where Red river flows into, and the Chafalaya is discharged from, the Mississippi, the waters of that river are compressed into a narrower space than at any other point below the 33d degree of north latitude; this may be considered as the apex of the lower plain. The contraction of the waters of the Mississippi at this point is occasioned by the Avoyelles, which, during high water, is an island, and is alluvial land, but of ancient origin; from this island a tongue of land projects towards the Mississippi, which, though covered at high water, is of considerable elevation. It is probable, therefore, that at the point thus designa-

ted, a series of experiments and admeasurements could be made, by which the volume of water discharged in any given time, on the lower plain, by the Mississippi, at its different stages of elevation, might be ascertained with sufficient accuracy to calculate the number and capacity of the channels necessary to discharge that volume of water into the gulf of Mexico in the same time. With this data, the practicability and the expense of enlarging the natural, and excavating a sufficient number of new channels to affect this object, might readily be ascertained. If that work could be accomplished by the government, every thing else in respect to the lower plain should be left to individual exertion, and the lands would be reclaimed as the increase of population and wealth of the country might create a demand for them.

The contraction of the plain of the Mississippi by the elevated lands of the Avoyelles, and the manner in which Red river passes through the whole width of the upper plain, to a distance of nearly thirty miles, has a strong tendency to back up all the waters of the upper plain; therefore it is that, immediately above this point, there is a greater extent of alluvial lands, more deeply covered with water than at any other point, perhaps, on the whole surface of the plain of Louisiana; and at some distance below this point, the embankments of the Mississippi terminate. To enable individuals to progress with these embankments, and to facilitate the erection of others along the water courses, and to reclaim with facility the lands of the upper plain, it will probably be found to be indispensably necessary to draw off a considerable portion of the water by artificial channels. The Red river, arrested in its direct progress by the elevated lands of Avoyelles, is deflected in a direction contrary to the general course of the Mississippi, and traverses the whole width of the upper plain in a circuitous course of upwards of thirty miles before it reaches that river. There is good reason to believe that the waters of the Red river, or a very large portion of them, in times past, found their way through Bayou Bœuf and the lake of the Attakapas to the ocean; and during high floods a small portion of the waters of that river are now discharged into the Bayou Bœuf, at different points between the Avoyelles and Rapide. A deep cut from the Red river, through the tongue of elevated alluvial land east of the Avoyelles, to the Chafalaya, and opening the natural channels by which it now occasionally flows into the Bayou Bœuf, would probably take off the waters which accumulate at the lower termination of the upper plain with such rapidity, and reduce their elevation so much as to enable individual enterprise and capital to continue the embankments, which now terminate below this point, not only along the whole course of the Mississippi, but along all those extensive water courses running through the upper plain.

The Tensa, a continuation of Black river, is, for fifty miles above its junction with Red river, a deep water course, and in breadth but little inferior to the Mississippi. It draws but a very small portion of its waters from the high lands, but communicates with the Mississippi by a number of lakes and bayous, at different points, from near its

mouth to its source, which is near the 33d degree of latitude, and through these channels aids in drawing off the surplus water of the Mississippi, while it continues to rise; when the Mississippi, however, retires within its banks, the waters in these bayous take a different direction, and are returned through the same channels into the Mississippi. Particular local causes will produce this effect at particular points; but the general cause, so far as these bayous connect with the Tensa, will be found in the fact that there is not a sufficient vent for the waters of the upper plain at the point of connexion with the lower plain of Louisiana. The Tensa is also connected, in times of high water, at several points, with the Washita and its branches. When the Mississippi has risen to a point a few feet below its natural banks, the whole of the upper plain of Louisiana is divided by the natural channels which connect the Mississippi with the Tensa, and the Tensa with the Washita, into a number of distinct islands of various extent. The banks of the rivers and the natural channels which connect them are very generally the most elevated lands; and each and all these islands might be reclaimed from inundation by embankments, thrown entirely around them, of from six to twelve feet high, provision being made to take off the rain water, and that occasioned by leakage and accidental crevices in the banks, with machinery. While the Mississippi is rising, the waters are carried off through these natural channels and their outlets into the lakes and the lowest and most depressed parts of the plain. During this process, there are currents and counter currents in every possible direction; but when the floods have attained their greatest known height, then this whole plain becomes covered with water, from a few inches to twelve feet deep, as its surface may be more or less depressed; and if it could be exposed to view, would exhibit the appearance of an immense lake, with a few insulated spots dispersed throughout it, such as the island of Sicily, the banks of the lakes Concordia, Providence, and Washington, and some very narrow strips partially distributed along the banks of the Mississippi and the other water courses. If the whole of the upper plain were reclaimed in the manner above mentioned, then the waters being contracted into much narrower channels would necessarily be very considerably elevated above the point to which they now rise; and passing off on the lower plain with greater elevation and greater rapidity, and having only the present natural channels of outlet to the gulf, the inevitable consequence would be, that the whole of the lower plain would be inundated, and probably parts of Attakapas and Opelousas would again be subject to inundation.

The reclamation of both the plains of Louisiana will depend, under any possible plan that may be proposed, upon the practicability of tapping the Mississippi and Red rivers, at one or more points, and to an extent that may draw off rapidly such a quantity of water as will prevent the refluent waters now collected just above the 31st degree of latitude, from rising to the heights to which they now do, and the practicability of delivering the waters into the ocean within periods equal to those in which they

were drawn off. We have seen that the natural channels of the Lafourche, Plaquemine, Iberville, and the Chafalaya, have so reduced the mass of water in the Mississippi, below their points of afflux, as to enable individuals, by very moderate embankments, to confine that part of the Mississippi within its banks. The Lafourche is the only one of these natural channels that takes off the waters to the ocean so rapidly and directly as to enable individuals to erect levees or embankments along its whole course. The passes of the Rigolets, and at Berwick's bay, not being sufficient to take off the waters which flow through them as fast as they are discharged into their resevoirs, it is evident that no beneficial effect could be derived from tapping the Mississippi at any point on its eastern bank, or at any point on the Western bank above the Lafourche, unless the capacity of the outlets at Berwick's bay and the Rigolets be greatly enlarged. The passes at the Rigolets are well known; and it is probable that by enlarging them, and cutting off that portion of the waters of Pearl river which now flows through them, they might be made adequate to take off, in a sufficiently short period, the waters of Iberville and those of the short rivers of Beliciana, so as to prevent that portion of the plain between the Iberville and the city of New-Orleans from being inundated, except so far as the waters of Ponchartrain, elevated by high winds and tides, may produce that effect. It is only, therefore, on the west bank of that river, or the south bank of Red river, that the proposed tappings can be made with the prospect of a successful issue.

The course of the Mississippi from Donaldsonville to New-Orleans being nearly parallel to the gulf, and the distance to the gulf across that part of the plain being much shorter than that by its natural channel to tide water, that portion of the river presents eligible points for tapping, particularly near to New-Orleans; the commerce of which, in time not perhaps distant, may require a deep cut to be made to the gulf. The width of the river at Donaldsonville being about seven hundred yards, the rise above its natural banks about one yard, and its velocity two and a half miles an hour; if, then, by one or more tappings below this point, a volume of water of the above dimensions could be carried off to the ocean with equal velocity, then would the highest elevation of the river be reduced very considerably every where below such tapping, and for some distance above. Such a reduction of the elevation of this part of the river, aided by the clearing out of the rafts from the Chafalaya, would possibly produce so great a reduction of the refluent waters at the junction of the Red and Mississippi rivers, as to enable individuals to proceed gradually to the reclamation of the whole of the upper plain by common embankments. It would then require only an increased capacity to be given to the outlets of the lake of Attakapas, to insure the reclamation of both plains. But if this effect cannot be produced by the tappings below the Lafourche, then they must be made at points higher up, either between Plaquemine and the Chafalaya, or at a point about the mouth of the Bayou Lamourie, or Du Lac, on Red river. A reference to the map will show that

the waters of Red river can be taken to the Gulf from this point in an almost direct course, through channels that it is more than probable they formerly occupied, and in a distance of less than one half of that by which they reached the ocean through the channel of the Mississippi, and by forty or fifty miles less than that through the channels of the Chafalaya. A deep cut at this point, of ten miles, through an alluvial soil, would discharge the waters of Red river in Bayou Bœuf; and as these waters would pass through an alluvial plain having probably a fall of not less than sixty feet in seventy miles from the point of tapping, there is reason to believe that they would work for themselves, without much artificial aid, a channel of great capacity.

The question then arises, how are these waters, in addition to the superabundant waters of the Chafalaya, which already overflow all the valley of the lake of Attakapas, to be taken off to the gulf? To solve this question satisfactorily, it will be necessary to take a view of the outlets of the lake of Attakapas. The Teche is a natural canal, almost without feeders or outlets, except at its mouth, and having no doubt been a channel for a much larger mass of water in time past, its adjacent lands have been formed precisely as those of the Mississippi have been, and its banks of course occupy the highest elevation of the country through which it runs. For forty miles above its mouth it is contracted by the waters of the Attakapas lake on the one side, and by those of the gulf on the other, so as to exhibit almost literally a mere tongue of land just above high water mark. It enters Berwick's bay about eighteen miles from the Gulf. Nearly opposite to the mouth of the Teche is the mouth of Bayou Black, or Bayou Bœuf. This bayou, like the Teche, is also a natural canal, occupying the highest elevation of a narrow tract of land, extending eastwardly nearly to the Bayou Lafourche, that is seldom inundated, and which would seem to be a prolongation of the Attakapas country; inducing a belief that the Teche formerly discharged its waters at a point farther east, into a bay that occupied the whole of the present plain, from the Attakapas lake to Bayou Lafourche and the Mississippi. It is this elevated ridge that causes the indentation in the lower plain to be deluged by the waters of the Mississippi, which, forcing a passage for themselves across the Teche, have formed an outlet called Berwick's bay. This path is narrow, and is about seven or eight feet deep, passing in part of its course through lands not of recent alluvion, and disembogues into the bay of Achafolia, through the lake of that name, and two or three other outlets.

Following up, then, this indication of nature, by cutting artificial outlets from the lake of Attakapas across the Teche, at different points, for a distance of fifteen or twenty miles above its mouth, at such places as the drains emptying into the ocean may approach nearest to Attakapas lake, giving to such cuts any width that may be required, and a depth that may be on a level with low water mark, and embanking the lake of Attakapas so as to raise it three feet above its present surface, it is believed that a capacity may be obtained for taking off any volume of water that

it may be necessary to throw into the lake of Attakapas, and at an expense very trifling in comparison to the object to be obtained. All the waters of the Atchafalaya being thrown into lake Attakapas, and that lake embanked, the whole of the plain between it and the Mississippi would be exempt from inundation. The rain water, and that from the weepings and crevices in the embankments, would find a reservoir in the deepest lakes and beds of Grand river, the surplus being taken off by machinery, or by tide locks in some of the bayous, which now connect with these lakes in the highest floods.

It is believed that three brigades of the topographical corps, operating for a few seasons from the 1st of November to the 1st of July, would be able to obtain sufficient data to decide upon the practicability of devising, and the expense of accomplishing, a plan that would effect the reclamation of both plains: but if it should be found to be impracticable, or too expensive for the state of the population and wealth of the country, yet the minute knowledge which they would obtain of the topography of the entire plain, would enable them to designate different portions of it in both plains which could be reclaimed from inundation at an expense commensurate with the present capital and population of the country.

The gradual elevation of the plain of the Mississippi,* by the annual deposites, and the accumulation of population and capital, will ultimately accomplish its entire reclamation from the inundations of the Mississippi; but the interposition of the government and the judicious expenditure of a few millions of dollars would accomplish that object fifty or perhaps a hundred years sooner than it will be effected by individual capital, aided by the slow operations of nature.

I attach a small diagram of the country, as illustrative of some of the points referred to in this report.

With great respect,

Your obedient servant,

GEO. GRAHAM.

The Hon. Richard Rush,

Secretary of the Treasury.

---

* The gradual elevation of the plain is not perceptible, because the gradual elevation of the beds of the water courses, arising from the same cause, occasions as general an overflow of their banks as formerly; but that which is perceptible is the rapid filling up of the ponds and shallow lakes; and there can be no question that the great annual alluvion and vegetable deposite must produce similar effects through the whole plain.

The Mississippi river is among the muddiest in the world, and deposites its muddy particles with great rapidity; its waters hold in solution not less than one sixteenth part of their bulk of alluvion matter, and some experiments are stated to give a greater proportion. If then, within the embankments of the Mississippi, a piece of level ground be surrounded by a dike sixteen inches high, and filled by the waters of the Mississippi when above its banks, and those waters drawn off when they have deposited all their muddy particles, nearly one inch in depth of alluvion matter will have been obtained; if this process be repeated as often as practicable during a season of high waters, a quantity of alluvion will have been accumulated of not less than six or eight inches in depth. This process is similar to that termed warping in England, and is in use to some extent along the waters of the estuary of the Humber for manuring lands; and it is a process by which the lands of the plain of Louisiana will be rendered inexhaustible, so long as the Mississippi continues to bear its muddy waters to the ocean.

An estimate of the expense of excavating Outlets from the Lake of the Attakapas to the Gulf of Mexico.

On the presumption that the waters of the gulf of Mexico, at low tide, reach within six miles of the lake—and it is believed that they do, at several points, between the Bayou Cypress and Berwick's bay —let positions at one or more of the most favourable of these points be selected, the aggregate width of which shall be two thousand yards; let such portions of these positions as may be inundated at high water, be drained by common embankments, so that oxen may be used in removing the earth; let excavations be made through them of such widths as may be best adapted to the removal of the earth, leaving, however, the proportion of excavation to that of embankment as three to one. A number of canals will then be formed, with an embankment between each, the excavation of which, their beds being on a level with low water, would not average a depth of three feet. These proportions will give the amount of excavation as equal to 15,840,000 cubic yards, which, at 20 cents the cubic yard, gives $3,168,000 as the expense of excavating outlets, which, at low tide, would have the capacity of discharging from the lake, with great velocity, a column of water of fifteen yards in width and one yard in depth, at the point where it left the lake.

No estimate, with any tolerable approximation to accuracy, can be made of the expense of excavating a deep cut from Red river to the Bayou Bœuf, and of enlarging the bed of that bayou; of the embankments along the Attakapas, necessary to give it the required elevation; or for tide locks, machinery, &c. until an accurate survey on the ground made. It is possible that the judicious expenditure of five million dollars, by the government, would be sufficient to make the excavations, and erect embankments, tide locks, and other machinery, that would be necessary to give such a control over the waters of the Mississippi, and its outlets, as to reduce them so nearly within their banks at high floods as to enable individual capital to progress with the entire embankment of them, and the reclamation of the whole plain.

The quantity of land belonging to the government within the limits of the alluvial plain may be estimated at three millions of acres, which, at a minimum price of ten dollars per acre, would be upwards of thirty millions of dollars.

A Treaty of Commerce and Navigation, between the United States of America and His Majesty the King of Sweden and Norway.

In the name of the Most Holy and Invisible Trinity.

The United States of America and His Majesty the King of Sweden and Norway, equally animated with the desire of extending and consolidating the commercial relations subsisting between their respective territories, and convinced that this object cannot better be accomplished than by placing them on the basis of a perfect equality and re-

ciprocity, have, in consequence, agreed to enter into negotiation for a new Treaty of Commerce and Navigation; and, to this effect, have appointed Plemipotentiaries, to wit; The President of the United States of America, John James Appleton, Chargé d'Affaires of the said States at the Court of His Majesty, the King of Sweden and Norway: and His Majesty the King of Sweden and Norway, the Sieur Gustave Count de Wetterstedt, his Minister of State and of Foreign Affairs, Knight Commander of his orders, Knight of the Orders of St. Andrew, St. Alexander Newsky, and St. Ann, of the first class, of Russia; Knight of the Order of the Red Eagle, of the first class, of Prussia; Grand Cross of the Order of Leopold, of Austria; one of the Eighteen of the Swedish Academy; who, after having exchanged their full powers, found in good and due form, have agreed upon the following articles:

ARTICLE I.

The citizens and subjects of each of the two high contracting parties may, with all security for their persons, vessels, and cargoes, freely enter the ports, places, and rivers, of the territories of the other, wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories; to rent and occupy houses and warehouses for their commerce; and they shall enjoy, generally, the most entire security and protection in their mercantile transactions, on condition of their submitting to the laws and ordinances of the respective countries.

ARTICLE II.

Swedish and Norwegian vessels, and those of the island of St. Bartholomew, arriving either laden or in ballast, into the ports of the United States of America, from whatever place they may come, shall be treated on their entrance, during their stay, and at their departure, upon the same footing as national vessels coming from the same place, with respect to the duties of tonnage, light houses, pilotage, and port charges, as well as to the perquisites of public officers, and all other duties or charges of whatever kind or denomination, levied in the name or to the profit, of the government, the local authorities, or of any private establishment whatsoever.

And reciprocally, the vessels of the United States of America, arriving, either laden, or in ballast, in the ports of the kingdom of Sweden and Norway, from whatever place they may come, shall be treated on their entrance, during their stay, and at their departure, upon the same footing as national vessels coming from the same place, with respect to the duties of tonnage, light houses pilotage, and port charges, as well as to the perquisites of public officers, and all other duties or charges, of whatever kind or denomination, levied in the name, or to the profit of the government, the local authorities, or of any private establishment whatsoever.

ARTICLE III.

All that may be lawfully imported into the United States of America, in vessels of the said states, may also be thereinto imported in Swedish and Norwegian vessels, and in those of the island of St. Bartholomew, from whatever place they may come, without paying other or higher duties, or charges, of whatever kind or denomination, levied in the name, or to the profit, of the government, the local au-

thorities, or of any private establishments whatsoever, than if imported in national vessels.

And reciprocally, all that may be lawfully imported into the kingdoms of Sweden and Norway, in Swedish and Norwegian vessels, or in those of the island of St. Bartholomew, may also be thereinto imported in vessels of the United States of America, from whatever place they may come, without paying other or higher duties, or charges, of whatever kind or denomination, levied in the name, or to the profit, of the government, the local authorities, or of any private establishments whatsoever, than if imported in national vessels.

ARTICLE IV.

All that may be lawfully exported from the United States of America in vessels of the said states, may also be exported therefrom in Swedish and Norwegian vessels, or in those of the island of St. Bartholomew, without paying other or higher duties, or charges, of whatever kind or denomination, levied in the name, or to the profit, of the government, the local authorities, or of any private establishments whatsoever, than if exported in national vessels.

And reciprocally, all that may be lawfully exported from the kingdoms of Sweden and Norway, in Swedish and Norwegian vessels, or in those of the island of St. Bartholomew, may also be exported therefrom in vessels of the United States of America, without paying other or higher duties, or charges, of whatever kind or denomination, levied in the name, or to the profit, of the government, the local authorities, or of any private establishments whatsoever, than if exported in national vessels.

ARTICLE V.

The stipulations contained in the three preceding articles, are, to their full extent, applicable to the vessels of the United States of America, proceeding, either laden, or not laden, to the colony of St. Bartholomew, in the West Indies, whether from the ports of the kingdoms of Sweden and Norway, or from any other place whatsoever; or proceeding from said colony, either laden or not laden, whether bound for Sweden or Norway, or for any other place whatsoever.

ARTICLE VI.

It is expressly understood, that the foregoing second, third, and fourth articles, are not applicable to the coastwise navigation from one port of the United States of America, to another port of the said states; nor to the navigation from one port of the kingdoms of Sweden or of Norway to another, nor to that between the two latter countries; which navigation each of the two high contracting parties reserves to itself.

ARTICLE VII.

Each of the two high contracting parties engages not to grant, in its purchases, or in those which might be made by companies or agents, acting in its name, or under its authority, any preference to importations made in its own vessels, or in those of a third power, over those made in the vessels of the other contracting party.

ARTICLE VIII.

The two high contracting parties engage not to impose upon the navigation between their respective territories, in the vessels of either, any tonnage or other duties of any kind or denomination, which shall be higher, or other than those which shall be imposed on every

other navigation, except that which they have reserved to themselves, respectively, by the sixth article of the present treaty.

ARTICLE IX.

There shall not be established, in the United States of America, upon the products of the soil or industry of the kingdoms of Sweden and Norway, or of the island of St. Bartholomews, any prohibition or restriction of importation or exportation, or any duties of any kind or denomination whatsoever, unless such prohibitions, restrictions, and duties, shall, likewise, be established upon articles of like nature, the growth of any other country.

And reciprocally, there shall not be established in the kingdoms of Sweden and Norway, nor in the island of St. Bartholomews, on the products of the soil or industry of the United States of America, any prohibition or restrictions of importation or exportation, nor any duties of any kind or denomination whatsoever, unless such prohibitions, restrictions, and duties, be likewise established upon articles of like nature, the growth of the island of St. Bartholomews, or of any other place, in case such importation be made into, or from, the kingdoms of Sweden and Norway; or of the kingdoms of Sweden and Norway, or of any other place, in case such importation or exportation be made into, or from, the island of St. Bartholomews.

ARTICLE X.

All privileges of transit, and all bounties and drawbacks which may be allowed within the territories of one of the high contracting parties, upon the importation or exportation of any article whatsoever, shall, likewise, be allowed on the articles of like nature, the products of the soil or industry of the other contracting party, and on the importations and exportations made in its vessels.

ARTICLE XI.

The citizens or subjects of one of the high contracting parties, arriving with their vessels on the coasts belonging to the other, but not wishing to enter the port, or after having entered therein, not wishing to unload any part of their cargo, shall be at liberty to depart and continue their voyage, without paying any other duties, imposts, or charges, whatsoever, for the vessel and cargo, than those of pilotage, wharfage, and for the support of light-houses, when such duties shall be levied on national vessels in similar cases. It is understood, however, that they shall always conform to such regulations and ordinances concerning navigation, and the places and ports which they may enter, as are, or shall be, in force with regard to national vessels; and that the custom-house officers shall be permitted to visit them, to remain on board, and to take all such precautions as may be necessary to prevent all unlawful commerce, as long as the vessels shall remain within the limits of their jurisdiction.

ARTICLE XII.

It is further agreed, that the vessels of one of the high contracting parties, having entered into the ports of the other, will be permitted to confine themselves to unlading such part only of their cargoes, as the captain or owner may wish, and that they may freely depart with the remainder, without paying any duties, imposts, or charges, whatsoever, except for that part which shall have been landed, and which shall be marked upon,

and erased from, the manifest exhibiting the enumeration of the articles with which the vessel was laden; which manifest shall be presented entire at the custom-house of the place where the vessel shall have entered. Nothing shall be paid on that part of the cargo which the vessel shall carry away, and with which it may continue its voyage, to one, or several other ports of the same country, there to dispose of the remainder of its cargo, if composed of articles whose importation is permitted, on paying the duties chargeable upon it; or it may proceed to any other country. It is understood, however, that all duties, imposts, or charges whatsoever, which are, or may become chargeable upon the vessels themselves, must be paid at the first port where they shall break bulk, or unlade part of their cargoes; but that no duties, imposts, or charges, of the same description, shall be demanded anew in the ports of the same country, which such vessels might, afterwards, wish to enter, unless national vessels be, in similar cases, subject to some ulterior duties.

ARTICLE XIII.

Each of the high contracting parties grants to the other the privilege of appointing, in its commercial ports and places, consuls, vice consuls, and commercial agents, who shall enjoy the full protection, and receive every assistance necessary for the due exercise of their functions; but it is expressly declared, that, in case of illegal or improper conduct, with respect to the laws or government of the country in which said consuls, vice consuls, or commercial agents, shall reside, they may be prosecuted and punished conformably to the laws, and deprived of the exercise of their functions by the offended government, which shall acquaint the other with its motives for having thus acted; it being understood, however, that the archives and documents relative to the affairs of the consulate shall be exempt from all search, and shall be carefully preserved under the seals of the consuls, vice consuls, or commercial agents, and of the authority of the place where they reside.

The consuls, vice consuls, commercial agents, or the persons duly authorized to supply their places, shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews, or of the captain, should disturb the order or tranquillity of the country; or the said consuls, vice consuls, or commercial agents, should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood, that this species of judgment, or arbitration, shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country.

ARTICLE XIV.

The said consuls, vice consuls, or commercial agents, are authorized to require the assistance of the local authorities for the arrest, detention, and imprisonment, of the deserters from the ships of war and merchant vessels of their country; and for this purpose, they shall apply to the competent tribu-

nals, judges, and officers, and shall, in writing, demand said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, that such individuals formed part of the crews, and on this reclamation being thus substantiated, the surrender shall not be refused.

Such deserters, when arrested, shall be placed at the disposal of the said consuls, vice consuls, or commercial agents, and may be confined in the public prisons, at the request and cost of those who claim them, in order to be sent to the vessels to which they belonged, or to others of the same country. But, if not sent back within the space of two months, reckoning from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause.

It is understood, however, that, if the deserter should be found to have committed any crime or offence, his surrender may be delayed, until the tribunal before which the case shall be depending, shall have pronounced its sentence, and such sentence shall have been carried into effect.

ARTICLE XV.

In case any vessel of one of the high contracting parties shall have been stranded or shipwrecked, or shall have suffered any other damage on the coasts of the dominions of the other, every aid and assistance shall be given to the persons shipwrecked or in danger, and passports shall be granted to them to return to their country. The shipwrecked vessels and merchandise, or their proceeds, if the same shall have been sold, shall be restored to their owners, or to those entitled thereto, if claimed within a year and a day, upon paying such costs of salvage as would be paid by national vessels in the same circumstances; and the salvage companies shall not compel the acceptance of their services, except in the same cases, and after the same delays, as shall be granted to the captains and crews of national vessels. Moreover, the respective governments will take care that these companies do not commit any vexatious or arbitrary acts.

ARTICLE XVI.

It is agreed that vessels arriving directly from the United States of America, at a port within the dominions of his majesty the king of Sweden and Norway, or from the territories of his said majesty in Europe, at a port of the United States, and provided with a bill of health granted by an officer having competent power to that effect, at the port whence such vessel shall have sailed, setting forth that no malignant or contagious diseases prevailed in that port, shall be subjected to no other quarantine than such as may be necessary for the visit of the health officer of the port where such vessel shall have arrived; after which, said vessels shall be allowed immediately to enter and unload their cargoes; provided always, that there shall be on board no person who, during the voyage, shall have been attacked with any malignant or contagious disease; that such vessels shall not, during their passage, have communicated with any vessel liable, itself, to undergo a quarantine; and that the country whence they came shall not, at that time, be so far infected or suspected, that, before their arrival an

ordinance had been issued, in consequence of which all vessels coming from that country should be considered as suspected, and consequently subject to quarantine.

ARTICLE XVII.

The second, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeeth, eighteenth, nineteenth, twenty-first, twenty-second, twenty-third, and twenty-fifth articles of the treaty of amity and commerce concluded at Paris on the third of April, one thousand seven hundred eighty-three, by the plenipotentiaries of the United States of America, and of his majesty the king of Sweden, together with the first, second, fourth, and fifth separate articles, signed on the same day by the same plenipotentiaries, are revived, and made applicable to all the countries under the dominion of the present high contracting parties, and shall have the same force and value as if they were inserted in the context of the present treaty. It being understood that the stipulations contained in the articles above cited, shall always be considered, as in no manner affecting the conventions concluded by either party with other nations, during the interval between the expiration of the said treaty of one thousand seven hundred eighty-three, and the revival of said articles by the treaty of commerce and navigation, concluded at Stockholm by the present high contracting parties, on the fourth of September, one thousand eight hundred and sixteen.

ARTICLE XVIII.

Considering the remoteness of the respective countries of the two high contracting parties, and the uncertainty resulting therefrom with respect to the various events which may take place, it is agreed that a merchant vessel belonging to either of them, which may be bound to a port supposed, at the time of its departure, to be blockaded, shall not, however, be captured or condemned for having attempted, a first time, to enter said port, unless it can be proved that said vessel could, and ought to have learned, during its voyage, that the blockade of the place in question still continued. But all vessels which, after having been warned off once, shall, during the same voyage, attempt a second time to enter the same blockaded port, during the continuance of said blockade, shall then subject themselves to be detained and condemned.

ARTICLE XIX.

The present treaty shall continue in force ten years, counting from the day of the exchange of the ratifications; and if, before the expiration of the first nine years, neither of the high contracting parties shall have announced, by an official notification, to the other, its intention to arrest the operation of said treaty, it shall remain binding for one year beyond that time, and so on, until the expiration of the twelve months which will follow a similar notification, whatever the time at which it may take place.

ARTICLE XX.

The present treaty shall be ratified by the president of the United States of America, by and with the advice and consent of the Senate, and by his majesty the king of Sweden and Norway, and the ratifications shall be exchanged at Washington within the space of

nine months from the signature, or sooner, if possible.

In faith whereof, the respective plenipotentiaries have signed the present treaty, by duplicates, and have affixed thereto the seals of their arms. Done at Stockholm, the fourth of July, in the year of Grace, one thousand eight hundred and twenty-seven.

J. J. APPLETON. [L.S.]
G. COUNT DE WETTERSTEDT. [L.S.]

SEPARATE ARTICLE.

Certain relations of proximity and ancient connexions having led to regulations for the importation of the products of the kingdoms of Sweden and Norway into the Grand Duchy of Finland, and that of the products of Finland into Sweden and Norway, in vessels of the respective countries, by special stipulations of a treaty still in force, and whose renewal forms at this time the subject of a negotiation between the courts of Sweden and Norway and Russia, said stipulations being, in no manner, connected with the existing regulations for foreign commerce in general, the two high contracting parties, anxious to remove from their commercial relations all kinds of ambiguity or motives of discussion, have agreed that the eighth, ninth, and tenth articles of the present treaty shall not be applicable either to the navigation and commerce above mentioned, nor consequently to the exceptions in the general tariff of custom-house duties, and in the regulations of navigation resulting therefrom, nor to the special advantages which are, or may be granted to the importation of tallow and candles from Russia, founded upon equivalent advantages granted by Russia on certain articles of importation from Sweden and Norway.

The present separate article shall have the same force and value as if it were inserted, word for word, in the treaty signed this day, and shall be ratified at the same time.

In faith whereof, we, the undersigned, by virtue of our respective full powers, have signed the present separate article, and affixed thereto the seals of our arms.

Done at Stockholm, the fourth of July, one thousand eight hundred and twenty-seven.

J. J. APPLETON. [L.S.]
G. COUNT DE WETTERSTEDT. [L.S.]

The said treaty and separate article have been duly ratified on both parts, and the respective ratifications of the same were exchanged at Washington, on the eighteenth day of January, one thousand eight hundred and twenty-eight, by Henry Clay, Secretary of State of the United States, and Robert, Baron de Stackelberg, Colonel, Knight of the order of the sword, and Chargé d'Affaires of his majesty, the king of Sweden and Norway, near the said United States, on the part of their respective governments.

A Convention between the United States of America and his Majesty the King of the United Kingdom of Great Britain and Ireland.

WHEREAS it is provided, by the fifth article of the Treaty of Ghent, that, in case the commissioners appointed under that article, for the settlement of the boundary line therein described, should not be able to agree upon such boundary line, the report or reports of those commissioners, stating the points on which they had differed, should

be submitted to some friendly sovereign or state, and that the decision given by such sovereign state, on such points of difference, should be considered by the contracting parties as final and conclusive: That case having now arisen, and it having, therefore, become expedient to proceed to, and regulate the reference, as above described; the United States of America and his Majesty the King of the United Kingdom of Great Britain and Ireland, have, for that purpose, named their plenipotentiaries, that is to say:—The President of the United States has appointed ALBERT GALLATIN, their Envoy Extraordinary and Minister Plenipotentiary at the Court of his Britannic Majesty; and his said Majesty, on his part, has appointed the Right Honourable CHARLES GRANT, a Member of Parliament, a Member of His said Majesty's most Honourable Privy Council, and President of the Committee of the Privy Council for Affairs of Trade and Foreign Plantations; and HENRY UDWIN ADDINGTON, Esq., who, after having exchanged their respective full powers, found to be in due and proper form, have agreed to, and concluded the following articles:

ARTICLE I.

It is agreed that the points of difference which have arisen in the settlement of the boundary between the American and British dominions, as described in the fifth article of the treaty of Ghent, shall be referred, as therein provided, to some friendly sovereign or state, who shall be invited to investigate, and make a decision upon, such points of difference.

The two contracting powers engage to proceed in concert to the choice of such friendly sovereign or state, as soon as the ratifications of this convention shall have been exchanged, and to use their best endeavours to obtain a decision, if practicable, within two years after the arbiter shall have signified his consent to act as such.

ARTICLE II.

The reports and documents thereunto annexed, of the commissioners appointed to carry into execution the fifth article of the treaty of Ghent, being so voluminous and complicated as to render it improbable that any sovereign or state should be willing or able to undertake the office of investigating and arbitrating upon them, it is hereby agreed to substitute for those reports, new and separate statements of the respective cases, severally drawn up by each of the contracting parties; in such form and terms as each may think fit.

The said statements, when prepared, shall be mutually communicated to each other by the contracting parties, that is to say, by the United States to his Britannic Majesty's Minister or Chargé d'Affaires at Washington, and by Great Britain to the Minister or Chargé d'Affaires of the United States at London, within fifteen months after the exchange of the ratifications of the present convention.

After such communication shall have taken place, each party shall have the power of drawing up a second and definitive statement, if it thinks fit so to do, in reply to the statement of the other party, so communicated; which definitive statements shall, also, be mutually communicated, in the same manner as aforesaid, to each other, by the contracting parties, within twenty-one months after the exchange of ratifications of the present convention.

ARTICLE III.

Each of the contracting parties shall, within nine months after the exchange of ratifications of this convention, communicate to the other, in the same manner as aforesaid, all the evidence intended to be brought in support of its claim, beyond that which is contained in the reports of the Commissioners, or papers thereunto annexed, and other written documents laid before the Commission under the fifth article of the treaty of Ghent.

Each of the contracting parties shall be bound, on the application of the other party, made within six months after the exchange of the ratifications of this convention, to give authentic copies of such individually specified acts, of a public nature, relating to the territory in question, intended to be laid as evidence before the arbiter, as have been issued under the authority, or are in the exclusive possession, of each party.

No maps, surveys, or topographical evidence, of any description, shall be adduced by either party, beyond that which is hereinafter stipulated, nor shall any fresh evidence of any description, be adduced or adverted to, by either party, other than that mutually communicated or applied for, as aforesaid.

Each party shall have full power to incorporate in, or annex to, either its first or second statement, any portion of the reports of the Commissioners, or papers thereunto annexed, and other written documents, laid before the Commission under the fifth article of the treaty of Ghent, or of the other evidence mutually communicated or applied for, as above provided, which it may think fit.

ARTICLE IV.

The map called Mitchell's Map, by which the framers of the treaty of 1783 are acknowledged to have regulated their joint and official proceedings, and the map A, which has been agreed on by the contracting parties, as a delineation of the water courses, and of the boundary lines in reference to the said water courses, as contended for by each party, respectively, and which has accordingly been signed by the above named plenipotentiaries, at the same time with this convention, shall be annexed to the statements of the contracting parties, and be the only maps that shall be considered as evidence mutually acknowledged by the contracting parties of the topography of the country.

It shall, however, be lawful for either party to annex to its respective first statement, for the purposes of general illustration, any of the maps, surveys, or topographical delineations, which were filed with the Commissioners under the fifth article of the treaty of Ghent, any engraved map heretofore published, and also a transcript of the abovementioned map A, or of a section thereof, in which transcript each party may lay down the highlands, or other features of the country, as it shall think fit; the water courses and the boundary lines, as claimed by each party, remaining as laid down in the said map A.

But this transcript, as well as all the other maps, surveys, or topographical delineations, other than the map A, and Mitchell's map, intended to be thus annexed, by either party, to the respective statements, shall be communicated to the other party, in the same manner as aforesaid, within nine months after the

exchange of the ratifications of this Convention, and shall be subject to such objections and observations as the other contracting party may deem it expedient to make thereto, and shall annex to his first statement, either in the margin of such transcript, map or maps, or otherwise.

ARTICLE V.

All the statements, papers, maps, and documents, abovementioned, and which shall have been mutually communicated as aforesaid, shall, without any addition, subtraction, or alteration, whatsoever, be jointly and simultaneously delivered in to the arbitrating sovereign or state, within two years after the exchange of ratifications of this convention, unless the arbiter should not, within that time, have consented to act as such; in which case, all the said statements, papers, maps, and documents, shall be laid before him within six months after the time when he shall have consented so to act. No other statements, papers, maps, or documents, shall ever be laid before the arbiter, except as hereinafter provided.

ARTICLE VI.

In order to facilitate the attainment of a just and sound decision on the part of the arbiter, it is agreed, that in case the said arbiter should desire further elucidation or evidence, in regard to any specific point contained in any of the said statements submitted to him, the requisition for such elucidation or evidence shall be simultaneously made to both parties, who shall thereupon be permitted to bring further evidence, if required, and to make, each, a written reply to the specific questions submitted by the said arbiter, but no further; and such evidence and replies shall be immediately communicated by each party to the other.

And in case the arbiter should find the topographical evidences laid, as aforesaid, before him, insufficient for the purposes of a sound and just decision, he shall have the power of ordering additional surveys to be made of any portions of the disputed boundary line or territory as he may think fit; which surveys shall be made at the joint expense of the contracting parties, and be considered as conclusive by them.

ARTICLE VII.

The decision of the arbiter, when given, shall be taken as final and conclusive, and it shall be carried, without reserve, into immediate effect, by commissioners appointed for that purpose by the contracting parties.

ARTICLE VIII.

This convention shall be ratified, and the ratifications shall be exchanged, in nine months from the date hereof, or sooner, if possible.

In witness whereof, we, the respective plenipotentiaries, have signed the same, and have affixed thereto the seals of our arms.

Done at London, the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and twenty-seven.

ALBERT GALLATIN. [L. S.]
CHARLES GRANT. [L. S.]
HENRY UNWIN ADDINGTON. [L. S.]

The said convention, and the respective ratifications of the same, were exchanged at London on the second day of April, one thousand eight hundred and twenty-eight, by William Beach Lawrence, Chargé d'Affaires of the United States at the Court of his Britannic Majesty,

and the Right Honourable Charles Grant and Henry Unwin Addington, Esquire, on the part of their respective governments.

A Convention between the United States of America and his Majesty the King of the United Kingdom of Great Britain and Ireland.

The United States of America and his Majesty the King of the United Kingdom of Great Britain and Ireland, being equally desirous to prevent, as far as possible, all hazard of misunderstanding between the two nations with respect to the territory of the Northwest Coast of America, west of the Stony or Rocky Mountains, after the expiration of the third article of the Convention concluded between them on the 20th of October, 1818; and, also, with a view to give further time for maturing measures which shall have for their object a more definite settlement of the claims of each party to the said territory, have respectively named their plenipotentiaries, to treat and agree concerning a temporary renewal of the said article.

ARTICLE I.

All the provisions of the third article of the Convention concluded between the United States of America and his Majesty the King of the United Kingdom of Great Britain and Ireland, on the 20th of October, 1818, shall be, and they are hereby, further indefinitely extended and continued in force, in the same manner as if all the provisions of the said article were herein specifically recited.

ARTICLE II.

It shall be competent, however, to either of the contracting parties, in case either should think fit, at any time after the 20th of October, 1828, on giving due notice of twelve months to the other contracting party, to annul and abrogate this Convention; and it shall, in such case, be accordingly entirely annulled and abrogated, after the expiration of the said term of notice.

ARTICLE III.

Nothing contained in this Convention, or in the third article of the Convention of the 20th of October, 1818, hereby continued in force, shall be construed to impair, or in any manner affect, the claims which either of the contracting parties may have to any part of the country westward of the Stony or Rocky Mountains.

ARTICLE IV.

The present Convention shall be ratified, and the ratifications shall be exchanged in nine months, or sooner, if possible.

In testimony whereof, the respective plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at London, the sixth day of August, in the year of our Lord one thousand eight hundred and twenty-seven.

ALBERT GALLATIN. [L. S.]
CHARLES GRANT. [L. S.]
HENRY UNWIN ADDINGTON. [L. S.]

The said Convention, and the respective ratifications of the same, were exchanged at London, on the second day of April, one thousand eight hundred and twenty-eight, by William Beach Lawrence, Chargé d'Affaires of the United States at the Court of his Britannic Majesty, and the Right Honourable

Charles Grant, and Henry Unwin Addington, Esquire, on the part of their respective governments.

A Convention between the United States of America, and his Majesty the King of the United Kingdom of Great Britain and Ireland.

The United States of America, and his Majesty the King of the United Kingdom of Great Britain and Ireland, being desirous of continuing in force the existing commercial regulations between the two countries, which are contained in the Convention concluded between them on the 3d of July, 1815, and further renewed by the fourth article of the Convention of the 20th October, 1818, have, for that purpose, named their respective plenipotentiaries; who, after having communicated to each other their respective full powers, found to be in due and proper form, have agreed upon and concluded the following articles.

ARTICLE I.

All the provisions of the Convention concluded between the United States of America and his Majesty the King of the United Kingdom of Great Britain and Ireland, on the 3d of July, 1815, and further continued for the term of ten years by the fourth article of the Convention of the 20th October, 1818, with the exception therein contained, as to St. Helena, are hereby further indefinitely, and without the said exception, extended and continued in force, from the date of the expiration of the said ten years, in the same manner as if all the provisions of the same Convention of the 3d of July, 1815, were herein specifically recited.

ARTICLE II.

It shall be competent, however, to either of the contracting parties, in case either should think fit, at any time after the expiration of the said ten years—that is, after the 20th of October, 1828—on giving due notice of twelve months to the other contracting party, to annul and abrogate this Convention; and it shall, in such case, be accordingly entirely annulled and abrogated, after the expiration of the said term of notice.

ARTICLE III.

The present Convention shall be ratified, and the ratifications shall be exchanged in nine months, or sooner, if possible.

In witness whereof, the respective plenipotentiaries have signed the same, and have fixed thereto the seals of their arms.

Done at London, the sixth day of August, in the year of our Lord one thousand eight hundred and twenty-seven.

ALBERT GALLATIN. [L. S.]
CHARLES GRANT. [L. S.]
HENRY UNWIN ADDINGTON. [L. S.]

The said Convention, and the respective ratifications of the same, were exchanged at London on the second day of April, one thousand eight hundred and twenty-eight, by William Beach Lawrence, Chargé d'Affaires of the United States of America at the Court of his Britannic Majesty, and the Right Honourable Charles Grant and Henry Unwin Addington, Esquire, on the part of their respective governments.

A Convention of friendship, commerce, and navigation, between the United States of America, and the free Hanseatic Republics of Lubeck, Bremen, and Hamburg.

The United States of America, on the one part, and the Republic and Free Hanseatic City of Lubeck, the Republic and Free Hanseatic City of Bremen, and the Republic and Free Hanseatic City of Hamburg, (each state for itself separately,) on the other part, being desirous to give greater facility to their commercial intercourse, and to place the privileges of their navigation on a basis of the most extended liberality, have resolved to fix, in a manner clear, distinct, and positive, the rules which shall be observed between the one and the other, by means of a convention of friendship, commerce, and navigation.

For the attainment of this most desirable object, the President of the United States of America has conferred full powers on Henry Clay, their Secretary of State; and the senate of the Republic and free Hanseatic City of Lubeck, the senate of the Republic and free Hanseatic City of Bremen, and the senate of the Republic and free Hanseatic City of Hamburg, have conferred full powers on Vincent Rumpff, their Minister Plenipotentiary near the United State of America, who, after having exchanged their said full powers, found in due and proper form, have agreed to the following articles:

ARTICLE I.

The contracting parties agree, that, whatever kind of produce, manufacture, or merchandise, of any foreign country, can be, from time to time, lawfully imported into the United States, in their own vessels, may be also imported in vessels of the said free Hanseatic Republics of Lubeck, Bremen, and Hamburg, and that no higher or other duties upon the tonnage or cargo of the vessel, shall be levied or collected, whether the importation be made in vessels of the United States, or of either of the said Hanseatic Republics. And, in like manner, that whatever kind of produce, manufacture, or merchandise, of any foreign country, can be, from time to time, lawfully imported into either of the said Hanseatic Republics, in its own vessels, may be also imported in vessels of the United States; and that no higher or other duties upon the tonnage or cargo of the vessel, shall be levied or collected, whether the importation be made in vessels of the one party, or of the other. And they further agree, that, whatever may be lawfully exported, or re-exported, by one party, in its own vessels, to any foreign country, may, in like manner, be exported or re-exported in the vessels of the other party. And the same bounties, duties, and drawbacks, shall be allowed and collected, whether such exportation or re-exportation be made in vessels of the one party, or of the other. Nor shall higher, or other charges, of any kind, be imposed in the ports of the one party, on vessels of the other, than are, or shall be, payable in the same ports by national vessels.

ARTICLE II.

No higher or other duties shall be imposed on the importation, into the United States, of any article, the produce or manufacture of the free Hanseatic Republics of Lubeck, Bremen, and Hamburg; and no higher or other duties shall be imposed on the importation, into

either of the said republics, of any article, the produce or manufacture of the United States, than are, or shall be, payable on the like article, being the produce or manufacture of any other foreign country; nor shall any other, or higher duties or charges, be imposed by either party on the exportation of any articles to the United States, or to the free Hanseatic Republics of Lubeck, Bremen, or Hamburg, respectively, than such as are, or shall be, payable on the exportation of the like articles to any other foreign country; nor shall any prohibition be imposed on the importation or exportation of any article, the produce or manufacture of the United States, or of the free Hanseatic Republics of Lubeck, Bremen, or Hamburg, to, or from, the ports of the United States, or to, or from, the ports of the other party, which shall not equally extend to all other nations.

ARTICLE III.

No priority or preference shall be given, directly or indirectly, by any or either of the contracting parties, nor by any company, corporation, or agent, acting on their behalf, or under their authority, in the purchase of any article, the growth, produce, or manufacture, of their states, respectively, imported into the other, on account of, or in reference to, the character of the vessel, whether it be of the one party or the other, in which such article was imported; it being the true intent and meaning of the contracting parties, that no distinction or difference whatever shall be made in this respect.

ARTICLE IV.

In consideration of the limited extent of the territories of the Republics of Lubeck, Bremen, and Hamburg, and of the intimate connexion of trade and navigation subsisting between these republics, it is hereby stipulated and agreed, that any vessel which shall be owned exclusively by a citizen or citizens of any or either of them, and of which the master shall also be a citizen of any or either of them, and provided three fourths of the crew shall be citizens or subjects of any or either of the said republics, or of any or either of the states of the confederation of Germany, such vessel, so owned and navigated, shall, for all the purposes of this Convention, be taken to be, and considered as, a vessel belonging to Lubeck, Bremen, or Hamburg.

ARTICLE V.

Any vessel, together with her cargo, belonging to either of the free Hanseatic Republics of Lubeck, Bremen, or Hamburg, and coming from either of the said ports to the United States, shall, for all purposes of this Convention, be deemed to have cleared from the republic to which such vessel belongs; although, in fact, it may not have been the one from which she departed; and any vessel of the United States, and her cargo, trading to the ports of Lubeck, Bremen, or Hamburg, directly, or in succession, shall, for the like purposes, be on the footing of a Hanseatic vessel, and her cargo, making the same voyage.

ARTICLE IV.

It is likewise agreed that it shall be wholly free for all merchants, commanders of ships, and other citizens of both parties, to manage, themselves, their own business, in all the ports and places subject to the jurisdiction of each other, as well with respect to the consign-

ment and sale of their goods and merchandise, by wholesale or retail, as with respect to the loading, unloading, and sending off their ships; submitting themselves to the laws, decrees and usages there established, to which native citizens are subjected; they being, in all these cases, to be treated as citizens of the republic in which they reside, or at least to be placed on a footing with the citizens or subjects of the most favoured nation.

ARTICLE VII.

The citizens of each of the contracting parties shall have power to dispose of their personal goods, within the jurisdiction of the other, by sale, donation, testament, or otherwise; and their representatives, being citizens of the other party, shall succeed to their said personal goods, whether by testament or *ab intestato*, and they may take possession thereof, either by themselves or others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein said goods are, shall be subject to pay in like cases: and if, in the case of real estate, the said heirs would be prevented from entering into the possession of the inheritance on account of their character of aliens, there shall be granted to them the term of three years to dispose of the same, as they may think proper, and to withdraw the proceeds without molestation, and exempt from all duties of detraction on the part of the government of the respective states.

ARTICLE VIII.

Both the contracting parties promise and engage, formally, to give their special protection to the persons and property of the citizens of each other, of all occupations, who may be in the territories subject to the jurisdiction of the one or the other, transient, or dwelling therein, leaving open and free to them the tribunals of justice for their judicial recourse, on the same terms which are usual and customary with the natives or citizens of the country in which they may be; for which they may employ, in defence of their rights, such advocates, solicitors, notaries, agents, and factors, as they may judge proper, in all their trials at law; and such citizens or agents shall have as free opportunity as native citizens to be present at the decisions and sentences of the tribunals, in all cases which may concern them; and likewise at the taking of all examinations and evidence which may be exhibited in the said trials.

ARTICLE IX.

The contracting parties, desiring to live in peace and harmony with all the other nations of the earth, by means of a policy, frank, and equally friendly with all, engage mutually not to grant any particular favour to other nations, in respect of commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same freely, if the concession was freely made, or on allowing the same compensation, if the concession was conditional.

ARTICLE X.

The present Convention shall be in force for the term of twelve years, from the date hereof; and, further, until the end of twelve months after the government of the United States, on the one part, or the free Hanseatic Republics of

Lubeck, Bremen, or Hamburg, or either of them, on the other part, shall have given notice of their intention to terminate the same; each of the said contracting parties reserving to itself the right of giving such notice to the other, at the end of the said term of twelve years: and it is hereby agreed between them, that, at the expiration of twelve months after such shall have been received by either of the parties from the other, this Convention, and all the provisions thereof, shall, altogether, cease and determine, as far as regards the States giving and receiving such notice; it being always understood and agreed, that, if one or more of the Hanseatic Republics aforesaid, shall, at the expiration of twelve years from the date hereof, give or receive notice of the proposed termination of this Convention, it shall, nevertheless, remain in full force and operation, as far as regards the remaining Hanseatic Republics, or Republic, which may not have given or received such notice.

ARTICLE XI.

The present Convention being approved and ratified by the President of the United States, by and with the advice and consent of the Senate thereof; and by the Senates of the Hanseatic Republics of Lubeck, Bremen, and Hamburg, the ratifications shall be exchanged at Washington within nine months from the date hereof, or sooner, if possible.

In faith whereof, we, the plenipotentiaries of the contracting parties, have signed the present Convention, and have thereto affixed our seals.

Done, in quadruplicate, at the city of Washington, on the twentieth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, in the fifty-second year of the Independence of the United States of America.

[L. S.] H. CLAY.
[L. S.] V. RUMPFF.

The said Convention, and the respective ratifications of the same, were exchanged at Washington on the second day of June, one thousand eight hundred and twenty-eight, by Henry Clay, Secretary of State of the United States, and Vincent Rumpff, Minister Plenipotentiary of the free Hanseatic Republics of Lubeck, Bremen, and Hamburg, near the said United States, on the part of their respective governments.

An additional Article to the Convention of the 20th December, 1827, between the United States of America, and the Hanseatic Republics of Lubeck, Bremen, and Hamburg, concluded and signed, at Washington, on the 4th day of June, 1828.

The United States of America, and the Hanseatic Republics of Lubeck, Bremen, and Hamburg, wishing to favour their mutual commerce by affording, in their ports, every necessary assistance to their respective vessels, the undersigned Plenipotentiaries have further agreed upon the following additional article to the Convention of friendship, commerce, and navigation, concluded at Washington on the twentieth day of December, 1827, between the contracting parties.

The Consuls and Vice-Consuls may cause to be arrested the sailors, being part of the crews of the vessels of their respective countries, who shall have deserted from the

said vessels, in order to send them back and transport them out of the country. For which purpose, the said Consuls and Vice-Consuls shall address themselves to the courts, judges, and officers competent, and shall demand the said deserters, in writing, proving, by an exhibition of the registers of the said vessels, or ship's roll, or other official document, that those men were part of said crews; and on this demand being so proved, (saving, however, where the contrary is proved,) the delivery shall not be refused; and there shall be given all aid and assistance to the said Consuls and Vice-Consuls, for the search, seizure, and arrest of the said deserters, who shall even be detained and kept in the prisons of the country at their request and expense, until they shall have found opportunity of sending them back. But, if they be not sent back within two months, to be counted from the day of their arrest, they shall be set at liberty, and shall be no more arrested for the same cause.

It is understood, however, that if the deserter should be found to have committed any crime or offence, his surrender may be delayed until the tribunal before which the case shall be depending shall have pronounced its sentence, and such sentence shall have been carried into effect.

The present additional article shall have the same force and value as if it were inserted, word for word, in the Convention signed at Washington on the twentieth day of December, 1827, and being approved and ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by the Senates of the Hanseatic Republics of Lubeck, Bremen, and Hamburg, the ratifications shall be exchanged at Washington within nine months from the date hereof, or sooner, if possible.

In faith whereof, we, the undersigned, by virtue of our respective full powers, have signed the present additional article, and have thereto affixed our seals.

Done, in quadruplicate, at the City of Washington, on the fourth day of June, in the year of our Lord one thousand eight hundred and twenty-eight.

[L. S.] H. CLAY.
[L. S.] V. RUMPFF.

The said additional article, and the respective ratifications of the same, have, this day, been exchanged at Washington, by Henry Clay, Secretary of State of the United States, and Anthony Charles Cazenove, Consul of the Hanseatic Republic of Bremen, and Vice-Consul of the Free Hanseatic Republic of Hamburg, on the part of their respective governments.

II.—FOREIGN.

CANADA.

LEGISLATURE OF NEW-BRUNSWICK.

Fredericton, N. B., Council Chamber, December 9, 1828.

This being the day appointed for the meeting of the legislature, his excellency the Lieutenant Governor came in state to the Council Chamber, at 2 o'clock, and opened the session with the following speech:—

Mr. President, and Gentlemen of his Majesty's Council;

Mr. Speaker, and Gentlemen of the House of Assembly:

I have called you together at a season which is not, I fear, the most convenient, in consequence of having received an intimation from his majesty's government, which gave me every reason to apprehend that at a later period I should be deprived of the pleasure of meeting you in session, to bring forward some important business which I wish to recommend, in person, to your consideration.

In furtherance of those objects, and in your deliberations for the public good, I have no doubt that I shall continue to receive that assistance from your zeal, wisdom, and loyalty, which I have hitherto had the high satisfaction to experience, in my administration of the government of this province.

Although the revenue of the present year, may not be quite equal to that of the past, yet, I am happy to have it in my power to say, that in this contingent fluctuation, which may be easily accounted for, there is nothing to apprehend for the future, and that the financial resources of the country are substantially sound and unimpaired.

Mr. Speaker, and Gentlemen of the House of Assembly;

The treasurer's accounts shall be laid before you as soon as they can be prepared: and I rely on your making provision for the ordinary services of the province.

I shall likewise cause to be laid before you statements drawn up by the person whom I have appointed to examine and report upon the expenditures of the public moneys.

To give the fullest and surest effect to a measure so important, I instructed that gentleman, not only to make a strict and efficient audit of each and every account of expenditure for the present year, but further to have retrospect to a pe-

riod at which it appeared material to commence; and to carry forward by distinct years, a statement showing the amount of appropriations in each, so as to exhibit an accurate and comprehensive view of the state of the expenditure at the present time. Referring to those statements, and in due consideration of the advances and heavy expenses which have been incurred on account of a yet recent calamity, I recommend the expediency of making less liberal appropriations than usual, for some of the extraordinary and other services of the country: and a rigid observance of economy, until those floating advances are redeemed.

Mr. President, and Gentlemen of his Majesty's Council;

Mr. Speaker, and Gentlemen of the House of Assembly;

I am happy to acquaint you that various important operations of internal improvement have made considerable advancement during the present year. Had those retrenchments in the expenditure of the country, which I now recommend, been suddenly introduced, when the late severe depression occurred, many of the public works then under execution must have been suspended, and the country subjected to great additional distress, from the more general stagnations so thrown upon her internal operations. Being enabled, by a particular arrangement, to keep those works in full activity, I deemed it highly expedient rather to cause them to proceed with increased spirit, than to relax in exertions which I perceived would be highly productive, as well as in other respects beneficial. The effect is apparent: and in reviewing the past period of depression in the commercial affairs of the country, it is highly consolatory to perceive that the liberal grants which you have made, realized and promptly applied as they have been to the more important public works, have effected more than was contemplated, or could, in other times, have been accomplished with equal means.

[After recommending the agriculture and the fisheries of the province, as well as the institutions of education and learning, to the continued protection of the legislature; advising the erection of light houses on the coast, &c., his excellency proceeds:]

I have great satisfaction in acquainting you that, in compliance with my representations, a measure has been adopted by his majesty's government, for completing the armament of all the militia forces of this province, without any charge upon its local funds. I shall have occasion to communicate with you by special message, on some arrangements, relating to this important subject. Confident, now, in the full efficiency of an excellent militia system, to the formation of which my attention has long been devoted, and which you have enabled me to establish, by law.—Provided with every requisite by which to render that system practically efficient, when necessary; and convinced of the sentiments and spirit which would animate and inspire it for the defence and security of the country, I congratulate you on the perfection of a measure upon which so much reliance may justly be placed in the day of need, and which, by a judicious exercise of the powers vested in me, will be lightly felt by the people, when no need is. I re-

commend this system to your continued support, in all its essential provisions.

I took an early opportunity of bringing under the consideration of a former assembly, the expediency of ascertaining the practicability, and probable cost, of opening a water communication across the narrow isthmus which separates the gulf of St. Lawrence from the bay of Fundy. The practicability of such an undertaking has been satisfactorily ascertained: but it would not have been prudent for New-Brunswick, to take the execution upon herself; and the circumstances of those times were not altogether propitious for bringing it forward on general grounds. But in the present state of the inter-colonial trade, the accomplishment of this great project becomes an object of so much national importance, that I have recommended it in the strongest manner to the paternal consideration of his majesty's government, and to the governments of the adjoining provinces. Copies of my communications on this subject, shall be laid before you. Though not to be undertaken solely on New-Brunswick's account, this is a measure in which she is most nearly concerned, and which could not proceed without your concurrence. In the documents which have been prepared for your information, you will find reason sufficient to induce you to give to the measure, the fullest consideration; and, without giving any precise pledge, these will incline you to afford whatever conditional contribution may appear to correspond with the particular position and circumstances of this province, viewed relatively with the general object of the measure; and with the extent to which New-Brunswick may participate, with the other North American provinces, and the West India colonies, generally, in a national work which it may fairly be considered will be beneficial to all.

In a position one of the least remote from the parent state; and remarkably favoured, in productions as well as in localities, for constant and mutually advantageous intercourse with her, and with other of her colonies—Protected by her power, and free to participate in the benefits of her extended commerce, which she adapts with special regard to the interests of these possessions—With a rich and fertile soil, over which cultivation and its attendant benefits are gradually extending their comforts and their blessings; or, where still in a virgin state, abounding with valuable productions which will long enable this province to contribute to the commercial and maritime greatness of the empire, and at the same, if properly managed, to improve her own condition and enrich herself—Intersected with rivers, and other water communications, extending from near the centre where this capital is fast rising in consideration and importance, to every part of the seaboard, where, at the estuaries of noble rivers, a flourishing and populous city, thriving towns, and dense communities, about to become such, have already arisen—Surrounded by seas, teeming with sources of future wealth and power; and not deficient, in the more unexplored recesses of her soil, of other inherent resources, which at a suitable season, it will become prudent and productive to develope-

Enjoying all the rights and privileges of British subjects, under the paternal government of our most gracious sovereign, and a wise system of laws, framed by yourselves, administered at the charge of your generous and affectionate parent—With capabilities of high statistical value, and such as these, in possession of a hardy, loyal, industrious and well disposed population:—I hold not too high the advantages which you may secure to yourselves, and transmit to your descendants; nor indulge too freely in the hope and expectation, that New-Brunswick shall flourish in no common degree, if her inhabitants continue to show that they know how to estimate the blessings, and improve the advantages they possess; and if proper measures be taken by all on whom it may depend to promote and secure them.

LEGISLATURE OF NOVA-SCOTIA.

From the Halifax Royal Gazette, February 11.

On Thursday, at two o'clock, his excellency Sir Peregrine Maitland, attended by his suite, went to the Council Chamber, and having taken his seat, a message was sent to the Assembly, commanding their attendance; on their entrance, his excellency opened the session with the following speech:

Mr. President, and Gentlemen of his Majesty's Council, Mr. Speaker, and Gentlemen of the House of Assembly,

I have called you together at the time which best accords with the ordinary course of public business, with the desire I have felt to obtain early, for my administration, the advantage of your council and support.

It is a great satisfaction to me, that I can rely with confidence for this constitutional aid, on that temper and public spirit which have ever been so honourable to this legislature, and so productive of successful consequence to its labours.

Mr. Speaker, and Gentlemen of the House of Assembly,

I am happy to acquaint you that your address respecting the disposal of the duties collected under the statutes of the Imperial Parliament, for regulating the colonial trade, has received the consideration of his majesty's government; and I doubt not you will discern in the communication I am instructed to make to you, a fresh proof of that liberal policy towards the colonies, which prevails in his Majesty's councils.

The usual accounts and estimates shall be laid before you, and I trust you will make the necessary provision for the public service.

Mr. President, and Gentlemen of his Majesty's Council, Mr. Speaker, and Gentlemen of the House of Assembly,

Fully sensible that it is my duty, as it is my inclination, to execute the trust committed to me by my sovereign with the utmost advantage to the province, it has naturally been my endeavour to make myself acquainted with the general

interests, and to ascertain how far the measures, recently adopted by the legislature, were on trial likely to produce the results for which they were contemplated.

The fisheries have, under the encouragement you have afforded them, been engaged in with spirit, and it is hoped, with advantage to the persons most interested in their success; and although I am not yet enabled to give you all the information desirable, in regard to the operation of your act for promoting the establishment of schools, it appears to have been extensively beneficial. A full report on this interesting subject shall be submitted to you, so soon as the commissioners in the several counties shall supply the necessary details.

I shall freely communicate with you by message on all subjects touching the public interests, as occasions may arise; in the fullest assurance, that any suggestion which, by our labours, can be rendered subservient to the increase of the general welfare, will not be recommended by me to your consideration in vain.

OPENING OF THE PARLIAMENT OF LOWER CANADA.

Quebec, November 21, 1828.

A little before two o'clock his excellency the administrator of the government came down in state from the castle of St. Louis. Being seated on the throne, his excellency opened the session in the following speech:

Gentlemen of the Legislative Council,

Gentlemen of the House of Assembly,

His majesty having been most graciously pleased to confide to me the government of this important colony, it affords me great satisfaction to meet you in provincial parliament.

Placed in a situation of so much importance, at a period of peculiar difficulty, I cannot but feel that very arduous duties are imposed upon me: duties, indeed, which I should despair of being able to discharge, to the satisfaction of his majesty, and his faithful and loyal subjects the inhabitants of this province, if I did not look forward, with a sanguine hope, to the enjoyment of your confidence, and your cordial co-operation in my administration of the government.

Without a good understanding between the different branches of the legislature, the public affairs of the colony cannot prosper; the evils which are now experienced, cannot be effectually cured, the prosperity and welfare of his majesty's Canadian subjects cannot be promoted; and you may therefore believe that no exertions will be spared on my part, to promote conciliation, by measures in which the undoubted prerogatives of the crown, and your constitutional privileges, will be equally respected.

His majesty's government has, however, relieved me from the responsibility attendant upon any measures to be adopted for the adjustment of the financial difficulties that have unfortunately occurred; and I shall take an early op-

portunity of conveying to you by message, a communication from his majesty, which I have been especially commanded to make to you upon the subject of the appropriation of the provincial revenue.

It will be my duty to lay at the same time before you, the views of his majesty's government upon other topics, connected with the government of this province, to which the attention of the ministers of the crown has been called; you will see in them proofs of the earnest desire of his majesty's government, to provide, as far as may be practicable, an effectual remedy for any case of real grievance; and you may rely on my affording you every assistance towards the elucidation of any questions which may arise for discussion in the course of your proceedings.

Gentlemen of the House of Assembly,

I shall direct the accounts of the provincial revenue, and expenditure of the last two years, to be laid before you, as soon as possible, with every explanation respecting them, which it is in my power to afford you.

Gentlemen of the Legislative Council,

Gentlemen of the House of Assembly,

Relying on your zeal and diligence in the discharge of your legislative duties, I feel persuaded that you will give your immediate attention to the renewal of such useful acts as may have recently expired; and, indeed, to all matters of public interest that may appear to be of pressing necessity and importance.

Possessing, as yet, but an imperfect knowledge of the great interests of the province, and the wants of its inhabitants, I refrain at the present time, from recommending to you measures of public improvement, which it will be my duty to bring under your consideration at a future day.—In all countries, however, good roads and other internal communications;—a general system of education, established upon sound principles;—and a well-organized, efficient militia force, are found to be so conducive to the prosperity, the happiness, and the security of their inhabitants, that I may be permitted to mention them, at present, as objects of prominent utility.

But an oblivion of all past jealousies and dissentions is the first great step towards improvement of any kind; and when that is happily accomplished, and the undivided attention of the executive government, and the legislature, shall be given to the advancement of the general interests of the province, in a spirit of cordial co-operation, there is no reason to doubt that Lower Canada will rapidly advance in prosperity; and emulate, ere long, the most opulent and flourishing portions of the North American continent.

PARLIAMENT OF LOWER CANADA.

Legislative Council Chamber,
Friday, Nov. 28th.

Lieutenant Colonel Yorke, civil secretary, brought down the following message from his excellency the administrator in chief.

MESSAGE.

James Kempt.—His excellency

the administrator of the government avails himself of the earliest opportunity of conveying to the legislative council the following communication, which he has received the king's commands to make to the provincial parliament.

In laying the same before the legislative council, his excellency is commanded by his majesty to state, that—

His majesty has received too many proofs of the loyalty and attachment of his Canadian subjects, to doubt their cheerful acquiescence in every effort which his majesty's government shall make to reconcile past differences, and he looks forward to a period, when by the return of harmony, all branches of the legislature will be able to bestow their undivided attention on the best methods of advancing the prosperity, and developing the resources of the extensive and valuable territories comprised within his majesty's Canadian provinces.

With a view to the adjustment of the question in controversy, his majesty's government has communicated to his excellency Sir James Kempt its views on different branches of this important subject; but as the complete settlement of the affairs of the province cannot be effected but with the aid of the imperial parliament, the instructions of his excellency are at present confined to the discussion of points alone, which can no longer be left undecided without extreme disadvantage to the interests of the province.

Among the most material of these points, the first to be adverted to, is, the proper disposal of the financial resources of the country; and with the view of obviating all future misunderstanding on this matter, his majesty's government have prescribed to his excellency the limits within which his communications to the legislature on this matter are to be confined.

His excellency is commanded by his majesty to acquaint the legislative counsel, that the discussions which had occurred some years past between the different branches of the legislature of this province respecting the appropriation of the revenue, have engaged his majesty's serious attention, and that he has directed careful enquiry to be made, in what manner these questions may be adjusted with a due regard to the prerogative of the crown, as well as to their constitutional privileges, and to the general welfare of his faithful subjects in Lower Canada.

His excellency is further commanded to state. that the statutes passed in the 14th and the 31st years of the reign of his late majesty, have imposed upon the lords commissioners of his majesty's treasury, the duty of appropriating the produce of the revenue granted to his majesty by the first

£25,000	£34,000	of these statutes;
5,000		and that, whilst the
4,000		law shall continue
		unaltered by the

same authority by which it was framed, his majesty is not authorized to place the revenue under the control of the legislature of this province.

The proceeds of the revenue

14 Geo. 3.	arising from the act of
35 Geo. 3.	the imperial parliament,
41 Geo. 3.	14 Geo. 3. together with
	the sum appropriated by
	the provincial statute 35

Geo. 3. and the duties levied under the provincial statutes 41 Geo. 3. cap. 18 and 14, may be estimated

for the current year, at the sum of £3,700.

The produce and casual and territorial revenues of the crown and of fines and forfeitures may be estimated for the same period at the sum of £3,400.

Casual Revenue.	3,000	£3,400
Fines, &c.	400	

These several sums, making together the sum of £38,100, constitute the whole estimatad revenue arising in this province, which the law has placed at the disposal of the crown.

His majesty has been pleased to direct that from this collective revenue of £38,100, the salary of the officers administering the government of the province, and the salaries of the judges, shall be defrayed. But his majesty being graciously disposed to mark, in the strongest manner, the confidence which he reposes in the liberality and affection of his faithful provincial parliament, has been pleased to command his excellency to announce to the legislative council, that no farther appropriation of any part of this revenue will be made until his excellency shall have been enabled to become acquainted with their sentiments, as to the most advantageous mode in which it can be applied to the public service ; and it will be gratifying to his majesty, if the recommendation made to the executive government of the province on this subject, shall be such as it may be able with propriety, and with due attention to the interest and the efficiency of his majesty's government, to adopt.

His majesty fully relies upon the liberality of his faithful provincial parliament, to make such further provision as the exigencies of the public service of the province (for which the amount of the crown revenues above mentioned may prove inadequate) may require.

The balance in the hands of the receiver general, which is not placed by law at the disposal of the crown, must await the appropriation which it may be the pleasure of the provincial legislature to make.

His excellency is further commanded by his majesty to recommend to the legislative council, the enactment of a law, for the indemnity of any persons who have heretofore, without authority, signed or acted in obedience to warrants for the appropriation to the public service of any appropriated moneys of this province : And his majesty anticipates that they will, by an acquiescence in this recommendation, show that they cheerfully concur with him in the efforts which he is now making for the establishment of a permanent good understanding between the different branches of the executive and legislative government.

The proposals which his excellency has been thus instructed to make for the adjustment of the pecuniary affairs of the province, are intended to meet the difficulties of the ensuing year, and he trusts they may be found effectual for that purpose.

His majesty has however further commanded his excellency to acquaint the legislative council, that a scheme for the permanent settlement of the financial concerns of Lower Canada, is in contemplation, and his majesty entertains no doubt of such a result being attainable as will prove conducive to the general welfare of the province, and satisfactory to his faithful Canadian subjects.

The complaints which have reached his majesty's government, respecting the inadequate security heretofore given by the receiver general and by the sheriffs, for the due application of the public moneys in their hands, have not escaped the very serious attention of the ministers of the crown.

It has appeared to his majesty's government that the most effectual security against abuses in these departments, would be found in enforcing in this province, a strict adherence to a system established under his majesty's instructions in other colonies, for preventing the accumulation of balances in the hands of public accountants, by obliging them to exhibit their accounts to a competent authority, at short intervals, and immediately to pay over the ascertained balance into a safe place of deposite ;—and in order to obviate the difficulty arising from the want of such place of deposite in Lower Canada, his excellency is authorized to state that the lords commissioners of his majesty's treasury will hold themselves responsible to the province for any sums which the receiver general or sheriffs may pay over to the commissary general, and his excellency is instructed to propose to the legislative council, the enactment of a law, binding those officers to pay over to the commissary general such balances as, upon rendering their accounts to the competent authority, shall appear to be remaining in their hands, over and above what may be required for the current demands upon their respective offices; such payments being made on condition that the commissary general shall be bound on demand to deliver bills on his majesty's treasury for the amount of his receipts.

His excellency is further instructed to acquaint the legislative council, that although it was found necessary by an act passed in the last session of the imperial parliament, 9 Geo. IV. cap. 76, sec. 26, to set at rest doubts which had arisen, whether the statute for regulating the distribution between the provinces of Upper and Lower Canada, of the duties and customs collected at Quebec, had not been inadvertently repealed by the general laws of a later date, his majesty's government have no desire that the inteference of parliament in this matter should be perpetuated, if the provincial legislatures can themselves agree upon any plan for a division of these duties which may appear to them more convenient and more equitable ; and on the whole of this subject, his majesty's government will be happy to receive such information and assistance as the legislative council and assembly of this province may be able to supply.

The appointment of an agent in England to indicate the wishes of the inhabitants of Lower Canada, appearing an object of great solicitude with the assembly, his majesty's government will cheerfully accede to the desire expressed by the house of assembly upon this head; provided that such agent be appointed, as in other British colonies, by name, in an act to be passed by the legislative council and assembly, and approved by the executive government of the province ; and his majesty's government are persuaded that the legislature will not make such a selection as to impose on the govern-

of rejecting the bill on the ground of any personal objection to the proposed agent.

His majesty's government is further willing to consent to the abolition of the office of agent, as it is at present constituted; but it is trusted that the liberality of the house of Assembly will indemnify the present holder of this office, to whose conduct in that capacity no objection appears ever to have been made; indeed, without some adequate indemnity being provided for him, it would not be compatible with justice, to consent to the immediate abolition of his office.

His majesty's government being very sensible of the great inconvenience which has been sustained, owing to the large tracts of land which have been suffered to remain in a waste and unimproved condition, in consequence of the neglect or poverty of the grantees, it has appeared to his majesty's government that the laws in force in Upper Canada, for laying a tax upon wild land, on which the settlement duties had not been performed, should be adopted in this province; and his excellency is instructed to press this subject on the attention of the legislative council with that view.

The attention of his majesty's government has also been drawn to several other important topics; among which may be enumerated: The mischiefs which are said to result from the system of tacit mortgages effected by a general acknowledgment of a debt before a notary; the objectionable and expensive mode of conveyancing said to be in use in the townships; the necessity of a registration of deeds; and the want of proper courts for the decision of causes arising in the townships. Regulations affecting matters of this nature can obviously be most effectually made by the provincial legislature; and his excellency is commanded to draw the attention of the legislative council to these subjects, as matters requiring their early and most serious attention.

In conclusion, his excellency has been commanded to state, that his majesty relies for an amicable adjustment of the various questions which have been so long in dispute, upon the loyalty and attachment hitherto evinced by his majesty's Canadian subjects, and on that of the provincial parliament; and that his majesty entertains no doubts of the cordial concurrence of the legislative council, in all measures calculated to promote the common good, in whatever quarter such measures may happen to originate.

RESOLUTIONS

Of the House of Assembly, in answer to the foregoing Message.

1. That this house has derived the greatest satisfaction from the gracious expression of his majesty's beneficent views towards this province, and from the earnest desire of his excellency, the administrator of the government, to promote the peace, welfare, and good government of the province, as evinced in his excellency's message of Friday last.

2. That this house has, nevertheless, observed with great concern, that it may be inferred from the expression of that part of the said message which relates to the appropriation of the revenue, that the pretension put forth at the commencement of the late administra-

tion to the disposal of a large portion of the revenue of this province, may be persisted in.

3. That under no circumstances, and upon no considerations whatsoever, ought this house to abandon, or in any way compromise, its inherent and constitutional right, as a branch of the provisional parliament representing his majesty's subjects in this colony, to superintend and control the receipt and expenditure of the whole public revenue arising within this province.

4. That any legislative enactment in this matter by the parliament of the united kingdom, in which his majesty's subjects in this province are not and cannot be represented, unless it were for the repeal of such British statutes, or any part of British statutes, as may be held by his majesty's government to militate against the constitutional right of the subject in this colony, could in no way tend to a settlement of the affairs of the province.

5. That no interference of the British legislature with the established constitution and laws of this province, excepting on such points as from the relation between the mother country and the Canadas can only be disposed of by the paramount authority of the British parliament, can in any way tend to the final adjustment of any difficulties or misunderstandings which may exist in this province, but rather to aggravate and perpetuate them.

6. That in order to meet the difficulties of the ensuing year, and to second the gracious intentions of his majesty for the permanent settlement of the financial concerns of the province, with due regard to the interests and efficiency of his government, this house will most respectfully consider any estimate for the necessary expenses of the civil government for the ensuing year, which may be laid before it, confidently trusting, that in any such estimate a due regard will be had to that economy which the present circumstances of the country and its other wants require.

7. That on the permanent settlement before mentioned being effected, with the consent of this house, it will be expedient to render the governor, lieutenant governor, or any person administering the government, for the time being, the judges and executive councillors, independent of the annual vote of this house, to the extent of their present salaries.

8. That although this house feels most grateful for the increased security against the illegal application of the public money which must result from his majesty's government referring all persons who may have been concerned in such application to an act of indemnity to be consented to by this house, it will be inexpedient to consent to any such enactment, till the full extent and character of such illegal application may have been fully inquired into and considered.

9. That this house feels the most sincere gratitude for his majesty's solicitude to effect the most perfect security against the recurrence of abuses on the part of persons intrusted with public moneys in this province.

10. That this house has not complained, nor have any complaints been made known to it, respecting the arbitration for the distribution between the provinces of Upper ment the painful and invidious duty

and Lower Canada of the duties collected in Lower Canada; but that in this, as in every other respect, this house will most cheerfully co-operate in every equitable and constitutional measure which may be submitted to it as desirable by the inhabitants of Upper Canada.

11. That this house has seen with sentiments of the highest satisfaction and gratitude, the declaration of the willingness of his majesty's government cheerfully to accede to the desires which the assembly has so frequently expressed during the last twenty years, of having an agent in England to indicate the wishes of the inhabitants of Lower Canada; and that it is expedient to provide for such an appointment without delay.

12. That so soon as the scheme in contemplation of his majesty's government for the permanent settlement of the financial concerns of the province shall have been made known and considered, it may be expedient to provide some adequate indemnity to such persons as were placed on the civil establishment of this province with salaries prior to the year 1818, and whose offices may have been found to be unnecessary, or require to be abolished.

13. That this house will cheerfully consent in any measure which may appear most likely to be successful in effectually removing the great inconvenience which has been sustained from the non-performance of the duties of settlement by grantees or holders of land obtained from the crown, and otherwise remove the obstructions to the settlement of the country which may have resulted, or may hereafter result, from the manner in which the powers and superintendence of the crownl in the most essential particular as effecting the general prosperity of the province, may have been exerted.

14. That *it is the desire of this house to take as speedily as possible every measure in its power, that* the inhabitants of the townships, upon a subdivision of the counties in which they are situated, by act of the provincial parliament, shall have a full and equitable representation in this house, of persons of their own free choice; *and that* the house will cheerfully concur in every measure which may appear to be most desirable to their inhabitants, and most conducive to the general welfare.

15. That this house is fully sensible of the distinguished mark of confidence reposed in the loyalty and attachment hitherto evinced by his majesty's Canadian subjects and their representatives in the provincial parliament, by his majesty's declaration that he relies on them for an amicable adjustment of the various questions which have been so long in dispute.

16. That amongst these questions not particularly mentioned on the present occasion, this house holds as most desirable to be adjusted and most essential to the future peace, welfare, and good government of the province, viz.:

The independence of the judges, and their removal from the political business of the province.

The responsibility and accountability of public officers.

A greater independence of support from the public revenue, and more intimate connexion with the interests of the colony, in the

composition of the legislative council.

The application of the late property of the Jesuits to the purpose of general education.

The removal of all obstructions to the settlement of the country, particularly by the crown and clergy reserves remaining unoccupied in the neighbourhood of roads and settlements, and exempt from the common burthens;

And a diligent inquiry into, and a ready redress of, all grievances and abuses which may be found to exist, or which may have been petitioned against by the subjects in this province, thereby assuring to all the invaluable benefit of an impartial, conciliatory and constitutional government, and restoring a well-founded and reciprocal confidence between the governors and the governed.

That an humble address be presented to his excellency the administrator of the government, with a copy of the foregoing resolutions, humbly praying that he would be pleased to submit the same to his majesty's government in England.

LEGISLATURE OF UPPER CANADA.

York, U. C.

His Excellency addressed both Houses of the Provincial Parliament in the following Speech:

Honourable Gentlemen of the Legislative Council, and Gentlemen of the House of Assembly.

At the time of my assuming the government which his Majesty has been pleased to commit to my charge, I was desirous of meeting you in provincial parliament at an earlier period than the present: but the interests of the country have been best consulted by convening you at a season when little embarrassment, or inconvenience, can be experienced in any district, from your being called to your legislative duties.

In recommending your immediate and earnest attention to be directed to affairs that are closely connected with the welfare of the colony, I must remark, that no surer proofs of your vigilance and judgment can be adduced, than the prosperity, happiness and contentment of his Majesty's faithful Canadian subjects; and I trust, if the public good be exclusively and diligently considered, in the exercise of your important functions, that those ends will be assured, and that the beneficial effects of your proceedings will soon be apparent in every part of the province.

Gentlemen of the House of Assembly,

I have ordered the estimates of the present year, and the public accounts, to be laid before you.

The commands of his majesty that have relation to the several addresses of the House of Assembly of the last parliament, shall be communicated to you.

Honourable Gentlemen, and Gentlemen,

The laws that are about to expire will require your consideration. The repeal of the act, entitled, "An act for better securing this Province," &c. passed in the 44th year of the late king, is, I think, advisable, as it seldom can be applied to cases which it was intended to meet.

The report of the arbitrators on

the part of Upper and Lower Canada, for ascertaining the proportion of duties to be paid to this province, has been transmitted to me; and it must be satisfactory to you to be informed, that on that question, an equitable arrangement has taken place.

The public schools are generally increasing, but their present organization appears susceptible of improvement.

Measures will be adopted, I hope, to reform the Royal Grammar School, and to incorporate it with the university recently endowed by his majesty, and to introduce a system in that seminary that will open to the youth of the province the means of receiving a liberal and extensive course of instruction. Unceasing exertion should be made to attract able masters to this country, where the population bears no proportion to the number of officers and employments, that must necessarily be held by men of education and acquirements, for the support of the laws, and of your free institutions.

The expense already incurred in carrying on the works in the Gore and Niagara districts has been considerable, but few will regret that they have been undertaken. Such enterprises can, at first, be seldom duly appreciated. It is obvious, however, that the value of the productions of your soil can never be known, unless you have canals, and good internal communications, to facilitate your commercial intercourse with the vast empire of which you form a part.

From the observations of the Deputy Post-Master-General at Quebec, to which I shall draw your attention, respecting the impossibility of forwarding the mails with either expedition or safety, I am persuaded that some better expedient than statute labour must be resorted to for maintaining the roads in a proper state.

The sums expended on the useful works now in progress, circulate in their natural channels, remain in the province, enrich it, and promote industry. On the extent of protection and encouragement afforded to projects of this kind;—and on your being prepared, by means of the essential aid of well organized institutions, for the reception and location of every description of settler, the agricultural interests of the colony, and the advance of its commerce, will be found chiefly to depend.

GENERAL ORDERS.

Horse-Guards, July 18, 1829.

His majesty, being desirous to encourage officers to become settlers in the British North American provinces, is pleased to command that grants of land, in the proportions undermentioned, shall, on the recommendation of the general commanding in chief, be made to those officers who may be induced to avail themselves of the offer, viz.

	Acres.
Lieutenant-colonel, - -	1200
Major, - - - - - - -	1000
Captain, - - - - - - -	800
Subaltern, - - - - - -	500

subject always to the conditions of actual residence, and cultivation of the land assigned, within a limited period.

Officers who shall propose to settle in the British provinces of North America, will, if of a proper age, and if their service shall be considered as entitling them to the indulgence, be permitted to dispose of their commissions; and in

order that his majesty's government may have full security for the appropriation to the intended purpose of the sums produced by such sale, it is his majesty's command, that the agent, to whom the purchase money is paid, shall be instructed to retain in his hands one third of the amount in each case, until a certificate shall be transmitted by the governor or officer commanding in the province, that the officer is actually settled. The reserved money will then be paid to him.

By command of the right honourable, the general commanding in chief.

HERBERT TAYLOR, Adj. Gen.

MEXICO.

Speech of citizen Guadaloupe Victoria, President of the Mexican United States, delivered in the hall of the Congress of the Union, at the regular session, May 21, 1828.

Citizens Representatives and Senators of the Congress of the Union:

At the beginning of this year, and of the second term of the congress of the union, the republic experienced a crisis, and the institutions to which we had pleged our oath, and which the people has maintained, were exposed to a violent attack. The Mexican nation achieved its liberty by great efforts, confirmed its independence by means of costly sacrifices, and felt secure that if danger threatened, it would be fearlessly met, in defence of a system which places our country on a level with the most refined and fortunate nations. Events have proved the justness of this anticipation. By the unanimous expression of opinion, the project of a revolution was condemned, and anarchy saw its vain hopes dissipated, and became convinced of its own impotence. The people, the congress, the government, saved the constitution, saved the political existence of the great Mexican nation.

The cry of universal indignation drowned that of the discontented, and they plunged themselves into the abyss which they had endeavoured to open for their country. The government did not alter its course, and public spirit being confirmed by the triumphs of the cause of liberty, the congress and the executive were able to devote themselves to the exact discharge of their duties, as soon as they had fulfilled the sacred and important one, of giving domestic peace to the republic.

The very efforts which were made to disturb the public order, only served to give it more stability, and there is no corner in the vast extent of the United Mexican States, which does not fully enjoy it.

During the session, the treaty of boundaries between this republic and the United States of North America has been approved, and after being ratified by the government, has been sent for an exchange of ratifications to our mi-

nister plenipotentiary in that country. The treaty of amity, navigation, and commerce, with the same nation, has been discussed in the representatives' chamber, and when it shall obtain the approbation of the general congress, will strengthen the liberal harmony which now subsists between the two nations. The proper exequatur has been granted to the consuls named by that government for our ports of Campeche and Mazatlan.

The minister plenipotentiary of the republic of Colombia, having fulfilled the most important objects of his mission to his government, has presented his letters of recall, and taken leave.

The treaties of union, league, and perpetual confederation, concluded at Panama between the plenipotentaries of the American republics, have been examined by the chamber of representatives, and I confidently hope that the congress will devote its first labours to the conclusion of a matter, which has excited the attention of the world.

The general congress having approved of the treaty of amity, navigation, and commerce, with his majesty the king of the Netherlands, it has been forwarded for the exchange of ratifications. An exequatur has also been granted for a commission of Mexican consul, executed by the president of the Swiss Diet in favour of Senor Carlos Lavater.

The law for the naturalization of foreigners, which the best interests of the republic have so long demanded, has been passed in the session which is now concluded; it has also been signed by the executive, which has further given the necessary directions for its being carried into effect.

The public treasury, in consequence of the changes in the new tariff of maritime customs, which retards the receipt of the duties for ninety days more than before, has suffered some falling off, which has been increased by the schemes of speculators. Notwithstanding, no diminution is remarked in the arrivals of vessels in our ports; and our domestic markets, in the midst of the commercial changes that have occurred, afford a fair profit for the goods consumed, and invite speculators to new enterprises.

Happily, the chief part of our attention has hitherto been occupied in the interior of the republic; and if the government has until now given itself much anxiety to attend with the fidelity and promptitude which the national honour demands, to the loans of foreign houses, we may now be assured that the firm determination of the government, seconded harmoniously by the indefatigable zeal and activity of the congress, will accomplish the object in view. To this end, the eighth part of the receipts of the maritime ports is appropirated, and this return will produce an alleviation, so that the interruption that has been suffered in the operation of the sinking fund and the payment of dividends will cease.

The executive has also transmitted to the two chambers projects of a law whereby the payment will be expedited, so that we shall be able to repeat the evidence of that good faith which characterizes the Mexican nation. The urgency of these duties demands,

gentlemen, that your time of relaxation should be very short.

The administration of justice in the tribunals of the federation, and in those of the districts and territories, has occasioned among you important and luminous discussions. You will, doubtless, complete your work, which is one truly worthy of the national gratitude. The executive will use its exertions, as it has hitherto done, to introduce all possible regularity into this department, and to supply the defects of the existing law. The law regulating the proceedings against vagrants, visibly operates to improve public morals, and to preserve them from the attacks continually made upon them by the idleness of this class of men; and the government hopes soon to see united, by this provision, the honour and the spirit of the republican system.

Our ecclesiastical affairs have hitherto been somewhat embarrassed for want of convenient arrangements with the apostolic see, but they will soon be regulated upon a basis established by the general congress. The executive has endeavoured to form his instructions to the newly nominated minister to Rome, in exact accordance with this basis.

The army preserves its former system, equipment, and discipline. The national marine has harrassed the enemy on the coasts of Cuba, and the brigatine Guarrero was lost in a combat of immortal glory for the Mexicans. You, gentlemen, have displayed the national gratitude to the brave defenders of the flag of the republic, and the whole nation has resolved on the construction of another ship that shall maintain our glory and be the avenger of our injuries.

Should the odious Spanish flag appear in sight of our ports, or should the enemy presume to tread upon our shores, they will be humbled and overthrown. You have given power to the executive; the people offer their arms and their fortunes. A great people is invincible when it is determined to be free.

You retire, fellow citizens, only to return to the task which the nation has imposed upon you as a duty, and has given you as a law. Your country owes you much; retire with the satisfaction of having done her service.

Decree of the Legislature of Mexico.

Art. 1. Spaniards who capitulated, whatever be the terms of their capitulation, and other Spaniards mentioned in the 16th article of the treaty of Cordova, shall leave the territory of the republic within the term the government may fix, not exceeding six months.

Art. 2. Those, notwithstanding their capitulations, may depart, or may remain, who, 1stly, are married with Mexicans; 2dly, who have children here that are not Spanish; 3dly, widowers who have children that are not Spanish; 4thly, who are sixty years of age; 5thly, who suffer from any durable physical impediment; 6thly, *those who by their capitulations, may remain in the republic.*

Art. 3. All Spaniards, who, since the declaration of independence, have entered secretly, or unlawfully, shall leave the territory of the republic within the term which the government may fix.

Art. 4. In like manner, those shall depart, within the term the government may designate, who have entered since the same pe-

riod, with passports, provided they have not obtained letters of naturalization or citizenship.

Art. 5. Also, the Spanish clergy, who are not comprized in the 4th and 5th exceptions of the second article.

Art. 6. Spaniards of every class, who are notoriously disaffected towards independence, and the established system of government, shall depart from the territory of the republic within the term which the government may designate, carrying with them their effects, paying the established exportation duties.

Art. 7. Those Spaniards shall be considered notoriously disaffected to independence, and the existing form of government, who, 1stly, have returned to the republic, after having emigrated at the time of the establishment of independence, or of the adoption of the federal republican form of government; 2dly, who may be regarded as suspicious, on account of services done to the Spanish government, contrary to the independence of the nation; and those who, although positively decided in its favour, have obstinately propagated sentiments in favour of a constitutional monarchical system, and of inviting to the throne any foreign prince; 3dly, those who have been expelled from any of the states, by virtue of laws passed by their respective legislatures.

Art. 8. The governors of the states shall determine the qualifications to which the preceding article refers, respecting Spaniards that are subjects of the states: the general government, notwithstanding, having power to judge of them in regard to such as inhabit any part of the republic. When the governors shall have qualified any Spaniard as notoriously disaffected, the government shall order him to leave the federation within the term fixed upon for that purpose.

Art. 9. The transportation of the Spanish clergy who may leave the territory, shall be paid out of the funds of their order.

Art. 10. To such of the capitulated as receive no pay from holding a civil or military office, the government shall order to be given out of the public fund, what it may esteem just for their removal from the territory of the federation.

Art. 11. The expenses of civil and military officers shall be paid at the cost of the federation, to the place which the government may designate; and, moreover, one year's pay shall be given them at the time of their embarkation.

Art. 12. To the Spanish ecclesiastics in employment shall be given, at the time of their embarkation, the sum which the government may determine, corresponding to one year's income, and, also, the expenses of transportation.

Art. 13. All Spaniards expelled in virtue of this law, shall have power to return to the republic, and enjoy their offices, after Spain has recognised its independence.

Art. 14. The discretionary powers which this law embraces, shall be understood as granted for six months only, counting from the publication of it.

Art. 15. After the publication of this law, all the movements which have been made, with the view of expelling the Spaniards, shall be consigned to oblivion; so that, on this account alone, none of those who have been the authors of them,

or who have co-operated in their execution, shall be molested, saving always the rights of mediation.

EXPULSION OF THE SPANIARDS.

PROCLAMATION.

The president of the United Mexican States to the inhabitants of the Republic.

Be it known, that the general congress have enacted the following decree:

1. All Spaniards who reside in the interior states or territories of the Oriente and Occidente [east and west], the territories of high and low California and New Mexico, shall, within a month after the publication of this law, quit the state or territory in which they reside, and within three months the republic. Those residing in the intermediate states and territories, and the federal district, shall quit the state, territory, or district of their residence, within one month, and two months the republic: and those residing in the maritime states of the gulf of Mexico, shall depart from the republic within one month from the publication of this law.

2. By Spaniards are intended those born in countries now under the dominion of the king of Spain, and the children of Spaniards born at sea. [This last clause, we understand, was introduced to effect the expulsion of certain persons, from whose presence the government was anxious to be relieved.] Those born in Cuba, Porto Rico, and the Philippines, are alone excepted.

3. From the provisions of the first article, are excepted, 1. Those physically impeded, so long as the impediment exists. 2. The children of Americans.

4. Within one month after the publication of this law, the persons embraced in the preceding article, will present to the government, either personally or by proxy, through the medium of the secretary of foreign relations, the documents which prove their title to exception.

5. Spaniards who do not depart within the time prescribed, will be punished by six months imprisonment in a castle, and afterwards sent away, in the manner of those who returned to the republic during the war with Spain.

6. The government will report to congress, every month, concerning the execution of this law.

7. Those who, in the opinion of the government, cannot pay the expense of their journey and voyage, shall have it paid at the charge of the federation, to the nearest port of the United States of the North—the government to proceed according to the strictest economy.

8. In the same manner the journey and voyage of such religionists as the funds of the province [of convents,] or convent, to which they belong are incompetent to provide for shall be paid at the public expense.

9. The government will make due signification to the Spaniards who are entitled to remain in the republic: but they cannot afterwards establish themselves on the coast: the government being at liberty to compel those who now reside there to retire into the interior, in case of a threatened invasion.

10. The Spaniards who receive *pension*, (a stipend from the government or ecclesiastical benefice,) will have the share which of right belongs to them, if they establish

themselves in any of the friendly republics or nations, on notice of such residence being given by the consuls of this republic—but not if they remove to countries governed by the king of Spain.

11. The law of the 20th December, 1827, is repealed, except the article which prohibits the introduction of Spaniards and subjects of the Spanish government into the republic.

FRANCISCO DEL MORAL,
President of the ch. of dep.
JOSE FARRERA,
Vice-President of the senate.
Jose J. B. Ibanes,
Secretary ch. deputies.
Ant. Maria de Esnaurizar,
Secretary of the senate.

His excellency enjoins that this law be "printed, published, circulated, and promptly obeyed." To such as have not the means of defraying their travelling expenses to the port of embarkation, the rate of allowance is from fifty cents to a dollar a league, "according to the distances and the class and rank of each individual." The expenses by water are to be regulated by the commissaries of the ports under the general instruction to exercise the strictest economy.

[Dated at the palace of the Federal Government, Mexico. March 20th, 1829.]

COLOMBIA.

TREATY OF PEACE BETWEEN THE REPUBLIC OF COLOMBIA AND THE REPUBLIC OF PERU; CONCLUDED SEPTEMBER 22D, 1829.

In the name of God, the author and legislator of the universe:

The republic of Colombia and the republic of Peru, sincerely desiring to put an end to the war in which they have seen themselves placed by fatal circumstances, which have prevented to both the friendly settlement of their differences, and now finding themselves happily in the condition of being able to effect it, and to establish at the same time more intimate and cordial relations, both nations have constituted and named their ministers plenipotentiary, that is to say: his excellency, the Liberator, president of the republic, has appointed Pedro Sual, citizen of the same, and his exeellency the president of Peru has appointed D. Jose Lama y Loerdo, citizen of the said republic, who, after having exchanged their full powers, and finding them in good and sufficient form, have agreed on the following articles:

Art. 1. There shall be a perpetual and inviolable peace, and constant and perfect friendship, between the republics of Colombia and Peru, so that hereafter, it shall not be lawful for either of them to commit or tolerate, directly or indirectly, the commission of any act of hostility against their people, citizens and subjects, respectively.

Art. 2. Both contracting parties bind themselves and promise solemnly to forget all the past, endeavouring to remove every motive of disgust which the disagreements which have happily terminated, may recall; to promote their

mutual well-being, and to contribute to their security and good name by every means in their power.

Art. 3. Neither of the contracting parties will permit the passage through their territory, nor lend aid of any kind, to the enemies of the other; but, on the contrary, will employ their good offices, and even their mediation, if necessary, for the re-establishment of peace whenever hostilities may break out with one or more powers, not permitting in the meanwhile an entrance in the ports of either republic to the privateers and prizes which the said enemies may make from the citizens of Colombia and Peru.

Art. 4. The military forces in the department of the south of Colombia and in those of the north of Peru, shall be reduced, upon the ratification of the present treaty, to the footing of peace, so that, hereafter, it shall not be permitted to maintain in them more than the garrisons and bodies necessary and indispensable to preserve the country in security and quiet. All the prisoners taken during the present war who are now in the power of the authorities of either of the two republics, shall be sent back *en masse* to their respective countries, without the necessity of exchange or ransom.

Art. 5. Both parties recognise as the limits of their respective territories the same that the ancient vice-royalities, New-Grenada and Peru, had before their independence, with the sole variations that they may think proper to agree upon between themselves, to affect which they bind themselves from this time reciprocally to make such cessions of smaller territories as may contribute to fix the dividing line in a manner more natural, exact and proper for avoiding competition and difference between the inhabitants and authorities of the frontiers.

Art. 6. In order to obtain this last result as briefly as possible, it has been agreed, and is here expressly agreed, that a commission composed of two individuals from each republic shall be appointed by both governments, which shall examine, rectify and fix the dividing line conformably to the stipulation in the previous article. This commission shall place, with the consent of its respective governments, each one in possession of the parts belonging to it, in proportion as it marks out and recognises the said line, commencing from the River Tumbes in the Pacific ocean.

Art. 7. It is also stipulated between the contracting parties, that the commission of limits shall commence its labours forty days after the ratification of the present treaty, and shall terminate them in six months afterward. If the members of said commission shall disagree in one or more points in the course of their operations, they shall give to their respective governments a circumstantial account of every thing, in order that, taking it into consideration, they may resolve amicably upon what may be most advantageous, in the mean time, continuing their labours until their conclusion, without interruption.

Art. 8. It has been agreed, and is here expressly agreed, that the inhabitants of the small territories who, by virtue of the fifth article, are mutually to yield *the parts agreed on*, shall enjoy the prerogatives, privileges, and exemp-

tions which the other inhabitants of the country in which they may definitely fix their residence have or may enjoy. Those who declare before the local authorities their intention of becoming citizens either of Colombia or Peru, shall have a year, in order to dispose, as may seem best to them, of all their moveable and immoveable goods, and to transport themselves with their families and property to the country of their choice, free from every obligation and charge whatsoever, without undergoing the least trouble or vexation whatever.

Art. 9. The navigation and commerce of the rivers and lakes which flow or may flow through the frontiers of either republic, shall be entirely free to the citizens of both, without any distinction; and under no pretext shall there be imposed upon them incumbrances or impediments of any kind in their dealings, exchanges, and reciprocal sales of those articles which may belong to lawful and free commerce, and which consist of the natural products of their respective countries, subject only to the duties, charges or emoluments to which the natives or denizens of each of the contracting parties were subject.

Art. 10. It is also stipulated, that a commission, composed of two citizens on each side, shall liquidate, in the city of Lima, within the time designated in the 7th article, on the subject of boundaries, the debt, which the republic of Peru contracted with that of Colombia for the assistance lent during the late war against the common enemy. In case of the disagreement of the members, either on part of Colombia or Peru, upon one or more parts of the accounts of which they may have cognizance, they shall make to their respective governments an explanation of the motives on which their disagreement was founded, in order that the said governments may amicably determine what is just, without a cessation, however, on the part of the commission, of continuing the examination and liquidation of the other parts of the debts, until it is completely ascertained and satisfied.

PERU.

TREATY OF PEACE BETWEEN PERU AND BOLIVIA; CONCLUDED JULY 6TH, 1828; AT THE VILLAGE OF PEQUISA.

Art. 1. In the space of fifteen days from the ratification of this treaty by the commanders-in-chief of the belligerent armies, all persons who are in the army of the Bolivian republic, and who are Colombians or foreigners, shall begin to depart from the territory of the republic.

Art. 2. There shall be excepted from the operation of the preceding article, subalterns below the grade of captain, inclusive, who may remain in the republic, renouncing the military service, but the president of the republic may, after he shall be elected, recall them to the army.

Art. 3. All other officers, who shall, by virtue of the first article, be compelled to quit the republic, may return after the national assembly shall be installed; and during their absence they shall receive half-pay from the public treasury, until the president decides whether they shall or not continue in the military service and receive full pay. The persons comprehended in the second article shall also enjoy half-pay, subject to the same conditions.

Art. 4. The squadrons of Colombian grenadiers and hussars, who are in Bolivia, shall commence their homeward route by the route which shall be designated, as far as Arica; the commander-in-chief of the Peruvian army shall furnish them with transports, the republic of Bolivia assuming to pay the expenses resulting therefrom.

Art. 5. The day after the ratification of the treaty, the commander-in-chief of the Bolivian army shall issue a decree, convoking for the first of August, the constitutional congress, which is now adjourned, and which shall re-assemble in the city of Chuquisaca, for the purpose, 1st, of receiving and accepting the resignation of the president of the republic, the grand marshal of Ayacucho, Antonia Jose de Sucre; 2d, to name a provisional government; 3d, to convoke, with all possible speed, a national assembly, to revise, modify or maintain the existing constitution.

Art. 6. This national assembly shall name and elect a president of the republic, and shall designate the day when the Peruvian army shall begin to evacuate the territory of the republic.

Art. 7. The Peruvian army shall occupy the department of Potosi until the meeting of the constitutional congress, and then it shall commence its march towards Paz and Oreoco by the department of Cochabamba. It shall receive all the necessary articles of subsistence on the way.

Art. 8. The national assembly, after having carried into effect the sixth article, shall suspend its sittings, to resume them after the Peruvian army shall have passed the Desaguadero.

Art. 9. The Bolivian army shall occupy the department of Chuquisaca, Cochabamba, Santa Cruz, and Tarija, as well as that of Potosi, the day after they shall be evacuated by the Peruvian army. The revenues of the latter department, so long as it shall be occupied by the Peruvian army and those of Oreoco and De Paz, while it remains within the Bolivian territory, shall be appropriated to its use, after deducting the charges of collection.

Art. 10. The governments of the two republics shall agree between themselves as to the reclamations that they may reciprocally make, after the Peruvian army shall have passed the Desaguadero.

Art. 11. The two republics shall resume their mutual relations by means of their diplomatic agents, after the Peruvian army shall have evacuated the Bolivian territory.

Art. 12. Neither of the two republics shall contract any relations with the empire of Brazil, until it shall conclude a peace with the Argentine republic.

Art. 13. All persons belonging to either republic who are in the armies of the other, shall be immediately dismissed, it being express-

ly understood that the Bolivians may remain in their own country, and that the Peruvians may return to theirs, leaving them at full liberty so to do. Colombian soldiers in the two armies are comprized in this article, and neither party shall be at liberty to reclaim deserters.

Art. 14. No Bolivians shall be accountable to the law, nor responsible, directly nor indirectly, for having expressed their opinions under existing circumstances, and those who are in that predicament, shall be treated and regarded according to their talents and services.

Art. 15. The contracting parties shall be responsible for all hostile acts, which may take place in either army, after the ratification of this treaty.

Art .16. Two officers, who shall be designated by the contracting generals, shall be given as hostages for the fulfilment of this treaty.

Art. 17. This treaty shall be ratified or rejected within twenty-four hours, and in case it shall be disapproved or not ratified, hostilities shall re-commence in twelve hours.

Signed in duplicate.

Miguel Maria de Aguirre.
Le Gen. Jose Miguel de Velasco.
Miguel del Carpio, Sec'ry.

Juan Agustino Lira.
Juan Baptista Arquedas.
Jose Maria Lopez, Sec'ry.

BRAZIL.

CONVENTION BETWEEN HIS BRITANNIC MAJESTY AND THE EMPEROR OF BRAZIL, FOR THE ABOLITION OF THE AFRICAN SLAVE TRADE, SIGNED AT RIO DE JANEIRO, NOVEMBER 23, 1826.

Art. 1. At the expiration of three years, to be reckoned from the exchange of the ratifications of the present treaty, it shall not be lawful for the subjects of the emperor of Brazil to be concerned in the carrying on of the African slave-trade, under any pretext or in any manner whatever, and the carrying on of such trade after that period, by any person, subject of his imperial majesty, shall be deemed and treated as piracy.

Art. 2. His majesty the king of the United Kingdom of Great Britain and Ireland, and his majesty the emperor of Brazil, deeming it necessary to declare the engagements by which they hold themselves bound to provide for the regulation of the said trade, till the time of its final abolition, they hereby mutually agree to adopt and renew, as effectually as if the same were inserted, word for word, in this convention, the several articles and provisions of the treaties concluded between his Britannic majesty and the king of Portugal on this subject, on the 22d of January, 1815, and on the 28th of July, 1817, and the several explanatory articles which have been added thereto.

Art. 3. The high contracting parties further agree, that all the matters and things contained in those treaties, together with the

instructions and regulations, and forms of instruments annexed to the treaty of the 28th of July, 1817, shall be applied, *mutatis mutandis*, to the said high contracting parties and their subjects, as effectually as if they were recited word for word herein; confirming and approving hereby all matters and things done by their respective subjects under the said treaties, and in execution thereof.

Art. 4. For the execution of the purposes of this convention, the high contracting parties further agree to appoint forthwith mixed commissions, after the form of those already established on the part of his Britannic majesty and the king of Portugal, under the convention of the 28th of July, 1817.

Art. 5. The present convention shall be ratified, and the ratifications shall be exchanged at London within four months from the date hereof, or sooner if possible.

In witness whereof, the respective plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Rio de Janeiro, the 23d day of November, in the year of our Lord 1826.

[L.S.] Robert Gordon.
[L.S.] Marquez de S. Amaro.
[L.S.] Marquez de Inhambupe.

Treaty of Commerce and Navigation between his Britannic Majesty, and his Majesty the Emperor of Brazil.

Rio Janeiro, August 17th, 1827.

In the name of the Holy and Indivisible Trinity, &c. &c.

Art. 1. There shall be peace and friendship for ever, between his majesty the emperor of Brazil, and his majesty the king of the united kingdoms of Great Britain and Ireland, their heirs and sucessors, their subjects, states, and countries, without distinction of person or of place.

Art. 2. His imperial majesty, and his Britannic majesty, have agreed, that each of the high contracting parties shall have the right of naming, and placing consuls-general, consuls, and vice-consuls in all or any of the ports of the other, as may be judged necessary for the commercial interests and advantage of its subjects. The consuls of each class cannot enter upon their functions, unless named by their respective monarchs, with all the requisite formalities, and confirmed by the monarch upon whose territory they are placed. The most perfect equality is to exist between the consuls of each class throughout the territory of each of the high contracting parties. The consuls shall enjoy the privileges attached to their rank, as generally recognised and granted. In all civil and criminal affairs, they are to submit like the rest of their fellow-countrymen, to the laws of the land in which they reside, and to enjoy the entire protection of those laws during their observance of them.

Art. 3. The consuls, and vice-consuls of the two nations shall, each in his respective residence, take cognizance and decide upon the differences which may arise between the subjects, the captains, and crews, of the vessels of their respective nations, without the intervention of the authorities of the countries, unless the public tranquillity demand it, or unless the parties themselves carry the affair before the tribunals of the territory, in which the difference arises. In

like manner, they shall have the right of administering the property of the subjects of their own nation, dying intestate, for the benefit of the legitimate heirs of said property, or creditors, conformably to the laws of their respective countries.

Art. 4. The subjects of each of the high contracting parties are to enjoy, throughout the territory of the other, the most perfect liberty of conscience in all matters of religion, conformably to the system of toleration, introduced and followed in each of their respective countries.

Art. 5. The subjects of either sovereign may, at their own pleasure, dispose of their property by sale, exchange, testament, or in any other manner, without let or hinderance. Their houses, goods, and effects, shall be protected and respected, and no authority shall invade them, without the will of their proprietors. They shall be exempted from all service upon land, and upon the sea; from all forced loans, and contributions, for war or for the service of the state; they shall not be required to pay any ordinary tax, under any denomination whatsoever, at a higher rate than that paid by the subjects of the monarch, whose territory they inhabit. They shall not be subjected to any arbitrary domiciliary visits; their books or papers shall not be demanded nor examined under any pretence. It is agreed that domiciliary and other visits, and examinations, shall only take place in the presence of the competent authorities, in cases of high treason, smuggling, and other crimes, provided for by the laws of the respective nations. In general it is expressly stipulated, that the subjects of each party shall enjoy, throughout the territory of the other, as regards their own persons, the same rights, favours and franchises, which are or may afterwards be granted, to the subjects of the most favoured nations.

Art. 6. The constitution of the empire having abolished all separate jurisdictions, it is agreed that the office of judge advocate (*juiz conservador*) of the British nation shall be suppressed, and that in the mean time a sufficient substitute shall be provided, for the protection of the persons and property of the subjects of his Britannic majesty. Hereby it is understood, that the subjects of his Britannic majesty shall enjoy in Brazil, the same rights and advantages enjoyed by Brazilian subjects, in civil and criminal matters; that they cannot be arrested without previous inquest, and the orders of the proper authorities, except in cases where they are taken *in flagrante delictu*, and that their persons are to be free from arrest, in all cases in which the law allows bail.

Art. 7. If, which Heaven avert, any misunderstanding, breach of friendship, or rupture, should take place between the two crowns, such rupture shall not be considered as existing, until after the recall or the departure of the diplomatic agents of the two powers. The subjects of either power remaining within the territory of the other, shall have the right of regulating their affairs, or of carrying on their business with the interior, provided they continue to act peaceably. and do nothing contrary to the laws. Nevertheless whenever their conduct gives rise to suspicions, they may be obliged to quit the country, every possible facility being afforded them, to retire with their property and effects, and sufficient

time being granted them; in no case, however, to exceed six months.

Art. 8. It is also agreed, that neither of the two contracting parties shall knowingly or designedly take or keep in his service, those subjects of the other, who may have deserted from the sea or land service, but shall on proper demand, dismiss all such from his employ. It is moreover declared and agreed, that every favour which can be granted by one of the powers to the other, relative to deserters from his service, shall be considered as also conceded in the opposite case, as fully as if expressed in the present treaty. It is also agreed that in the case of sailors or marines, deserting from ships belonging to subjects of either power, during their sojourn in the ports of the other, the authorities are bound to render all possible assistance, for the arrest of such deserters; in like manner the necessary reclamations shall be made by the consul-general, the consul, or his deputies and representatives; and moreover, no religious or civil corporation shall protect or receive the said deserters.

Art. 9. Salutes in ports, and between flags, shall be made conformably to the usual existing regulations between maritime states.

Art. 10. Liberty of commerce and navigation shall be reciprocally enjoyed, by the respective subjects of the two powers, in ships of both nations, and in all and every port, city, and territory, belonging to the said contracting powers, excepting those to which entrance is expressly forbidden to any foreign nation. It is agreed, that as soon as a port which has been thus interdicted, shall be opened to the commerce of any other nation, it shall be, from that moment, also opened to the subjects of the two high contracting parties. The subjects of the two high contracting parties may enter with their respective ships, into all the ports, harbours, bays and anchorages, of the territories belonging to each of the two parties, unload the whole or a part of their cargoes, and take in or re-export merchandises. They may remain there, rent houses and stores, travel, trade, open shops, transport goods, boats or money, and attend to all their concerns, without being thereby subjected to any surveillance, and transact their business at their pleasure, by means of agents and clerks. Nevertheless, it is agreed that the coasting trade between ports, with articles of consumption, either with the interior, or with other nations, shall be excepted, and that this trade can only be carried on in ships of the country; the subjects of the two powers are, however, permitted to load such ships with their property, merchandise and money, on paying the same duties.

Art. 11. The ships of the subjects of each of the two high contracting powers, shall pay no higher port, tonnage, and the like duties, than those which are or may hereafter be required of the most favoured nations.

Art. 12. In order to prevent all doubts concerning the nation to which a ship may belong, the two parties have agreed to consider as English, those ships which are purchased, registered, and employed in navigation, conformably to the laws of Great Britain. On the other hand, such are to be consi-

dered Brazilian, as are built upon the Brazilian territory, belong to Brazilian subjects, and whose captain and three fourths of the crew, are Brazilians. All ships shall likewise be considered as Brazilian, taken from the enemy by ships of his majesty, the emperor of Brazil, or by his subjects, furnished with letters of marque, if they have been declared lawful prize by the Brazilian prize court; also those which have been condemned by a competent tribunal, for infraction of the laws prohibiting the slave-trade, and those bought by Brazilian subjects, with crews constituted as above mentioned.

Art. 13. The subjects of each of the two monarchs, while on the territory of the other, shall enjoy entire liberty of trading in any way with other nations.

Art. 14. Excepting in this respect, all articles and merchandise of which the crown of Brazil reserves to itself the exclusive monopoly. If, however, the trade of any one of these articles should afterwards become free, the subjects of his Britannic majesty shall be permitted to exercise it, with no greater restrictions than those of his majesty the emperor of Brazil. The duties upon the import and export of these articles, and merchandises, shall in all cases be the same, whether consigned to Brazilian, or to English subjects, or exported by them or belonging entirely to one of them.

Art. 15. In order to determine what is to be viewed as contraband in time of war, it is agreed to include under that head, all arms and munitions of war, by land or sea, such as cannon, guns, mortars, petards, bombs, hand grenades, grape shot, saucissons, gun carriages, musket stocks, bandeliers, powder, matches, saltpetre, balls, pikes, swords, helmets, cuirasses, halberts, lances, spears, horse furniture, holsters, sword belts, and instruments of war in general, as well as ship timbers, tar and pitch, sheet copper, sails, canvass, ropes, and, in general, every thing necessary for fitting out ships of war, except unwrought iron, and pine boards.

Art. 16 Packets shall be established, to facilitate the public service of both courts, and the commercial relations between the subjects of each. They shall be considered as royal ships, whenever they are under the orders of officers of the royal navy. This article shall remain in force until an agreement has been concluded between the powers, for the special arrangement of the packet establishment.

Art. 17. For the more efficacious protection of the commerce and navigation of their respective subjects, the two high contracting parties, agree to receive no pirates within the ports, bays, or anchorages of their respective dominions, and to prosecute with all the rigour of the laws, all persons convicted of piracy, and all persons domiciliated in the territory, convicted of understanding or participation with them. All ships and cargoes belonging to the subjects of either of the contracting parties, taken or robbed by pirates, in the neighbourhood of one of the ports of the other, shall be returned to their proprietors, or to those whom they may appoint, as soon as the identity of the property can be established. This restitution shall take place, even when the article claimed has been sold; only, however,

in those cases in which the buyer knew, or ought to have known, that said article had been acquired by piracy.

Art. 18. If any ship of war or commerce, belonging to either of the contracting states, should be wrecked in the ports or on the coasts of the other, the authorities and persons employed by the custom-house of the place, are to render all possible assistance, to save the persons and property of the shipwrecked; to see that the articles saved or their value be secured, so that if the ship wrecked be a ship of war, they may be restored to their respective governments, and if a merchant ship, to their proprietor, or to those whom he may empower, as soon as they are claimed, and the expenses of salvage and storage have been paid. Articles saved from shipwreck, shall be subject to no duty, unless carried for consumption into the country.

Art. 19. Every species of merchandise, and articles of every kind, which are the natural product or manufacture of the territories of his Britannic majesty, either in Europe or in his colonies, may be introduced into all or each of the ports of Brazil, after having once paid a duty, not exceeding fifteen per cent. in specie, or its equivalent, as fixed by the tariff, published in all the ports of the kingdom, in which custom-houses exist.

It is also agreed, that when tariffs are in future made, the market price shall be taken each time as the basis, and the consul of his Britannic majesty, shall have leave to make a representation, whenever any one of the articles shall be valued too highly upon the existing tariff, so that this circumstance may be taken into consideration as soon as possible, and without causing any delay in the shipping of said article.

It has been likewise agreed, that whenever English articles introduced into the Brazilian custom-houses, shall not possess the value assigned them in the tariff, and they are intended for internal consumption, the importer shall add a declaration of their value, after which, their transportation shall not be delayed. In all cases, however, in which the persons employed by the custom-house, in fixing the duties, shall judge that the articles are rated beneath their value, it shall be in their power to sequester the article thus valued, to pay the importer ten per cent. over and above said valuation, within fifteen days from the time of their sequestration, returning the duties already paid; in all which the usages of the English custom-houses shall be followed.

Art. 20. His majesty the emperor of Brazil, engages not to admit into any part of his dominions, any article coming from abroad, produced or manufactured in said country, under duties less than those fixed in the preceding article, unless the same diminution takes place in English articles, produced or manufactured in England, excepting only, all articles produced or manufactured in Portugal, imported thence directly to Brazil, in ships of one or the other nation. His Britannic majesty has consented to this exception, in favour of Portugal, on account of the part he has himself taken in the negotiation which has been so happily terminated by the treaty of reconciliation and independence of the 29th of August, 1825, and

also on account of the friendly relations, which his Britannic majesty so ardently desires to maintain between Brazil and Portugal.

Art. 21. All articles of merchandise, the products of the industry and manufactures of Brazil, and imported directly for consumption into the territories and possessions of his Britannic majesty, in Europe, and in his American, Asiatic, and African colonies, open to foreign commerce, shall be subject to no higher duties, than those paid upon the same articles, imported in the same manner, from any other foreign country.

Art. 22. As certain articles of Brazilian produce, when imported for consumption into the United Kingdoms pay heavier duties than are imposed upon similar products of the English colonies, his Britannic majesty agrees that such articles may be stored within his dominions until re-exported, under the necessary regulations, without paying any duties of consumption; and they shall not be subject to higher storage or re-exportation duties, than those imposed, or which may hereafter be imposed, upon similar products of the British colonies, when thus stored or re-exported.

In like manner, the products of the English colonies, which are similar to those of Brazil, can only be admitted for re-exportation into the Brazilian port under the same favourable conditions to which similar articles are subjected in the English custom-house.

Art. 23. Every species of article and merchandise, imported from the English territories into a port of his imperial majesty, must be accompanied by certificates of its origin, signed by competent custom-house officers of the port of embarkation; which shall be numbered in order and attached to the declaration by the seal of the English custom-house; the correctness of the declaration shall be confirmed by oath in presence of the Brazilian consul, and the affidavit presented to the custom-house in the place of importation. The origin of the articles imported into Brazil from British possessions where there is no custom-house, shall be proved with the same formalities used in similar importations into Great Britain.

Art. 24. His Britannic majesty engages, in his own name and in that of his successors, to allow the subjects of his imperial majesty to trade with his own ports, at home and in Asia, upon the footing of the most favoured nations.

Art. 25. In all cases in which bounty or drawback is allowed upon articles exported from a port, belonging to either of the two powers, such bounty or drawback shall be the same under all circumstances, whether the re-exportation take place on Brazilian or on English ships.

Art. 26. His imperial majesty engages, in his own name, and in that of his successors, not to permit any restriction upon the commerce of his Britannic majesty, within his states, or injury to them from the effect of any exclusive monopoly for buying or selling, or by privileges granted to any commercial company. The subjects of his Britannic majesty, on the contrary, shall have full and entire liberty of buying and selling to whom and in what manner they please, without being obliged to give the preference to any such company, or to any individual enjoying such

exclusive privileges. On his own part, his Britannic majesty engages to preserve faithfully and reciprocally, the same principle with regard to the subjects of his imperial majesty. Those articles of Brazilian produce, which the crown has reserved to itself the exclusive right of buying and selling, are not comprehended under this provision, whilst such reservation remains in force.

Art. 27. His imperial majesty has resolved to grant to the subjects of his Britannic majesty the same privilege of credit (assignation) at the custom-houses, enjoyed by those of his Brazilian majesty. On the other hand, it is agreed and stipulated, that the Brazilian traders shall enjoy in the British custom-houses, the same favour, as long as the laws allow it to British subjects themselves.

Art. 28. The high contracting parties have agreed that the stipulations contained in the present treaty, shall remain in vigour for fifteen years, from the date of the ratification of the present, and after that until one of the two parties shall announce its revocation to the other, in which case the present treaty shall cease, upon the second year after such annunciation.

Art. 29. The present treaty shall be ratified by the high contracting parties, and the ratifications shall be exchanged, within the space of four months, or less, if possible.

In testimony whereof, we, the undersigned, plenipotentiaries of his majesty the emperor of Brazil, and of his Britannic majesty, in virtue of our plenary powers, have signed the present treaty, and affixed to it our seals and arms.

Done at Rio Janeiro, on the 17th of the month of August, in the year of grace eighteen hundred and twenty-seven.

Signed.

[L.S.] The Marquis de Queluz.
[L.S.] The Vi'ct de S. Leopoldo.
[L.S.] The Marquis de Maceyo.
[L.S.] Robert Gordon.

TREATY BETWEEN BRAZIL AND THE HANSE TOWNS.

In the name of the most Holy and Indivisible Trinity.

The Senate of the Free and Hanseatic city of Lubeck, the Senate of the Free and Hanseatic city of Bremen, and the Senate of the Free and Hanseatic city of Hamburgh, on one part, each of them separately, and his Majesty the Emperor of Brazil on the other part, desirous of consolidating the relations of commerce and navigation between their respective states, have named to conclude a convention founded on the principles of a fair reciprocity, their Plenipotentiaries, namely—

The Senate of the Free and Hanseatic city of Lubeck, the Senate of the Free and Hanseatic city of Bremen, and the Senate of the Free and Hanseatic city of Hamburgh, John Charles Frederick Gildemeister, esq., Doctor of Laws, member of the Senate of Bremen, at present their Envoy Extraordinary to His Majesty the Emperor of Brazil, and Charles Sieveking, esq., Doctor of Laws, Member and Syndic of the Senate of Hamburgh, at present their Envoy Extraordinary to his said Majesty; and his Majesty the Emperor of Brazil, his Excellency the marquis de Queluz, Councillor of State, Senator of the Empire, Grand

Cross of the Imperial Order of Cruziero, Commander of the Imperial order of Christ, Minister and Secretary of State for Foreign Affairs, and his Excellency the Count de Lages, Councillor of State, Officer of the Imperial Order of Cruziero, Commander of the Imperial Order of Saint Benoit D'Avis, decorated with the Cross of Gold of the army of the South, Brigadier of the Imperial and National Army, Minister and Secretary of State for the War Department, and Inspector of the Imperial Military Academy, who, after having reciprocally communicated their full powers, found in good and due form, have agreed on the following articles:

Art. I.—All ports and anchorages in the respective countries, open to the vessels of any other nation, shall be in like manner open to the Brazilian and Hanseatic vessels respectively.

Art. II.—All vessels bearing the flag of one of the republics of Lubeck, Bremen, and Hamburgh, belonging exclusively to a citizen or citizens of one of them, and of which the captain shall in like manner be a citizen of one of those republics, shall be held and considered for all the objects of this convention, as a vessel belonging to Lubeck, Bremen, or Hamburgh. A perfect reciprocity shall be observed in respect to Brazilian ships. Passports, regularly executed, shall establish between the high contracting parties the proofs of the nationality of the Brazilian and Hanseatic vessels.

Art. III.—Lubeck, Bremen, and Hamburgh vessels which shall enter the Brazilian ports or depart therefrom, and Brazilian vessels which shall enter the ports of the said republics, or depart therefrom, shall not be subject to duties levied on the vessels (besides the duties payable on their cargoes) under the head of port-charges, anchorage, light-houses, tonnage, visiting, pilotage, or any other denomination whatever, other or more considerable than those which are actually or may hereafter be imposed on national vessels.

Art. IV.—The high contracting parties mutually engage not to establish any prohibitions of import or export which shall attach to the importations or exportations of either country, not affecting those articles of the same description of other countries. The contracting parties engage not to burthen them with any duties or any other charges whatever, which shall not at the same time be extended to all the importations or exportations of the same sort, without any distinction of country.

Art. V.—All merchandise which can be imported into the states of the high contracting parties respectively in national vessels, or which can in like manner be exported therefrom, may also be imported or exported in the vessels of the other contracting party.

The coasting trade from port to port, employed for transporting indigenous or foreign products already admitted for consumption, being nevertheless excepted from this general principle, and reserved for the regulations of each country, it is agreed by both parties, that the citizens and subjects of the high contracting parties shall enjoy in this respect the privilege of using the coasting vessels for the conveyance of their merchandise, subject only to the same duties which are now levied, or which may here-

after be levied, on the subjects of the most favoured nation.

Art. VI.—Any merchandise whatever, without distinction as to origin, exported from the Brazilian ports to the ports of Lubeck, Bremen, and Hamburgh, or from these last-mentioned ports to Brazil, in Brazilian vessels, or in vessels belonging to a nation favoured in the Hanseatic ports in their direct commerce, and any merchandise imported from any country whatever into the Hanseatic ports by Brazilian vessels, or exported to any country whatever from the Hanseatic ports by Brazilian vessels, shall not, in the above-mentioned ports, pay the export and import duties, and any other duties, except according to the rates granted to the direct commerce of the most favoured nation.

On the other part, any merchandise whatever, without distinction as to origin, exported from the ports of Lubeck, Bremen, or Hamburgh, to Brazil, or from Brazil to these ports, in Hanseatic vessels or in vessels belonging to any nation favoured in the Brazilian ports in their direct commerce, shall not pay in Brazil the import or export duties, or any duties whatever, but such as are fixed by a rate to the direct and national commerce of the most favoured nation; a rate which by other treaties has been temporarily fixed at fifteen per cent. instead of twenty-four, for all merchandise introduced for consumption.

The Hanseatic cities not having placed any restriction on the indirect commerce of Brazil, and the Brazilian government not being in all respects able, in the present state of their commercial relations, to grant to the indirect commerce the same latitude and perfect reciprocity, it is agreed that the said indirect commerce shall for the present be restricted, and shall only take place with respect to the nations whose direct commerce is or shall be favoured in the Brazilian ports by particular treaties.

All merchandise exported in Hanseatic vessels from the ports of the said nations favoured in Brazil, shall pay the same duties of import and export, or any other duties which are paid by the Hanseatic cities in their direct commerce; these merchandises remaining nevertheless liable to the other formalities required when they are imported into the Brazilian ports by nations favoured in their direct commerce.

All bounties, drawbacks, or other such advantages granted in one of the countries on importation or exportation, in the vessels of any foreign nation whatever, shall in like manner be granted when the importation or exportation shall be performed by the vessels of the other country.

In the direct navigation between the Brazils and the Hanseatic cities, the manifests witnessed by the Consuls, Brazilian or Hanseatic respectively, or if there should not be any consuls by the local authorities, shall be sufficient to admit the respective importations or exportations to the advantages stipulated in this article,

Art. VII.—The indigenous articles referred to in the preceding article shall experience in the respective Custom-houses, as far as regards their valuation, all the advantages and facilities which are or shall be conceded to the most favoured nation. It is understood that in cases where they shall not

have a fixed value in the Brazilian tariff, the entry at the custom-house shall be made on a declaration of their value signed by the party who shall have imported them; but in the event of the officers of the customs charged with the collection of the duties suspecting the valuation to be faulty, they shall be at liberty to take the goods thus valued on paying ten per cent. above the said valuation; and this within the period of fifteen days from the first day of the detention, and on repaying the duties received thereon.

Art. VIII.—The commerce and navigation between Brazil and the Hanseatic ports shall enjoy in each country, without waiting for any additional convention, all the privileges and advantages which are or may be granted to any of the most favoured nations, provided always they fulfil the conditions of reciprocity. It is understood that the privileges which have been, or which may be, granted to the Portuguese nation, shall not be construed into a precedent, nor shall the effects of the present convention extend to Portugal, unless there should be particular treaties for that purpose.

Art. IX.—The consuls of the respective governments shall be treated, as well in respect to their persons as to the exercise of their functions, on the same footing as those of the most favoured nations. They shall especially enjoy the right of making representations, as well general as particular, upon the valuations made by the customs, which shall be taken into consideration with as little delay as possible, without detaining the consignments.

Art. X.—Should either of the contracting parties be engaged in war, whilst the other is neuter, it is agreed, that whatever the belligerent party may have stipulated with other powers to the advantage of the neutral flag, shall still be in force between Brazil and the Hanseatic towns. In order to prevent all mistakes relating to what is considered contraband of war, it is agreed (without however departing from the general principle above detailed) to restrict this definition to the following articles:—Cannons, mortars, guns, pistols, grenades, fusees, gun-carriages, belts, powder, saltpetre, helmets, balls, pikes, swords, halberds, saddles, harness, and all other instruments whatever manufactured for the uses of war.

Art. XI.—The citizens and subjects of the respective countries shall enjoy in the other country, in respect to their persons, their property, the exercise of their religion, and the employment of their industry, all the rights and privileges which are or shall be hereafter granted to the most favoured nations.

Some foreigners enjoying in Brazil the privilege of having accounts open at the custom-houses for payment of duties, on the same condition and sureties as the Brazilian subjects, this favour shall extend equally to the Hanseatic residents.

Art. XII.—The high contracting parties reserve to themselves the right of entering into any additional stipulations, which the reciprocal interest of trade may require, and any articles which may be hereafter agreed on shall be considered as making a part of the present convention.

Art. XIII.—Although the present convention be considered as common to the three free Hanseatic cities of Lubeck, Bremen, and Hamburgh, it is agreed, nevertheless, that a league of reciprocal responsibility does not exist between their sovereign governments, and that the stipulations of the present convention shall remain in full force with regard to the rest of these republics, notwithstanding a termination on the part of one or more of them.

Art. XIV.—The present convention shall be ratified, and the ratifications shall be exchanged in London within the space of four months, or sooner if possible.

It shall be in full force during ten years, dating from the day of the exchange of the ratifications: and beyond that term, until the senates of the Hanseatic cities, whether separately or collectively, or his majesty the Emperor of the Brazils, shall have announced the intention of terminating such convention, as likewise during the negotiation for a renewal or modification of it.

In witness whereof, the undersigned, plenipotentiaries of the Senates of the Hanseatic republics of Lubeck, Bremen, and Hamburgh, and of his majesty the emperor of Brazil, in virtue of their respective full powers, have affixed the seal of their arms.

Done at Rio de Janeiro, this 17th day of November, in the year of our Lord 1827.

(L. S.) GILDEMEISTER.
(L. S.) C. SIEVEKING.
(L. S.) Marquez de QUELUZ.
(L. S.) Conde de LAGES.

Treaty of Commere and Navigation, between his most Christian Majesty, and the Emperor of Brazil, relative to indemnity to the subjects of France, for the value of French vessels and their cargoes, seized by the Brazilian squadron in the river La Plata, and definitively condemned by the tribunals of Brazil.

Art. 1. The government of Brazil engages to pay to the French government, as an indemnity for the losses done to its subjects, the value of the hulls, rigging, and cargoes of the French vessels le Courrier, le Jules, and le San Salvador, which have been captured by the squadron in the river La Plata, and definitively condemned by the tribunals of Brazil.

Art. 2. These indemnities shall be arranged upon the basis; as to the vessels, the value of their hulls and rigging to be taken from the policies of insurance, where no suspicion of fraud is raised against the valuation; to which shall be added, the amount of freight, and the extraordinary expenses for the pay and maintenance of the crew, and for all the expenses occasioned by the detention of the vessel; and as to the cargoes, the value shall be regulated by the manifests and invoices, and after the current prices in the port of Rio Janeiro, at the time of capture. The policies of insurance, invoices, vouchers of expenses, and all the other documents, shall be presented and proved in legal form.

Art. 3. To the value of indemnity which shall be liquidated for each vessel, shall be added by way of damages and interest, six per

cent. per annum, to commence one month after the capture, unto the period hereafter fixed for the payment; and to the total amount of the indemnities, when ascertained, for the cargoes, freight, expenses and extraordinary charges, shall be added by way of damages and interest, five per cent. per annum, to commence six months after the capture, until the periods aforesaid.

Art. 4. The indemnities shall be ascertained and settled by a commission, composed of four members, two commissioners of liquidation, and two arbitrators, one of the latter, who shall be designated by lot, to be called in, only in case of disagreement of the commissioners. One commissioner and an arbitrator, shall be named by the Brazilian government, and the others, by the representative of his most Christian Majesty at the court of Brazil.

The commissioners shall receive from the claimants, the accounts and documents above mentioned, and all other proofs which may be presented in support of their claims, and although the claimants may have the power to produce all corroborative proofs, which they may think proper, until the close of the commission, it is nevertheless expressly agreed, that no claim shall be examined, or taken into consideration, if it be not presented within sixty days immediately following the opening of the commission.

Art. 5. The commission shall commence its sittings within one month after the signature of this convention, and its functions shall be definitively terminated, on the 28th of February, 1829.

Art. 6. The appraisement shall be made in the currency of Brazil, taking into account the difference of exchange, at the time of capture, and at the period of payment; and the amounts which shall be ascertained, shall be paid in equal payments, at Rio Janeiro, the first in twelve months; the second in eighteen months; and the third in twenty-four months after the termination of the duties of the commission. The schedules of payments shall be deposited with the French legation at the court of Brazil, and shall comprehend the articles, stipulated by article third. Each schedule shall contain the names of those interested, and shall indicate the persons who shall pay the amount, on account of the Brazilian government, as well as the place of payment.

Art. 7. This convention shall be ratified, and the ratifications exchanged in the city of Rio Janeiro, within six months, or sooner if possible.

Done in the city of Rio Janeiro the 31st day of August, 1828.

[L. S.] Le Marquis De Gabrial,
[L. S.] Marquis De Aracaty,
[L. S.] Jose Clemente Pereira,

PRELIMINARY TREATY OF PEACE

Between the Republic of the United Provinces of the river Plate, and the Emperor of Brazil.

In the name of the most holy and undivided Trinity:

The government of the republic of the United Provinces of the river Plate, and his majesty the Emperor of Brazil, desiring to put an end to the war, and establish upon solid and durable principles the good understanding, harmony, and friendship, which should exist between the neighbouring nations, called by their interests to live

united by the ties of perpetual alliance, have agreed, through the mediation of his Britannic majesty, to adjust between themselves, a preliminary treaty of peace, which shall serve as a basis to the definitive treaty of the same, which is to be celebrated between the high contracting parties. And for this purpose they appointed their plenipotentiaries, to wit:

The government of the Republic of the United Provinces, Generals Don Juan Ramon Balcarce, and Don Tomas Guido:

His majesty the Emperor, the most illustrious and most excellent Marquis of Aracaty, Member of his Majesty's Council, Gentleman of the Imperial Bed-Chamber, Counsellor of Finance, Commander of the Order of Aviz, Senator of the Empire, Minister Secretary of State in the Department of Foreign Affairs; Dr. Don Jose Clemente Pereira, Member of his Majesty's Council, Chief Judge of the House of Supplication, Dignitary of the Imperial Order of the Cross-bearer, Knight of that of Christ, Minister Secretary of State in the Home Department, and *ad interim* of Justice; and Don Joaquin Oliveira Alvarez, Member of his Majesty's Council and that of War, Lieutenant General of the National and Imperial Armies, Officer of the Imperial Order of the Cross-bearer, Minister Secretary of State in the Department of War;

Who, having exchanged their respective full powers, which were found to be in good and due form, agreed upon the following articles:—

Art. 1. His Majesty the Emperor of Brazil declares the Province of Monte Video, at present called the Cisplatine, separated from the territory of Brazil, in order that it may constitute itself into a state free and independent of any nation whatever, under the form of government which it may deem most suitable to its interests, wants, and resources.

Art. 2. The government of the Republic of the United Provinces concurs in declaring, on its part, the independence of the province of Monte Video, at present called the Cisplatine, and its being constituted into a free and independent state, in the form declared in the foregoing article.

Art. 3. Both high contracting parties oblige themselves to defend the independence and integrity of the province of Monte Video, for the time and in the manner that may be agreed upon in the definitive treaty of peace.

Art. 4. The existing government of the Banda Oriental, immediately upon the ratification of the present convention, shall convoke the representatives of that part of the said province which is at present subject to it; and the existing government of Monte Video shall make simultaneously a like convocation of the citizens residing within the city, regulating the number of deputies by that of the inhabitants of the province, and using the form adopted in the election of representatives in the last legislature.

Art. 5. The election of deputies for the city of Monte Video shall take place indispensably *extramuros* without the reach of the artillery of the city, and in absence of armed force.

Art. 6. The representatives of the province being assembled at a distance of at least ten leagues from the city of Monte Video, and

any other place occupied by troops, shall establish a provisional government, which shall rule the whole province until the installation of the permanent government, to be created as the constitution shall direct. The existing governments of Monte Video and the Banda Oriental shall cease immediately after the installation of the provisional one.

Art. 7. The same representatives shall betake themselves afterwards to the formation of the political constitution of the province of Monte Video; and the constitution, previously to being sworn to, shall be examined by commissioners from the two contracting governments, for the sole object of seeing that it does not contain any article or articles opposed to the security of their respective states. Should this be the case, it shall be publicly and categorically set forth by the said commissioners; but should there be a want of common accord in these, it shall be decided by the two contracting governments.

Art. 8. Any inhabitant of the province of Monte Video shall be at liberty to leave the territory thereof, taking with him his chattels, without prejudice to a third person, until the constitution be sworn to, if he do not wish to adhere to it, or if it so suit him.

Art. 9. There shall be perpetual and absolute oblivion of all political acts and opinions whatever done or professed previously to the ratification of the present convention, by the inhabitants of the province of Monte Video, and of the territory of the Emperor of Brazil which has been occupied by the troops of the republic of the United Provinces.

Art. 10. It being a duty of the two contracting governments to assist and protect the province of Monte Video, until it be completely constituted, the said governments agree that, if previously to the constitution being sworn to, and during five years afterwards, its tranquillity and security should be disturbed by civil war, they shall lend the necessary aid to maintain and support the lawful government. After the expiration of the above term, all protection which is by this article promised to the lawful government of the province of Monte Video shall cease: and the said province shall be considered in a state of perfect and absolute independence.

Art. 11. Both the high contracting parties declare most explicitly and categorically, that whatever may happen to be the use of the protection which in conformity to the foregoing article, is promised to the province of Monte Video, it shall in all cases be limited to the restoration of order, and shall cease immediately that the object is attained.

Art. 12. The troops of the province of Monte Video and those of the Republic of the United Provinces, shall evacuate the Brazilian territory in the precise term of two months from the date of the exchange of the ratifications of the present convention, the latter passing to the left bank of the river Plate or the Uraguay, with the exception of a force of 1500 men, or more, which the government of the aforesaid republic, if it deem fit, may maintain in any part of the territory of the province of Monte Video, until the troops of his majesty the Emperor of Brazil com-

pletely evacuate the city of Monte Video.

Art. 13. The troops of his majesty the Emperor of Brazil shall evacuate the territory of the province of Monte Video, including La Colonia del Sacramento, in the precise term of two months from the date of the exchange of the ratifications of the present convention, and retire to the frontiers of the empire, or embark, with the exception of a force of 1500 men, which his said majesty may maintain within the city of Monte Video, until the installation of the provincial government of the province, under the express obligation of withdrawing this force, in the precise term of four months, first following the installation of said provisional government, at the latest, delivery, in the act of evacuation, the said city of Monte Video, in *statu quo ante bellum*, to commissioners competently authorized *da hoc* by the lawful government of the province.

Art. 14. It is understood that neither of the troops of the republic of the United Provinces nor those of his majesty the Emperor of Brazil, which in conformity to the two foregoing articles, are to remain temporarily in the province of Monte Video, must in any wise interfere in the political affairs, government, institutions, &c. of the said province. They shall be considered as merely passive and on observation, kept to protect and guaranty public and individual liberties and property; and they cannot operate actively unless the lawful government of the province require their assistance.

Art. 15. As soon as the exchange of the ratifications of the present convention takes place, there shall be an entire cessation of hostilities by sea and by land. The blockade shall be raised in the term of forty-eight hours, on the part of the imperial squadron; hostilities by land shall cease immediately after this convention and its ratifications are notified to the armies, and by sea, in two days to cape St. Mary, in eight to St. Catherine's, in fifteen to cape Frio, in twenty-two to Pernambuco, in forty to the Line, in sixty to the coast of Africa, and in eighty to the seas of Europe. All prizes made subsequently shall not be considered *bona fide* captures, and indemnification will be reciprocally made for them.

Art. 16. All prisoners taken by either party during the war, by sea or by land, shall be set at liberty, as soon as the present convention is ratified and the ratifications exchanged; but those who have not secured the payment of the debts contracted by them, cannot leave the country in which they are.

Art. 17. After the exchange of the ratifications, both high contracting parties shall proceed to appoint their respective plenipotentiaries for the purpose of adjusting and concluding the definitive treaty of peace which is to be celebrated between the republic of the United Provinces and the Empire of Brazil.

Art. 18. If, contrary to expectation, the high contracting parties should not come to an adjustment in the said definitive treaty of peace, through questions that may arise in which they may not agree, notwithstanding the mediation of his Britannic majesty; the republic and the empire cannot renew hostilities, before the expiration of five years stipulated in the tenth article; nor even after this time can hostilities take place, with-

but notification being reciprocally given, with the knowledge of the mediating power, six months previously.

Art. 19. The exchange of the ratifications of the present convention shall be effected in the city of Monte Video, in the term of sixty days from the date hereof, or sooner if possible.

In testimony whereof, we, the undersigned plenipotentiaries of the government of the United Provinces, and his majesty the Emperor of Brazil, in virtue of our full powers, sign the present convention with our hand, and seal it with the seal of our arms. Done in the city of Rio Janeiro, on the 28th day of the month of August, in the year of the birth of our Lord Jesus Christ, 1828.

[L. S.] JUAN RAMON BALCARCE.
[L. S.] TOMAS GUIDO.
[L. S.] MARQUEZ DE ARACATY.
[L. S.] JOSE CLEMENTE PEREIRA.
[L. S.] JOAQUIN D'OLIVERA ALVAREZ.

ADDITIONAL ARTICLE.

Both the high contracting parties oblige themselves to employ all means in their power in order that the navigation of the river Plate, and of all others that empty into it, may be kept free for the use of the subjects of both nations, for the space of fifteen years, in the form that may be agreed upon in the definitive treaty of peace.

The present article shall have the same force and vigour as if it had been inserted word for word in the preliminary convention of this date.

Done in the city of Rio Janeiro, &c. &c.

Speech delivered by his Imperial Majesty, at the opening of the sessions of the Legislature assembled on the third of May, 1828.

August and worthy Representatives of the Brazilian Nation,

I open this assembly with the satisfaction of informing you that our relations of friendship with European powers continue and become daily more intimate. The emperor of Russia, and the king of Saxony, have recognised this empire. This with the court of Madrid is not the case, and it is the only government of Europe which has failed to do so. Treaties of commerce and navigation with the kings of Great Britain and Prussia are concluded and ratified; I finally inform you that I have completed the act of my abdication of the Portuguese crown, which I announced to you on the opening of the session of 1826. Equal relations of friendship and good intelligence exist between this empire and the principal states of the American continent. The government of the United States has nominated a Chargé d'Affaires to this court, instead of the one who left this, as I announced to you on the opening of the last session.

I have negotiations pending with the government of the Republic of Buenos Ayres, establishing the basis of a just and decorous convention, such as the national honour and the dignity of my imperial crown demand. If this republic refuses to acquiesce in the highly liberal and generous propositions which proclaim to all the world the good faith and moderation of the imperial government, whatever may be the regret of my imperial heart, it will be necessary

to continue hostilities, and to continue them with redoubled energy; this is my immutable resolution. I rely upon the general assembly for the most firm and loyal co-operation in sustaining the national honour and glory, lest they suffer in this affair.

With respect to the internal affairs, I congratulate myself and this assembly upon the order and tranquillity which reign in all the provinces of this empire, which convinces me in the highest degree, the monarchial constitutional regimen is rapidly strengthening.

I again call the attention of the chambers to the administration of finance and justice, which I so much recommended to their cares in the late session.

The finances and public credit will receive a beneficial impulse from the law for funding the public debt: but very prompt and efficient legislative measures are necessary to harmonize the different branches of their administration. The judicial power has not yet received the least improvement, and it is urgently necessary that in the course of this session it should be regulated according to the principles of the constitution of the empire; that judgment may be awarded on constitutional principles, which, insuring to my subjects the security of property which the constitution guaranties to them under this head, will cause them to bless the system, and assist me to maintain it. The ministers and secretaries of state will present to the chambers, with the exactness compatible with the actual circumstances, the state of the various branches of the administration.

I expect from the loyalty and wisdom of this assembly, as well as from every individual who composes it, the most perfect harmony and mutual confidence between it and the government. Upon this perfect harmony and mutual confidence, which on the part of the government will be unalterable, I boldly say, depends the welfare of the constitutional system, the orderly march of administration, and the national property, on which last rests the glory of my imperial throne. The session is opened.

Constitutional emperor and perpetual defender of Brazil.

MESSAGE TO ASSEMBLY, APRIL, 1829.

August and worthy Representatives of the Brazilian Nation,—

" The depreciation of the notes of the Bank of Brazil, so injurious to the interests of the state, as well as detrimental to the developement of public wealth, has occupied the attention of the General Legislative Assembly, during the two last sessions. In both, the superabundance or excessive amount of notes in circulation was acknowledged as the cause of that same depreciation; or rather of the agio of metallic specie; of the fall in the exchange; of the rise in all kinds of merchandise; of the increase in some branches of the national expenditure; of the afflictions endured by numerous families; of the shifts to which the public functionaries are driven, as well as of private misery.

" The law of the 15th November, 1827, by prohibiting new issues on the part of the bank, and authorizing the calling in of 6,000 contos, at least, of the notes in circulation, most assuredly would have diminished, if not removed, that cause, if the means pointed out for the buying up or exchange of those

notes had not failed when reduced to practice, it being found impossible to sell government securities at par, bearing an interest of five per cent., according to the terms of article 22 of the said law. As, therefore, the means of calling in the notes became impracticable, the prohibition of fresh issues could not of itself suffice to repress the influence of the superabundance already existing and acknowledged.

"During the last session, the General Assembly had occasion to observe that, notwithstanding for six or eight months the amount of notes in circulation had been stationary, the difficulty on that account was not the less aggravated. The value of the precious metals did not cease to rise, and the rate of exchange to fall; whilst, as no legislative measure was enacted before the close of the session, in order efficaciously to remedy the cause of the evil, it was consequently to be expected and feared that it would go on increasing.

"The government, aware of the impending calamity, in time busied itself to adopt preventive measures. After hearing the opinion of the Council of State, it began to purchase notes of the bank, in order to withdraw them from circulation, agreeably to the 1st section of article 21 of the aforesaid law of 15th November, confirmed by the decree of the 20th of August in last year; and, as shown by document No. 1, it was able to sell, in December in last year, and January in the current one, as far as the amount of 1,934,600,000 reis of government securities, bearing an interest of 6 per cent., which, at the price of 65, produced 1,257,490,000 reis, which, already have, or shortly will be, delivered over to the bank. At the same time the government endeavoured to interest the board of bank directors in the urgent operation of calling in the notes, by allowing, for that purpose, only the sale of the precious metals existing in its own coffers, and requiring the pledge of a real aid and intervention in the enterprise of calling in as far as four thousand contos of notes. Documents No. 2 to 6 contain the correspondence, which, on this subject, passed between the treasury and the bank.

"Finally, from the month of October in last year, the government resolved not to issue, as in fact it has not done up to the present moment, any amount in bills of exchange from this place on London, or beyond the territory of the empire, at the same time taking every due measure for the exact and necessary payment of the Brazilian and Portuguese loans, contracted in England, in the manner that will be made known to the Assembly in due season.

"Although these measures sustained the exchange at 30, during the two last months in the past year, they could not, nevertheless, any longer answer the end for which they were proposed, and the government beheld with regret the inefficiency of the means left at its disposal to dispel the torrent of discredit attending the bank paper. In a word, the agio which in January, 1828, was, in reference to copper, silver, and gold, 20, 48, and 100 per cent., now became 40, 110, and 190; whilst the exchange, which was then at 32½, fell as low as 20, and scarcely has it, at this present time, attained 23, as may be seen from document No. 7; and this at a moment when the

amount of notes in circulation, far from having been increased, has, on the contrary, experienced some reduction, owing to the calling in of them, which had already commenced.

"In the opinion of the government, this phenomenon is no other than the necessary effect of the cause itself, so long ago acknowledged, and at present aggravated by some excess of importation; by the late effort in the slave trade; by the forced issue of copper money, and by the failure of speculations, encouraged by the war and spoiled by the peace.

"Document No. 8, exhibiting the annual revenue of the custom house in this city, from the month of January, 1825, to the 26th of March, in the current year, shows, in the year 1828, compared with 1827, an increase of revenue equal to 1,775,350,167 reis, which supposes an excess of imports amounting to 11,836,000,000 reis, calculating the duties at 15 per cent., and, at the same time, barring contraband and favourable valuations; whereas, on the other hand, document No. 9, exhibiting the annual revenue of the Export Board, during the same period, only shows in the year 1828, compared with 1827, an increase of 80,928,577 reis, which supposes an excess of exports amounting to 4,046,000,000 reis, duties being levied at 2 per cent.; and it is not to be presumed that the contraband articles, including precious stones and metals, can scarcely amount to the difference of 7,990,000,000 reis resulting in favour of the importation.

"Document No. 10, containing a return of the slaves imported into this place from January, 1820, to the 26th of March in the current year, attests that in 1827, 29,787 slaves entered this port; in 1828, 43,555; and that during the three first months of the present year, not yet quite complete, we have received 13,459.

"Document No. 11, shows that the mint of the city, established in 1803, has coined, from the period of its opening to the 23d March in the current year, 7,875,184,413 reis in copper, viz., from its establishment to the end of December, 1825, 2,633,529,350, and from the commencement of January, 1826, to the 23d of the last month, 5,241,654,563.

"These are the circumstances, beyond all doubt, which have rendered the situation of the state more difficult than it was fifteen months ago. To private interest and time it belongs to remedy the evil which arose out of the excessive importations of goods and slaves; whilst on the legislative body alone it devolves to provide against that resulting from a prejudicial coin, by destroying the cause which rendered it necessary.

"Even where any other proof were wanting to the government, the painful experience of two years would be sufficient to point out the urgent necessity of an heroic measure, in the crisis in which we are placed.

"The report of the committee of inquiry, instituted by the decree and instructions of the 3d June in last year, satisfying with every possible exactitude the queries of the chamber respecting the situation of the bank, furnishes at the same time the most clear data at once to show the necessity of the salutary influence of the legislative body in the administration and affairs of

that establishment; and to remove all doubt of its being possible to remedy, without sacrifices to the state, the evils arising out of a circulation devoid of credit. The report has been printed and submitted to the consideration of the General Assembly, and the members of the committee who presented it are deserving of public acknowledgment for the zeal with which they served and the difficulties which they overcame.

"It is therefore unquestionable that the primary cause of the existing calamity is the superabundance of notes; it is, consequently, our duty to withdraw them as soon as possible. And as it cannot be expected that the bank will be able to realize so expensive an operation, the state is bound to do it, since the state is a debtor to the bank; and the national credit, which cannot sustain itself on any other basis than justice and good faith, is highly implicated in its circulating medium.

"The government, convinced of the solidity of the reasons above manifested, cannot but deplore the nature of the means which appear obvious and efficient for this operation of paying off the discredited notes. They are these—1st. To contract a loan in specie, sufficient to cover the amount of the notes lent to the government by the bank, by applying new branches of the revenue for the gradual extinction of the same. 2dly. To convert the notes into paper-money of a different standard, that they may circulate throughout the whole empire, by assigning fresh capitals, in order gradually to pay it off; and, 3dly, to sell national property and impose heavy taxes, in order that the proceeds may, in a few years, extinguish the debt of the government to the Bank.

"Since, therefore, the sacrifice is necessary, and that it becomes imperative, under present circumstances, to avail ourselves of some one of the means pointed out, the government is persuaded that the first is not so dangerous as the second, nor so onerous as the third; and it is besides fully sensible of the necessity of taking measures for the administration and settlement of the affairs of the bank, by supporting and securing the circulation of its notes, guaranteeing its deposits, and by obtaining for the shareholders a reasonable profit. I have resolved to draw up, and, by his majesty the Emperor's orders, I have the honour to submit to you the following:—

Art. 1. The Bank of Brazil shall be administered by a commission of seven members, four of whom shall be appointed by the government, and three by a majority of votes of a general assembly of the said bank. The government will select the president of the commission from among the seven members, and the said assembly shall fix the monthly remuneration which shall be due to their services. As soon as the commission is installed, all the existing agreements with the bank shall cease.

Art. 2. The directing commission shall by incessantly engaged—first, in withdrawing from circulation all notes which are payable at the bank, or may have a metallic currency; secondly, in ascertaining the exact number of notes in circulation, substituting for them new ones, which shall be signed by two members; thirdly, in winding up all the accounts of the bank, and especially those relating to the debt

of government: fourthly, in liquidating all the regular transactions of the bank, which may be found still pending; fifthly, in receiving the active credits of the bank, and liquidating the passive ones forthwith; and sixthly, in examining the state of the Bahia Orphans' Fund, and of St. Paul, and to liquidate both with speed.

Art. 3. The government shall give to the directing commission the necessary instructions, and will decide on cases of doubt, which may occur in the execution of the preceding article.

Art. 4. The nation shall acknowledge the current value of the present notes of the Brazil bank, and those which may be substituted for them, so that they may freely circulate, and be received as readily as specie by the public until they are duly redeemed, in security for which the primitive funds of the bank are assigned—that is, its funds of reserve, or the metallic funds existing in its coffers, the debt of the government, the debts of private individuals to the bank, and every thing else which may constitute the credits of the bank. The deposits in the bank are also assigned as security to the public.

Art. 5. The debt of the government to the bank, before and after the liquidation by the directing commission, shall continue to pay an interest of 1 per cent., which will be given by the public treasury to the said commission, that it may be divided half-yearly among the shareholders.

Art. 6. The directing commission shall render to the government a monthly account of their labours, and shall every year lay before the Legislative Assembly a statement of the affairs of the bank, and of the administration of them; and when the commission has concluded the liquidation of the bank's debts and credits, and redeemed its notes, they shall distribute the balance which may remain among the shareholders, and then dissolve the establishment.

Art. 7. The government shall be authorized to contract a loan in gold or silver specie, equal to the three fifths of the amount of its actual debt to the bank. The produce of this loan shall be exclusively applied to the purchase of notes of the said bank which are in circulation, according to the value they may be found to bear on the market: and all the notes thus bought up shall have no longer any value, excepting as payment to the directing commission on account of the said debt to the bank.

Art. 8. The purchased notes from the market, which are to be cancelled and delivered to the directing commission, shall remain for the account of the Junta, and employed in the reserve fund created by the law of the 15th of November, 1827, so that they may be delivered up by the public treasury to the Junta in extinction of the said loan, in proportion as they are received.

Art. 9. The produce of the loan, authorized by the present law, shall not be applied to any purpose but that which is specified in the 7th article, on pain of the penalties attached to those who dissipate the national property; neither shall the bank note withdrawn with that produce be applied to any other purpose than that specified in that article, under pain of the same penalties.

Art. 10. (This article authorizes the Chamber of Deputies to furnish the necessary subsidies, or a suffi-

cient revenue, for the annual payment of interest, and for the sinking fund reserved for the loan in question.)

BUENOS AYRES.

MESSAGE OF THE EXECUTIVE OF BUENOS-AYRES TO THE LEGISLATURE, 1828.

Gentlemen Representatives,

The government of the province of Buenos-Ayres, sees with the greatest satisfaction the opening of the seventh legislative assembly. At this moment are realized the hopes conceived on the first days of the revolution; therefore it presents itself with the fullest confidence to salute the honourable representatives, and to give a faithful account of the affairs confided to its direction. Nevertheless, it is not possible to do so with the same minuteness as heretofore, the war having paralyzed a portion of the means of interior improvement; and for this reason, it can only speak of the most important points, as far as the actual state of the country will permit. Internal tranquillity has been the first object to which it directed its attention, satisfied that without that we should be condemned by the world, and be the derision of our enemies. Past experience has not been sufficient to convince us, that the formation of a state is subjected to the general laws of nature, in which nothing can arrive at perfection except slowly and progressively. The government, acting upon this principle, applied itself to the extinction of discord and re-establishment of the quiet of the interior, under whose shade alone can flourish the real interests by which the nation must be hereafter united. It has the satisfaction to announce to you, that the result has corresponded with its hopes, and that reason has rarely obtained a triumph so easy and rapid in the midst of so much agitation. The government has cause to congratulate itself in the naming of the deputies who have acted in a negotiation so important. The provinces, in addition to having withdrawn their arms from civil war, have given them a more noble direction, and have named representatives to form a convention in the city of Santa Fé, which will probably have the good fortune to lay the foundation of the national happiness.

The negotiations for peace with his majesty the emperor of Brazil, still continue, and there are well-founded hopes that the day is not far distant in which the war will terminate satisfactorily; notwithstanding which, the government, sensible that honour is the vital principle of nations, continues to support it at every sacrifice, until peace can be realized; and hopes that, should necessity require it, you will with pleasure make every necessary sacrifice. The nations of our continent continue to give us proofs of their good wishes, and Great Britain renders us constantly the good offices of a true friend. The officers and forces by land and

sea have displayed great constancy and bravery, and have obtained considerable advantages, which recommend them to the respect and gratitude of every good citizen. When it appeared that the war was at a stand, and that the armies of the two hostile powers faced each other, without either being able to advance, an intrepid chief, with a handful of Argentines, has recovered our old possessions of the "Misiones Orientales;" his force has been there increased, and the joy evinced by the inhabitants in returning to the bosom of the republic, sufficiently proves the absurdity of conquest. The expedition from the north now marching to the same point, when united to the said force, will form a respectable army, the expense of which is inconsiderable, and which can easily combine its operations with the main army, and will prove the symbol of the concord and enthusiasm of the provinces.

The militia of the city and the country, which had been almost dissolved, and in a state of nullity, has been reorganized, and performs important services, enabling the troops of the line to be placed on the frontiers, and wherever their attentions may be called for in the foreign war. The new line of frontier is established; this undertaking, as desirable as it is important, commenced under the most auspicious circumstances. The Indians, with whom the government continues the measures of peace and conciliation with the most happy effects, will no more commit depredations with impunity, and the immense acquisition of territory has doubled the guaranty of the public debt, so that this burden may be taken off in a short time, if it is found necessary. But the most important is, that in this establishment we have occupied the interesting position of White Bay, (Bahia Blanca,) which is surrounded with commodious harbours, agricultural land, and extensive woods. Its maritime coasts abound with fisheries, and some ports, enabling us to have hereafter a respectable marine, which will be the shield of the republic. The communication to Chile by land, from the same point, is short and convenient; and the navigation of the Red river (Rio Colorado) will perhaps afford a more easy exportation of the produce of some of the interior provinces. The government has ordered the land to be surveyed, and to trace out the most proper place to erect a city, to be called the "New Buenos Ayres." The importance to which it is likely to arrive gives it a claim to so glorious a title. The zeal manifested in this undertaking, by all those charged with the execution of it, deserves the highest praise. Through the stagnation of our foreign commerce, that of the interior has rapidly increased, especially those capitals that have been applied to agricultural purposes, labourers being abundant, from the cessation of the impress.

In the midst of all this, the establishment of public grammar-schools for children in the city and country required particular attention. The government took them into consideration, and having placed at the head of them an individual who is well known for his philanthropy, it has produced the desired effect. Private colleges and houses of education have begun to be established; the government encourages, by every means,

this species of industry, the most useful for the country, and hopes that in a short time it will not be necessary for youths to cross the seas, seeking the treasure of science with the danger of losing those sentiments which alone can be cultivated in their native land. The ladies of the Benevolent Society have shown in the present year how much the nation is indebted to them for their assiduous efforts to forward education. The public schools continue in the same state: that of San Miguel has improved. The works at the cathedral church, and of the high road to Ensenada, and the canal of San Fernando, are nearly completed. Many country towns have been assisted with funds to repair their churches, or to build new ones; and until, in process of time, our laws and customs be improved, a new prison for debtors is fitting up. The hospitals, especially that for women, receive important improvements; the government thus endeavouring to alleviate the sufferings of the unfortunate. The important establishment of vaccination has been augmented, and its utility has never been more felt than at this moment: whilst the neighbouring provinces are visited by the terrible scourge of the small-pox, it has scarcely been felt in this city, and the government has put in practice every means entirely to eradicate it.

The liberty of the press has of late been greatly abused. Some ill-advised persons have carried its licentiousness to such an extent as to bring discredit upon the country among foreign nations, where it is not possible to know that such productions only produce here contempt for their authors. The law of the 8th of May has suppressed in part this licentious writing, and public opinion will by degrees banish it. The administration of justice requires a change, from which considerable advantages are expected. The government will have the honour of laying it before you for your consideration. Of all our domestic wants, none is more urgent than to fix, in a certain and positive manner, the basis of the national bank. This establishment, at present, requires the strongest guaranties; and to give them, it will be only necessary to act with prudence.

As the province of Buenos Ayres has providod exclusively the funds for the defence of the nation, it is but fair to state that when the present administration shall have been one year in office, in August next, they will have expended 1,000,000 of dollars less than they had calculated upon; after having discharged enormous outstanding debts, established the frontier, clothed, armed, and paid the army and navy, paid for the transport and armament of the contingents from the provinces, provided the expenses of foreign affairs, and nearly all those of the convention; supplied the parks of artillery and magazines, having attended at the same time to the internal expense of the province. It is true that they have suspended for the present the payment of the interest upon the loan in London, and that this dreadful measure was foreseen in making the above calculations, but it was one of those alternatives necessary to be taken, in order to avoid greater evils: the operation of issuing paper in Buenos Ayres to send gold to England would be like adding fuel to fire, and, in

the end, would devour all. The government has the satisfaction to learn, by means of a respectable house in London, to whom it has confided the management of this affair, that the holders of the bonds have duly appreciated the circumstances of the country, not doubting that the government intends to (as it most certainly will) remit to them, upon the first opportunity, the funds necessary for the fulfilment of its engagements. Every day proves the necessity of placing the direct taxes upon a solid foundation, and that the projects of law in that respect, submitted in the preceding session, should receive your sanction as soon as possible; the government on its part is prepared to give a new form to the mode of collection. The system of confiding to particular individuals, in farming it out, might be very well at the commencement, but now that more information has been obtained upon the subject, it will be advisable to administer it by persons permanently employed, with adequate salaries, who can be promoted according to their merits.

The department of engineers, architects, and botanical garden, have been supressed; as will be also other departments and expenses, not because the government did not recognise their utility, taken in the abstract, but because they were in disproportion with its means to sustain them, and therefore served only as a vain appearance. The government, in this respect, despising any ephemeral popularity, will perform its duty. The expenses of the war have been reduced to the lowest possible amount. It can assure you that the charges, in this respect, upon the revenue, is hardly one third of what might be expected.

Finally, gentlemen representatives, if a comparative view is taken of the present state of the province, and that in which it was in the month of August last year, it ought to be viewed as very satisfactory. The government confides in your enlightened and cordial co-operation, not only in sustaining the present institutions, but in advancing them to greater perfection.

MANUEL DORREGO.
JOSE MARIA ROXAS.
JUAN RAMON BALCARCE.

To the very Hon. Junta of Representatives of the province of Buenos-Ayres.

EUROPE.

GREAT BRITAIN.

IMPERIAL PARLIAMENT.

The session of Parliament was opened Jan. 29th 1828 by commissioners, appointed by his majesty, who delivered the following speech:

My Lords and Gentlemen,

We are commanded by his majesty to acquaint you, that his majesty continues to receive from all foreign princes and states, assurances of their desire to maintain the relations of amity with this country, and that the great powers of Europe participate in the earnest wish of his majesty to cultivate a good understanding upon all points which may conduce to the preservation of peace.

His majesty has viewed for some time past, with great concern, the state of affairs in the east of Europe.

For several years a contest has been carried on, between the Ottoman Porte, and the inhabitants of the Greek provinces and islands, which have been marked on each side by excesses revolting to humanity.

In the progress of that contest, the rights of neutral states, and the laws which regulate the intercourse of civilized nations, have been repeatedly violated, and the peaceful commerce of his majesty's subjects has been exposed to frequent interruption, and to depredations, too often aggravated by acts of violence and atrocity.

His majesty has felt the deepest anxiety to terminate the calamities and avert the dangers, inseparable from hostilities which constitute the only exception to the general tranquillity of Europe.

Having been earnestly entreated by the Greeks to interpose his good offices, with a view to effect a reconciliation between them and the Ottoman Porte, his majesty concerted measures for that purpose, in the first instance, with the Emperor of Russia, and subsequently with his imperial majesty and the king of France.

His majesty has given directions that there should be laid before you copies of a protocol, signed at St. Petersburg by the plenipotentiaries of his majesty, and of his imperial majesty the emperor of Russia, on the 4th of April, 1826, and of the treaty entered into between his majesty and the courts of the Thuilleries, and of St. Petersburg, on the 6th of July, 1827.

In the course of the measures adopted with a view to carry into effect the object of the treaty, a collision, wholly unexpected by his majesty, took place in the port

of Navarin, between the fleets of the contracting powers, and that of the Ottoman Porte.

Notwithstanding the valour displayed by the combined fleet, his majesty deeply laments that this conflict should have occurred with the naval force of an ancient ally; but he still entertains a confident hope, that this untoward event will not be followed by further hostilities, and will not impede that amicable adjustment of the existing differences between the Porte and the Greeks, to which it is so manifestly their common interest to accede.

In maintaining the national faith, by adhering to the engagements into which his majesty has entered, his majesty will never lose sight of the great objects to which all his efforts have been directed,—the termination of the contest between the hostile parties,—the permanent settlement of their future relations to each other, and the maintenance of the repose of Europe, upon the basis on which it has rested since the last general treaty of peace.

His majesty has the greatest satisfaction in informing you that the purposes for which his majesty, upon the requisition of the court of Lisbon, detached a military force to Portugal, have been accomplished. The obligations of good faith have been fulfilled, and the safety and independence of Portugal secured, his majesty has given orders that the forces now in that country should be immediately withdrawn.

We are commanded by his majesty to acquaint you, that his majesty has concluded treaties of amity and commerce with the emperor of Brazil, and with the United States of Mexico. Copies of which will, by his majesty's command, be laid before you.

Gentlemen of the House of Commons,

His majesty has ordered the estimates for the current year to be laid before you. They have been prepared with every regard to economy consistent with the exigency of the public service. We are commanded by his majesty to recommend to your early attention, an inquiry into a state of the revenue and expenditure of the country.

His majesty is assured that it will be satisfactory to you to learn that, notwithstanding the diminution which has taken place in some branches of the revenue, the total amount of receipt during the last year has not disappointed the expectations which were entertained at the commencement of it.

My Lords and Gentlemen,

His majesty has commanded us to inform you, that a considerable increase has taken place in the export of the principal articles of British manufacture.

This improvement of our foreign trade has led to a more general employment of the population, and affords a satisfactory indication of the continued abatement of those commercial difficulties which recently affected so severely the national industry.

His majesty commands us to assure you, that he places the firmest reliance upon your continued endeavours to improve the condition of all classes of his subjects, and to advance the great object of his majesty's solicitude—the prosperity and happiness of his people.

KING'S SPEECH TO PARLIAMENT, 1829.

On the 5th of February, 1829, parliament was opened by his majesty's commissioners, the duke of Wellington, earl of Shaftsbury, earl Bathurst and lord Ellenborough, the lord chancellor read the following speech:

"*My Lords and Gentlemen,*

"His majesty commands us to inform you that he continues to receive from his allies, and generally from all princes and states, the assurance of their unabated desire to cultivate the most friendly relations with his majesty.

"Under the mediation of his majesty, the preliminaries of a treaty of peace between his imperial majesty the emperor of Brazil, and the republic of the United Provinces of Rio de la Plata, have been signed and ratified.

"His majesty has concluded a convention with the king of Spain, for the final settlement of the claims of British and Spanish subjects preferred under the treaty signed at Madrid on the 12th March, 1823.

"His Majesty has directed a copy of this convention to be laid before you, and his majesty relies upon your assistance to enable him to execute some of its provisions.

"His majesty laments that his diplomatic relations with Portugal are still necessarily suspended.

"Deeply interested in the prosperity of the Portuguese monarchy, his majesty has entered into negotiations with the head of the house of Braganza, in the hope of terminating a state of affairs which is incompatible with the permanent tranquillity and welfare of Portugal.

"His majesty commands us to assure you that he has laboured unremittingly to fulfil the stipulations of the treaty of the 6th July, 1827, and to effect, in concert with the allies, the pacification of Greece:

"The Morea has been liberated from the presence of the Egyptian and Turkish forces.

"This important object has been accomplished by the successful exertions of the naval forces of his majesty, and of his allies, which led to a convention with the pacha of Egypt; and finally, by the skilful disposition and exemplary conduct of the French army, acting by the command of his most Christian majesty on the behalf of the alliance.

"The troops of his most Christian majesty having completed the task assigned to them by the allies, have commenced their return to France.

"It is with great satisfaction that his majesty informs you, that during the whole of these operations, the most cordial union has subsisted between the forces of the three powres by sea and land.

"His majesty deplores the continuance of hostilities between the emperor of Russia, and the Ottoman porte.

"His imperial majesty, in the proscecution of those hostilities, has considered it necessary to resume the exercise of his belligerent rights in the Mediterranean, and has established a blockade of the Dardanelles.

"From the operation of this blockade, those commercial enterprises of his majesty's subjects have been exempted, which were undertaken upon the faith of his majesty's declaration to his parliament respecting the neutrality of the Mediterranean sea.

"Although it has become indispensable for his majesty and the king of France to suspend the cooperation of their forces with those of his imperial majesty, in conse-

quence of this resumption of the exercise of his belligerent rights, the best understanding prevails between the three powers in their endeavours to accomplish the remaining objects of the treaty of London.

"*Gentlemen of the House of Commons,*

"We are commanded by his majesty to acquaint you, that the estimates for the current year will forthwith be laid before you.

"His majesty relies on your readiness to grant the necessary supplies, with a just regard to the exigencies of the public service, and to the economy which his majesty is anxious to enforce in every department of the state.

"His majesty has the satisfaction to announce to you the continued improvement of the revenue. The progressive increase in that branch of it which is derived from articles of internal consumption is peculiarly gratifying to his majesty, as affording a decisive indication of the stability of the national resources, and of the increased comfort and prosperity of his people.

"*My Lords and Gentlemen,*

"The state of Ireland has been the object of his majesty's continued solicitude.

"His majesty laments that, in that part of the United Kingdom, an association should still exist which is dangerous to the public peace, and inconsistent with the spirit of the constitution; which keeps alive discord and ill-will amongst his majesty's subjects; and which must, if permitted to continue, effectually obstruct every effort permanently to improve the condition of Ireland.

"His majesty confidently relies on the wisdom and on the support of his parliament, and his majesty feels assured that you will commit o him such powers as may enable his majesty to maintain his just authority.

"His majesty recommends, that when this essential object shall have been accomplished, you should take into your deliberate consideration the whole condition of Ireland; and that you should review the laws which impose civil disabilities on his majesty's Roman Catholic subjects.

"You will consider whether the removal of those disabilities can be effected consistently with the full and permanent security of our establishments in church and state, with the maintenance of the reformed religion established by law, and of the rights and privileges of the bishops and of the clergy of this realm, and of the churches committed to their charge.

"These are institutions which must ever be held sacred in this protestant kingdom, and which it is the duty and the determination of his majesty to preserve inviolate.

"His majesty most earnestly recommends to you to enter upon the consideration of a sbject of such paramount importance, deeply interesting to the best feelings of his people, and involving the tranquillity and concord of the United Kingdom, with the temper and the moderation which will best insure the successful issue of your deliberations."

PROROGATION OF PARLIAMENT, JUNE 24th, 1829.

Lord Commissioners—The Lord Chancellor, the Duke of Wellington, the Marquis of Winchester, Earl of Rosslyn, and Lord Ellenborough.

The Speech was delivered by the Lord Chancellor:—

"*My Lords and Gentlemen,*

"We are commanded by his majesty, in releasing you from

your attendance in parliament, to express to you his majesty's acknowledgments for the zeal and assiduity with which you have applied yourselves to the despatch of public business, and especially to the consideration of those important matters which his majesty recommended to your attention at the opening of the session.

"His majesty directs us to inform you, that he continues to receive from his allies, and from all foreign powers, assurances of their earnest desire to cultivate the relations of peace, and maintain the most friendly understanding with his majesty.

"His majesty laments that he has not to announce to you the termination of the war in the east of Europe ; but his majesty commands us to assure you that he will continue to use his utmost endeavours to prevent the extention of hostilities, and to promote the restoration of peace.

"It is with satisfaction his majesty informs you, that he has been enabled to renew his diplomatic relations with the Ottoman Porte.

"The ambassadors of his majesty, and of the king of France, are on their return to Constantinople ; and the emperor of Russia, having been pleased to authorize the plenipotentiaries of his allies to act on behalf of his imperial majesty, the negotiations for the final pacification of Greece will be carried on in the name of the three contracting parties to the treaty of London.

"The army of his most christian majesty has been withdrawn from the Morea, with the exception of a small force destined, for a time, to assist in the establishment of order in a country which has so long been the scene of confusion and anarchy.

"It is with increased regret that his majesty again adverts to the condition of the Portuguese monarchy. But his majesty commands us to repeat his determination to use every effort to reconcile conflicting interests, and to remove the evils which press so heavily upon a country, the prosperity of which must ever be an object of his majesty's solicitude.

"*Gentlemen of the House of Commons,*

"His majesty commands us to thank you for the supplies which you have granted for the service of the year, and to assure you of his majesty's determination to apply them with every attention to economy.

"*My Lords and Gentlemen,*

"His majesty has commanded us, in conclusion, to express the sincere hope of his majesty, that the important measures which have been adopted by parliament in the course of the present session, may tend, under the blessing of Divine Providence, to establish the tranquillity and improve the condition of Ireland ; and that, by strengthening the bonds of union between the several parts of this great empire, they may consolidate and augment its power, and promote the happiness of his people."

Convention between his Majesty and her royal highness the Infanta Regent of Portugal, for providing for the maintenance of a corps of British troops, sent to Portugal Dec. 1826; *signed at Brighthelmston, Jan.* 19, 1828.

In the name of the most holy and undivided Trinity, &c.

Her royal highness the infanta regent of Portugal having, in con-

sequence of aggressions committed against the Portuguese territory, claimed the fulfilment, by his majesty the king of the united kingdom of Great Britain and Ireland, of the ancient treaties of alliance and friendship which subsist between the two crowns; and his Britannic majesty having thereupon resolved to send, and having actually sent, a body of troops to Portugal, the two high contracting parties think it necessary to agree upon certain arrangements for the maintenance of the said troops during their stay in Portugal, and have named as their plenipotentiaries for that purpose, viz.:—

His majesty the king of the united kingdom of Great Britain and Ireland, the right hon. George Canning, &c.—And her royal highness the infanta regent of Portugal, the most illustrious and most excellent lord, Don Pedro de Souza e Holstein, marquis of Palmella, &c.—

Who, after having communicated to each other their respective full powers, found to be in due and proper form, have agreed upon and concluded the following articles:—

Art. 1. Her royal highness the infanta regent of Portugal, anxious that the body of troops which has been so promptly sent to her royal highness's aid by his Britannic majesty should be treated with the hospitality becoming the relations of the two allied nations, engages to provide the necessary barracks and quarters, and buildings for hospitals, and for stores and magazines, and the necessary rations of provisions and forage, for the officers, non-commissioned officers, and soldiers, and for the horses and cattle of the British auxiliary army, according to the regulations of the British service.

2. The provisions and forage above specified are to be delivered to the British commissariat, at a distance not greater than six Portuguese leagues from the head-quarters of each British detachment to which they are supplied, unless in cases where a different arrangement shall be made, with the consent of the British commissariat.

3. In order to obviate the difficulties which an immediate disbursement of funds for the purchase of the aforesaid provisions and forage might occasion, under the present circumstances, to the government of Portugal, it is agreed that the British commissary-general shall, for the present, provide those supplies for the British army, charging the cost thereof to the account of the Portuguese government.

As, however, cases may arise, in which it may be more convenient to receive such supplies from Portuguese magazines, for the purpose of avoiding competition in the markets, the British commissary-general shall, in the execution of this agreement, concert his proceedings, from time to time, with a person appointed for that end by the government of Portugal.

4. The accounts of the British commissariat being approved and signed by the commander of the auxiliary army, shall be delivered every three months to the Portuguese government, which, having verified the same, shall either pay the amount thereof forthwith to the British commissary-general, or carry it over to the credit of the British government, as shall be

judged most convenient by the two governments.

5. The cost of provisions and forage for the British troops shall be placed to the account of the Portuguese government, from the day of the landing of the said troops in Portugal, and shall cease to be placed to that account from the day of their departure, or of their passing the frontiers of Portugal.

6. Her royal highness the infanta regent of Portugal having consented that on this, as on former occasions, the forts of St. Julien and of Bugio shall be occupied by the British troops, it is agreed that the said occupation shall continue so long as the auxiliary army shall remain in Portugal. Those forts shall be, from time to time, duly provisioned by the Portuguese government, or by the British commissariat on account of the Portuguese government, in the same manner as is provided in the foregoing articles with respect to the auxiliary army.

Arrangements shall be made between the government of Portugal and the commander of the British army, for the carrying on of the service of the pratique, of the police of the harbour, and of the customs, by the proper officers of the Portuguese government, usually employed for those purposes. A list of these officers shall be given to the British commanding officer, and they shall be strictly under his command in all that may relate to military service, and to the defence of the forts.

7. His Britannic majesty requiring, on the part of his ally, only that which is indispensably necessary for insuring the proper maintenance of his troops, and for the good of the common service, declares that he will not bring forward any pecuniary claims whatever against the Portuguese government, on account of the assistance furnished by his majesty on this occasion to Portugal, beyond what is specified in the preceding articles.

8. The stipulations of this convention shall remain in full force until the two high contracting parties shall mutually agree to make any change therein.

9. The present convention shall be ratified, and the ratifications shall be exchanged in London, in the space of six weeks from the date hereof, or sooner if possible.

In witness whereof, the respective plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Brighthelmstone, the 19th day of January, in the year of our Lord 1827.

(L. S.) GEORGE CANNING.
(L. S.) MARQUEZ DE PALMELLA.

Despatch from the Right Hon. Wm. Huskisson, his Majesty's Principal Secretary of State for the Colonial Department, to Major-General Sir John Keane, K. C. B., Lieutenant-Governor of Jamaica, sent down by him in a Message to the Hon. House of Assembly, on Friday the 16th November, 1828.

Downing-street, Sept. 22.

SIR,—The act passed by the governor, council, and assembly of Jamaica, in the month of December, 1826, entitled, "An act to alter and amend the Slave-laws of this island," having been referred by his majesty in council to the lords of the committee of privy

council for the affairs of trade and foreign plantations, that committee have reported to his majesty in council their opinion that this act ought to be disallowed. The order of his majesty's council, approving that report, and disallowing the act, will be transmitted to you by the earliest opportunity.

In obedience to the commands of his majesty in council, I proceed to communicate to you the grounds of his majesty's decision upon this subject.

The privy council did not submit to his majesty their advice that this act should be disallowed without great reluctance. The great importance of the subject has been fully estimated, and his majesty has perceived with much satisfaction the advances which the colonial legislature have made in many respects, to meet the recommendations conveyed to them in lord Bathurst's despatch of the 11th of May, 1826; but, however much his majesty may have been desirous to sanction these valuable improvements in the slave code of Jamaica, it has been found impossible to overcome the objections to which other enactments of this law are open. I am commanded to express to you his majesty's earnest hope, that upon a deliberate review of the subject, the legislative council and assembly will be disposed to present for your assent another bill, devested of those enactments which have prevented the confirmation of the present act.

Among the various subjects which this act presents for consideration, none is more important in itself, nor more interesting to every class of society in this kingdom, than the regulations on the subject of religious instruction. The 83rd and the two following clauses must be cosidered as an invasion of that toleration to which all his majesty's subjects, whatever may be their civil condition, are alike entitled. The prohibition of persons in a state of slavery, assuming the office of religious teachers, might seem a very mild restraint, or rather a fit precaution against indecorous proceedings; but, amongst some of the religious bodies who employ missionaries in Jamaica, the practice of mutual instruction is stated to be an established part of their discipline. So long as the practice is carried on in an inoffensive and peaceable manner, the distress produced by the prevention of it will be compensated by no public advantage.

The prohibition of meetings for religious worship, between sun-set and sun-rise, will, in many cases, operate as a total prohibition, and will be felt with peculiar severity by domestic slaves inhabiting large towns, whose ordinary engagements on Sunday will not afford leisure for attendance on public worship before the evening. It is impossible to pass over, without remark, the invidious distinction which is made, not only between Protestant Dissenters and Roman Catholics, but even between Protestant Dissenters and Jews. I have, indeed, no reason to suppose that the Jewish teachers have made any converts to their religion among the slaves, and probably, therefore, the distinction in their favour is merely nominal; still it is a preference, which, in principle, ought not to be given by the legislature of a Christian country.

The penalties denounced upon persons collecting contributions

from slaves, for purposes either of charity or religion, cannot but be felt, both by the teachers and by their followers, as humiliating and unjust. Such a law would affix an unmerited stigma on the religious instructer; and it prevents the slave from obeying a positive precept of the Christian religion, which he believes to be obligatory on him, and which is not inconsistent with the duties he owes to his master. The prohibition is, therefore, a gratuitous aggravation of the evils of his condition.

It may be doubtful whether the restriction upon private meetings among the slaves without the knowledge of the owner, was intentionally pointed at the meetings for religious worship. No objection, of course, could exist to requiring that notice should be given to the owner or manager whenever the slaves attended any such meetings; but, on the other hand, due security should be taken that the owner's authority is not improperly exerted to prevent the attendance of the slaves.

I cannot too distinctly impress upon you, that it is the settled purpose of his majesty's government, to sanction no colonial law which needlessly infringes on the religious liberty of any class of his majesty's subjects; and you will understand that you are not to assent to any bill, imposing any restraint of that nature, unless a clause be inserted for suspending its operation until his majesty's pleasure shall be known.

Having thus adverted to this most important branch of the general subject, I proceed to inquire how far the suggestions contained in Lord Bathurst's despatch of the 11th of May, 1826, have been followed in the act under consideration.

The council of protection, established under the 33d clause of this act, cannot be considered as an effectual substitute for the office of a distinct and independent protector. The council in each parish will consist of those individuals over whom the protector was to exercise his superintendence. Their duties are limited to the simple case of extreme bodily injury, and are to be discharged only "if they think proper." The periodical returns required from the protector upon oath, are not to be made by the council of protection, nor are they even bound to keep a journal of their proceedings. No provision is made for executing the duties of the office in different parts of the colony upon fixed and uniform principles, and the number of persons to be united in this trust is such as entirely to destroy the sense of personal and individual responsibility.

In the provisions for the due observance of Sunday, I remark that the continuance of the markets on that day till the hour of eleven, is contemplated as a permanent regulation. It is, however, impossible to sanction this systematic violation of the law prevailing in every other Christian country. In the proposals transmitted by Lord Bathurst to his grace the duke of Manchester, a temporary departure from this rule was permitted, but only as a relaxation required by peculiar and transitory circumstances.

The clauses denouncing penalties on persons employing their slaves to labour on Sunday, are expressed with some ambiguity, so as to leave it doubtful whether the penalty

will be incurred at any other time than during crop, or for any work excepting that required about the mills. Neither is it clear that an owner, procuring his slaves to work on Sunday by persuasion, or by any other means than those of direct compulsion, would violate the law. I do not perceive that provision is made for those cases of unavoidable necessity, which would create an exception to the general rule.

Punishment inflicted by the domestic authority of the owner are not required to be made the subject of a report to any public officer, nor does the law require that any interval should elapse between the commission of the crime and the infliction of the punishment. The presence of free witnesses at the infliction of punishments is not declared necessary, nor would the law be broken, whatever might be the severity of the punishment, if it were inflicted by any other method than that of whipping or imprisonment. The use of the whip in the field is not forbidden. Women are not exempted from punishment by flogging. Nor is any presumption of guilt to arise, if the slave shall make a "probable, particular, and consistent" charge against his owner, confirmed by the exhibition of his person bearing the marks of recent and illegal punishment.

In all these respects the provisions of this act fall short of the recommendations of his majesty's government. It remains to notice other provisions upon the subject of punishment, which have been originally suggested by the colonial legislature.

The act appears to sanction an unlimited delegation of the power of punishment, so that even a fellow slave might be intrusted with it, provided that the correction does not exceed ten lashes. In the presence of the owner or manager thirty-nine lashes may be inflicted by his authority—an extent of power which cannot be necessary, and which might probably be the source of serious abuse.

The 37th section of this act authorizes private persons to commit their slaves to prison in the public workhouses of the island, without the warrant of a justice of the peace; and the preceding section, the 36th, enables the gaoler, as well as the owner, to inflict punishment by whipping in prison without trial. It is difficult to perceive the necessity for such an extension of domestic authority, and if unnecessary, it is plainly objectionable.

The fine of £10 for inflicting repeated punishments for the same offence can scarcely be incurred in any case, since no record is to be kept ascertaining the grounds of any particular punishment, and the party accused may impute to his slave whatever offences he may think proper, without the necessity of proving them. The fine on a workhouse-keeper inflicting an excessive number of lashes, is £10—a punishment which may, in some cases, be entirely disproportionate to so serious an offence.

The complaint, which the slave is authorized to make before any three magistrates, would not, I should fear, be a very effectual means of redress. As they must always be three proprietors of the same parish, there is a manifest danger of the influence of local partialities. As every groundless complaint is to be punished, it is to be feared, that many well-founded

complaints will not be preferred. The mere failure of evidence in support of a complaint is surely not enough to justify the punishment of the party complaining. The owner should be bound to prove that the complaint was malicious or frivolous.

On the subject of marriage, I observe that no security is taken against the possible case of the unreasonable or capricious refusal of the owner to consent. By confining the power of celebrating marriages to the clergy of the established church, every other class of religious teachers are deprived of the means of exercising a salutary influence over the minds of their disciples; and probably the Roman Catholic priests may be entitled to say, that such an enactment takes away from them a right which, by the common law, they enjoy in every part of his majesty's dominions to which the marriage act of George II. does not extend. The necessity of undergoing an examination by a clergyman of the established church, as to the nature and obligations of the marriage contract, is not very apparent, and might, perhaps, operate as a serious impediment to the formation of such connexions. It is difficult to understand how the range of inquiry respecting the "obligations" of the marriage contract is to be limited, since that expression may be supposed to embrace a large variety of moral and religious considerations, with which the slave population in its present state must be very imperfectly conversant.

I observe that this act does not require that any registry should be kept of the marriages of slaves, nor even that any periodical returns should be made of the number of such marriages.

On the subject of the separation of relatives, the word "family" is left without a definition. It is susceptible of so many different meanings, that it would seem peculiarly necessary to ascertain the precise sense in which it is used. The rule laid down in this law seems also to require some better sanction. It is simply a direction to the provost-martial; but if he should disobey that direction, it is not provided that the sale should be void. A provision appears to be wanting, for enabling the officer to ascertain whether any particular slave is or is not a member of the family.

The property of slaves is left by this law in an unprotected state. No action is given to them, or to any person on their behalf, for the defence or recovery of it. The single case in which any remedy is provided, is that in which the property of the slave is taken away. No mention is made of that much more important class of cases, in which property may be withheld. The slave could not under this law recover a debt, nor obtain damages for the breach of a contract. The mode of proceeding by information for penalties before three justices of the peace, is a remedy to which hardly any one would resort, for the act does not give the amount of the penalty, if recovered, to the injured party, and the slave himself could not make the complaint, except upon the condition of receiving a punishment if the justices should deem it groundless. The slaves are also excluded by the terms of this law from acquiring any interest in land—a restriction which would appear at once impolitic and unnecessary.

On the subject of what has been termed the compulsory manumission of slaves, this act does not profess to adopt the measures suggested by his majesty's government. It is, therefore, needless to institute any comparison between those measures and the enactment of this law; but upon that subject, I may, perhaps, at no distant period, have occasion to make a further communication to you.

On the subject of gratuitous manumissions, and manumissions effected by voluntary contracts, this act requires that in all cases security shall be given for the maintenance of the slave. In the case of testamentary manumissions, the estate of the testator is to be liable to the payment of an annuity of £10 for the support of the slave, if he should become incapable of maintaining himself. These regulations must, of course, operate as a great discouragement to enfranchisements in all cases. Without incurring this inconvenience, an effectual security might have been taken against the abuse of emancipating slaves incapable, from their age or infirmities, of procuring their own subsistence.

It is to be feared that serious inconvenience may arise from the neglect of the proposal, to provide a method by which a slave could ascertain what particular person was entitled to receive the price of his freedom. In the case of plantation slaves, the title is usually the same with the title to the land itself, and cases are stated to have occurred, in which a slave has lost the whole earnings of his life by paying the price of his liberty to the wrong person.

On the important subject of the evidence of slaves, his majesty is graciously pleased to signify his approbation of the advance which has been made towards a better system of law; but, in reference to this subject, I am to observe that this law appears to contemplate the admission of the evidence of slaves, in those cases of crimes only, in which they are usually either the actors or the sufferers, excluding their evidence in other cases,—a distinction which does not seem to rest on any solid foundation. There is not any necessary connexion betwen the baptism of a witness and his incredibility. The rule, which requires that two slaves, at the least, shall consistently depose to the same fact, on being examined apart, before any free person can be convicted on slave testimony, will greatly diminish the value of the general rule. In some particular cases, such, for example, as the case of rape, such a restriction might secure impunity to offenders of the worst description. The rejection of the testimony of slaves, twelve months after the commission of the crime, would be fatal to the ends of justice in many cases, nor is it easy to discover what solid advantage could result from it in any case.

If the owner of a slave is convicted of any crime on the testimony of that slave, the court has no power of declaring the slave free, although it may exercise that power when the conviction proceeds on other evidence. Highly important as it is, to deprive a slave of every motive for giving false evidence against his owner, that object might be secured without incurring the inconvenience of leaving the slave in the power of an owner convicted of the extreme abuse of his authority.

In rejecting the proposal for establishing a record of the names of all slaves sufficiently instructed to be competent witnesses, the colonial legislature appear to have neglected the means of providing a cheap and effectual encouragement to good conduct, and of investing the religious teachers of the slaves with a powerful and legitimate influence over them.

His majesty has observed with great satisfaction, various provisions in this act for the improvement of the condition of the slaves, which originated exclusively with the colonial legislature. Among them I have particularly to advert to the clause requiring the gratuitous baptism of slaves, and to the regulation by which slaves are allowed one day in each fortnight to cultivate their provision-grounds, exclusive of Sundays, except during the time of crop, the smallest number of days to be allowed in one year being twenty-six. It may, perhaps, however, be necessary that some more effectual means should be devised for enforcing obedience to this law.

The enactment requiring a monthly inspection of the provision-grounds, and the delivery of an adequate supply of provisions, when there is not a sufficient quantity of such grounds, is calculated to produce the most beneficial effects, and might be rendered still more valuable by some alteration in the terms of the oath, which are susceptible of a construction remote from the real intention of the framers of the law. Great advantage may be anticipated from the regulations for the support of the mothers and nurses of large families, and for the protection of old and infirm slaves.

The provisions for the prevention of excessive labour, contemplate the working the slaves for eleven hours and a half daily out of crop, and place no limit to the continuance of their work during crop-time. Considering the climate in which the labour is to be performed, and that, after the work of the field is over, there will yet remain to be done many offices not falling within the proper meaning of the term "labour," I should fear that the exertions of the slaves, if exacted up to the limits allowed by this law, would be scarcely consistent with a due regard for the health of the labourer.

The crimes of murder and rape, when committed on the persons of slaves, are most properly made punishable by death: but if these enactments are to be understood, not as declaratory of existing laws, but as introductory of new laws, then it is obvious that there are other offences which might be perpetrated on the persons of the slaves, against which the same punishment should have been denounced.

The rules for the prevention of mutilation, and other cruelties, however just and valuable in principle, would, I should fear, lose much of their efficacy in practice, from the peculiar complexity of the process which is to be observed in bringing the offender to justice. In the cases supposed of the dismemberment or mutilation of a slave, fine and imprisonment would seem a very inadequate punishment.

The rules on the subject of runaways claiming to be free, and respecting slaves carried from place to place for sale, seem well adapted to prevent the recurrence of

serious abuses. The provisions of the trial of slaves in criminal cases, would also appear to be a material improvement on the former law. I perceive, however, that the evidence of slaves in such trials is to be admitted against slaves. It is not said that such evidence shall be admitted for them, although, of course, this must have been the intention. It is to be regretted that no provision is made for securing the attendance of judges, regularly educated to the legal profession, on slave trials.

It remains to notice those parts of this act which provide for the punishment or the prevention of crimes committed by slaves.

The crime of harbouring runaways may be punished with much more severity, when the offender is a slave, than when he is a free man,—a distinction which reverses the established principle of justice, that the malignity of crimes is enhanced by the superior knowledge and station of the criminal.

In many cases, both the nature and amount of the punishment to be inflicted on the offending slave are referred exclusively to the discretion of the court. I am not aware of any necessity for so unlimited a delegation of authority.

Among capital crimes, are enumerated rebellion and rebellious conspiracy. As these are terms unknown to the law of England, it is not fit they should remain on the statute-book without some legislative definition of their meaning.

Felony seems to be generally declared capital, when committed by slaves. The case of the clergyable felonies is not noticed.

The enactments, by which assault, or offeringv iolence to a free person, are declared capital, are framed with an extreme laxity of expression, and have an appearance of severity which I am persuaded was not really contemplated by the framers of this law.

The definition of the offence of Obeah will be found to embrace many acts, against which it could not have been really intended to denounce the punishment of death. The definition of the crime of preparing to administer poison is also so extensive, as to include many innocent, and even some meritorious acts. Thus, also, the offence of possessing materials used in the practice of Obeah, is imperfectly described, since no reference is made to the wicked intention in which alone the crime consists.

The owner of a slave condemned to death or transportation is in all cases to be indemnified at the public expense for the loss of his property. His majesty's government have repeatedly expressed their disapprobation of this rule of law. It weakens the motives for maintaining good domestic discipline, and for preventing the commission of crimes by the authority of the owner. It is unjust to indemnify any man at the public expense, for a loss in which his own culpable neglect of duty may have involved him. To the slave it is unjust to deprive his owner of all pecuniary interests in the preservation of his life; and when the crime of the slave is, as it often may be, the direct consequence of the owner's positive misconduct, it is in the highest degree impolitic to relieve the owner from the loss. The power of remitting the sentences of slaves condemned to hard labour for life, is to be exercised only when the slave evinces in every respect a complete reformation of

manners. I fear that few men undergo such a total change of character as this, under any circumstances, and that a prison is among the last places in which it is to be expected. Independently of this consideration, I apprehend that this clause may in some degree derogate from the power, which, under his majesty's instructions, you possess, of pardoning offenders, or remitting their punishments.

I have thus explained, at length, the considerations which have imposed on his majesty's government the necessity of submitting to his majesty their advice that this act should be disallowed. It cannot but be a subject of deep regret to them, that their sense of public duty has prevented their adopting a different course; but I trust that, upon a serious and deliberate review of the subject, the gentlemen of the Legislative Council and Assembly of Jamaica will themselves be disposed to admit, that the decision which has been adopted was inevitable. The preceding remarks will show that this act has not been disallowed upon any slight grounds. The many wise and beneficent provisions which it contains have been fully appreciated, although they have not been thought sufficient to compensate for the irreparable injury which the best interests of the colony might sustain, from some of the enactments to which I have particularly referred. Even were the law unobjectionable on every other ground, it would be impossible to surmount the difficulty presented by the clauses for restraining religious liberty.—I have the honour to be, Sir, your most obedient humble servant,

(Signed) HUSKISSON.

Lieutenant-Governor
Sir John Keane, K. C. B., &c.

The following are the clauses contained in the law which refers to the sectarians:

83. And whereas it has been found that the practice of ignorant, superstitious, or designing slaves, of attempting to instruct others, has been attended with the most pernicious consequences, and even with the loss of life: Be it enacted, That any slave or slaves found guilty of preaching and teaching as Anabaptists, or otherwise, without a permission from their owner, and the quarter sessions for the parish in which such preaching or teaching takes place, shall be punished in such manner as any three magistrates may deem proper, by whipping, or imprisonment in the workhouse to hard labour.

84. And whereas, the assembling of slaves and other persons, after dark, at places of meeting belonging to dissenters from the established religion, and other persons professing to be teachers of religion, has been found extremely dangerous, and great facilities are thereby given to the formation of plots and conspiracies, and the health of the slaves and other persons has been injured in travelling to and from such places of meeting at late hours in the night: Be it further enacted, by the authority aforesaid, that from and after the commencement of this act, all such meetings between sunset and sunrise shall be held and deemed unlawful; and any sectarian, dissenting minister, or other person professing to be a teacher of religion, who shall, contrary to this act, keep open any such places of meeting between sunset and sunrise, for the purpose aforesaid, or permit or suffer any such nightly assembly of slaves therein, or be present thereat, shall forfeit and

pay a sum, not less than £20, nor exceeding £50, for each offence, to be recovered in a summary manner, before any three justices, by warrant of distress and sale; one moiety thereof to be paid to the informer, who is hereby declared a competent witness, and the other moiety to the poor of the parish in which such offence shall be committed; and, in default of payment thereof, the said justices are hereby empowered and required to commit such offender or offenders to the common gaol, for any space of time not exceeding one calendar month. Provided always, that nothing herein contained shall be deemed or taken to prevent any minister of the Presbyterian Kirk, or licensed minister, from performing divine worship at any time before the hour of eight o'clock in the evening at any licensed place of worship, or to interfere with the celebration of divine worship according to the rites and ceremonies of the Jewish and Roman Catholic religions.

85. And whereas, under pretence of offerings and contributions, large sums of money and other chattels have been extorted by designing men, professing to be teachers of religion, practising on the ignorance and superstition of the negroes in this island, to their great loss and impoverishment; and whereas, an ample provision is already made by the public, and by private persons, for the religious instruction of the slaves: Be it enacted, by the authority aforesaid, that from and after the commencement of this act, it shall not be lawful for any dissenting minister, religious teacher, or other person whatsoever, to demand or receive any money or other chattel whatsoever from any slave or slaves within this island, for affording such slave or slaves religious instruction, by way of offering contributions, or under any other pretence whatsoever; and if any person or persons shall, contrary to the true intent and meaning of this act, offend herein, such person or persons shall, upon conviction before any three justices, forfeit and pay the sum of £20 for each offence, to be recovered in a summary manner, by warrant of distress and sale, under the hands and seals of the said justices, one moiety thereof to be paid to the informer, who is hereby declared a competent witness, and the other moiety to the poor of the parish in which such offence shall be committed; and, in default of payment, the said justices are hereby empowered and required to commit such offender or offenders to the common gaol, for any space of time not exceeding one calendar month.

FRANCE.

THE chambers commenced their session on the 5th February, 1828; nearly every member was present, and the speech of the king was delivered as follows:

Gentlemen,

It is always with equal satisfaction that I see you meet about my throne, and that I come to make

known to you the situation of France.

The relations with the European powers continue to be amicable and satisfactory. The affairs of the east alone present some difficulties; but the treaty that I have signed with the king of England and the emperor of Russia, has laid the foundation for the pacification of Greece, and I have reason to hope that the efforts of my allies, and my own efforts, will triumph over the resistance of the Ottoman Porte, without the necessity of our having recourse to arms.

The unexpected battle at Navarino was at the same time an occasion of glory for our arms, and a brillant pledge of the union of the three flags.

The peninsula has been for a long time a cause of sacrifice to us; this is near an end; secure on her frontiers, Spain is employing herself with perseverance in the task of crushing in her bosom, the deplorable seeds of civil discord. Every thing assures me, that I shall be able, very soon, with the consent of the king my nephew, to restore my soldiers to their country, and to relieve my people from a painful burden.

A vigorous blockade, to terminate only when I shall have received the satisfaction which is due to me, is kept up, and is punishing Algiers, and protecting French commerce.

In distant regions, and under the uncertain dominion of infant governments, our flag has suffered some aggressions; but I have ordered that just reparation should be exacted, and I have prescribed measures which will for the future protect from all damage the fortunes of my subjects.

If I can thus, gentlemen, look abroad with satisfaction, the domestic state of my kingdom does not offer me less security. You will see by the documents which will be laid before you, that if the products of the different contributions have suffered some diminution, the sources of the public wealth are not lessened for any length of time. Extraordinary circumstances have produced an excess of expenditure for which it will be necessary to provide. I have ordered my ministers to render you an account of them; and I have required of them, to press constantly towards a severe and extensive economy.

I have called my son to act in the military promotions. The army will find in this new arrangement the most certain testimony of my regard towards it.

The progressive developements of commerce and industry, that glory of peaceful states, have increased their wants, and solicit more numerous outlets. It is my wish that a minister appointed in their interest, should have the special employment of proposing to me every thing which may be proper to assist their activity, which is ever increasing.

However intimate may be the connexion which must exist between religion and the education of men, public instruction and ecclesiastical affairs have appeared to me to require a separate direction, and I have ordered the division to be made.

Wishing to strengthen more and more in my states the charter which was granted by my brother, and which I have sworn to maintain, I shall be watchful, that the labours are carried on with wisdom and

judgment, which shall place our legislation in harmony with it.

Some high questions of public administration have been pointed out for my attention. Convinced that the true strength of the throne is, next to the divine protection, in observing the laws, I have ordered that these questions should be examined, and that their discussion should bring out the truth, which is the first want of princes and people.

Gentlemen, the happiness of France is the object of all my affections, of all my thoughts. To secure this, I shall know how to maintain the power and watchful authority which belongs to my crown.

I depend, gentlemen, and I depend very much, on the assistance of your information, and on the union with me of your feelings. The word of your king, calling for the union of good men, can here only find hearts disposed to listen and to respond to it.

Paris, Jan. 27 1829.

To-day his majesty opened the session of the chamber in the Louvre.

After the usual preliminary ceremonies had been through, and the peers and deputies had taken their seats, his majesty delivered the following speech:—

Gentlemen,—I am happy in seeing you every year assembled around my throne, to promote, in concert with me, the great interests of my people.

This satisfaction is the more lively on the present occasion, as I have pleasing communications to make to you, and important labours to intrust to you.

My relations with foreign powers continue to be friendly. The assurances I receive from my allies offer me a pledge, that notwithstanding the events which have desolated the east, peace will not be disturbed in the rest of Europe. To hasten the pacification of Greece, I have, in concert with England and Russia, sent to the Morea a division of my troops. At the sight of some thousand Frenchmen, determined to accomplish their noble task, that celebrated country, too long ravaged, has been restored to peace and security. There, as at Navarin, the union of the flags has proved to the world the respect of the three crowns for the faith of treaties, and my soldiers take pleasure in recounting the sincere support which they have found in the English navy.

A formal declaration, notified to the Porte, has placed the Morea and the neighbouring islands under the protection of the three powers. This solemn act will suffice to render a protracted occupation unnecessary. I continue to assist the Greeks to rebuild their ruins, and my ships bring back to them those Christian slaves whom the pious generosity of France has restored to their country and to liberty.

So many cares will not prove vain. I have reason to believe that the Porte, more enlightened, will cease to oppose the treaty of the 6th of July, and it may be hoped that this first arrangement will not be lost for the re-establishment of peace in the east.

The situation of Spain has allowed me to recall the troops which I left at the disposal of his Catholic majesty. My soldiers are returned to their country, after having received from the inhabitants of all

the countries through which they have passed, testimonies of esteem and respect, due to their excellent discipline. Considerable sums have been advanced to the Spanish government; a convention has been signed to regulate the payment of them.

The hope which I still retain of obtaining from the dey of Algeirs a just reparation, has retarded the measures which I may be obliged to take in order to punish him; but I shall neglect nothing to protect the French commerce from insult and piracy; and striking examples have already taught the Algerines that it is neither easy nor prudent to brave the vigilance of my naval force.

Engagements contracted by an ancient French colony had ceased to be executed. After having convinced myself that this inexecution was the result of inability, I have consented to open with more efficacious negotiations for the interests of the colonies and of commerce.

Many of my subjects have suffered by the measures taken by the emperor of Brazil in his war with the republic of Buenos Ayres. Some of their vessels have been captured. The convention which I have just ratified, while it confirms, with respect to the right of blockade, a conservatory principle always maintained by France, ensures to them the restitution of their loss. On this occasion, as on all others, I owe praises to the French marine, which shows itself worthy of its noble mission.

The successive shocks which have agitated some of the new states of South America have left the political situation of those states uncertain, and rendered it difficult to form regular relations with them. The moment is doubtless not far distant when I shall be able to give to those relations a stability advantageous to my subjects; meantime I have appointed consuls to watch over their interests.

Such, gentlemen, is the happy state of our relations with foreign powers. Whatever may be the events that the future reserves for us, I shall certainly never forget that the glory of France is a sacred deposite, and that the honour of being the guardian of it is the fairest prerogative of my crown.

Order and peace prevail in the interior. French industry, already so justly celebrated, is daily distinguished by new improvements.

Some branches of our agriculture and commerce are suffering, but I hope that it will be possible for me to lessen the evil, if I should not be enabled to cure it.

The long inclemency of the seasons, and the unfavourable delay which the harvest experienced, awakened for some weeks the solicitude of my government. Distressing doubts with respect to the state of our resources have been speedily dispelled by more positive information. The substance of all is assured, and if the price of corn, while it augments the prosperity of the landholders, increases for a moment the distress of the indigent, Providence has created beneficence to relieve those who suffer.

The press, freed from restraints, enjoys entire liberty. If licentiousness, its fatal enemy, still shows itself under the cover of a generous and confiding law, public good sense, which becomes more firm and enlightened, does justice to its aberrations, and the magistracy, faithful to its noble traditions, know its duties, and will always fulfil them.

The necessity of placing the religion of our fathers in security against any attack, to maintain in my kingdom the execution of the laws, and at the same time to ensure among us the perpetuity of the priesthood, have induced me, after mature reflection, to prescribe the measures which I have felt to be necessary.

These measures have been executed with that prudent firmness which reconciles the obedience due to the laws, the respect due to religion, and the just regards to which its ministers are entitled.

Communications will be made to you on the state of our finances. You will be happy to learn, that the estimates of the revenue for 1828 have been exceeded. This increasing prosperity has not relaxed the system of economy in which my government must endeavour daily to advance farther, without, however, forgetting that useful expense is also economy.

Numerous labours will occupy the session which is opened to-day. You will have to discuss a code which is destined for the army, and deserves serious attention.

The law on the endowment of the Chamber of Peers, and many other laws worthy of your attention, will be presented to you. A serious and important project will, above all, call for your solicitude. It has been long since acknowledged, that there is a necessity for a new municipal departmental law, the whole of which shall be in harmony with our institutions. The most difficult questions are connected with its organization. It ought to secure to the communes and to the departments a just share in the management of their interests; but it must at the same time preserve to the protecting and moderating power which belongs to the crown, the full scope of action and force which public order requires. I have caused a project, which will be presented to you, to be prepared with care. I invite all the meditations of your wisdom to this project, and I confide the discussion of it to your love of the public good, and to your fidelity. Every day gives me fresh proofs of the affection of my people, and enhances the sacredness of the obligation which I have contracted, to dedicate myself to their happiness. This noble task, which you, gentlemen, will assist me to fulfil, must daily become more easy.

Experience has dispelled the charm of insensate theories.—France, like yourselves, knows on what basis its happiness reposes, and those who should seek it any where but in the sincere union of royal authority and of the liberties which the charter has consecrated, would be openly disowned by it. You, gentlemen, are called upon to render this union more close and more solid; you will accomplish this happy mission like faithful subjects, and loyal Frenchmen, and your efforts will be equally certain of the support of your king, and of the public gratitude.

Law relative to Journals, and periodical writings.

Charles, by the grace of God, &c.

We have proposed, the Chambers have adopted, we have ordained, and do ordain, as follows:

Art. I. All Frenchmen of legal age, enjoying civil rights, may, without being previously autho-

rized, publish a journal or periodical publication, by conforming to the requisitions of this law.

Art. 2. The proprietors of every journal or periodical publication, shall be bound, before its publication, to furnish a security.

If the journal or publication appear more than twice a week, whether on a stated day or irregularly, the security shall be for 6000 francs de rentes.

The security shall be equal to three quarters of the specified sum, if the journal be published only twice a week.

It shall be one half of the above-named security, if the journal appear only once a week.

It shall be one fourth thereof, if it appear only twice a month.

The security for the daily journals, published in other departments than those of the Seine, the Seine and Oise, and the Seine and Marne, shall be 2000 francs de rentes in cities of 50,000 people and above; and 1,200 francs de rentes in other cities; and the half of those sums for journals which appear less often.

Art. 3. The following shall be exempted from giving security.

1st. Journals which appear only monthly, or less often.

2d. Journals exclusively devoted to the mathematical, physical and natural sciences, to learned works, and inquiries to the mechanical and liberal arts, that is to say, to the sciences and arts which engage the attention of the three academies of science, of inscriptions and of fine arts of the royal institute.

3d. Journals which do not discuss political subjects, and are exclusively devoted to letters, and the branches of knowledge above specified, provided they do not appear more than twice a week.

4th. All periodical publications which are not political, and which are published in any other than the French language.

5th. Periodical papers exclusively devoted to advertisements, legal notices, maritime arrivals, and price currents.

Every violation of the regulations of this or the preceding article, shall be punished according to the 6th article of the law of June 6th, 1819.

Art. 4. Where there are associations, the society shall be one of those defined and regulated by the commercial code. Except where the journal shall be published by an anonymous society, the associates shall be bound to choose from their body, one, two or three agents, who, according to the terms of articles 22 and 24 of the commercial code, shall have his individual signature.

If any of the responsible agents shall, from any cause, withdraw and cease to act, the proprietors shall be bound within two months to supply his place, or to reduce the number of the agents, by an act of the same formalities, as that by which the association was formed. They shall be permitted within the time above specified, to augment the number, on complying with the same formalities. If only one agent has been appointed, they shall appoint another within 15 days after his decease; in default whereof the journal shall be discontinued, under the penalty of 1000 francs for every sheet published after that time.

Art. 5. The responsible agents,

or one or two of them, shall superintend the publication of the journal.

Each of the responsible agents, shall have the qualifications required by the 980th article of the civil code, and shall be the proprietor of at least one share of the concern, and own in his own right at least one fourth of the security.

6th. No journal or periodical publication compelled to give security by the regulations of this law, shall be published without previously making a declaration containing—

1st. The title of the journal or periodical, and the stated times of its appearance.

2d. The names of all the proprietors besides the editors, their places of residence, their share in the concern.

3d. The names and places of residence of the responsible agents.

4th. An affirmation that the proprietors and agents have complied with the conditions prescribed by law.

5th. The place of the printing office where the journal is usually printed.

Whenever any change takes place, either in the title of the journal, or in the conditions of their publication, or among the proprietors, or the responsible agents, a delaration of it shall be made before the competent authority, within 15 days after the change, by the responsible agents. Any neglect of this regulation, shall be punished by a fine of 500 francs.

The same regulation shall apply if the journal shall be printed in any other printing office than the one originally designated. If the publication shall be undertaken solely by one individual, the proprietor, provided he possesses the qualifications specified in the second paragraph of article 5, shall also be the responsible agent of the journal.

Otherwise, he shall be bound to appoint a responsible agent, in conformity with article 5.

The journals not liable to furnish security, shall be bound to make the previous declaration prescribed by number 1, 2, and 5 of the first paragraph of this article.

Art. 7th. These declarations shall be accompanied by a deposite of the surety bonds: they shall be signed by each of the proprietors of the journal, or by the source of power of each of them. They shall be received in Paris, at the direction of the library, and in the departments at the secretary general of prefecture.

Art. 8. Each number of the periodical shall be signed *en minute* by the proprietor if he be sole; by one of the responsible agents, if it be published by an association in the collective or partnership name; and by one of the representatives, if it be published by an anonymous association.

The original signed, shall be deposited at the office of the royal procureur in the place of publication, or with the mayor, in cities, where there is no tribunal *de premiere instance*, under penalty of 500 francs upon the agents. Receipts shall be given therefor at the offices of deposite.

The signature shall be printed at the bottom of all the copies, under a penalty of 500 francs upon the printer, without any power of relief.

The signers of each sheet shall be responsible for its contents, and liable to all the penalties imposed by law, on account of libellous paragraphs published, without

prejudice to the prosecution of the authors of the libellous articles, as accomplices. Consequently prosecutions may be had, as well against the signers of the impressions, as against the authors of the libels, if the authors are known or prosecuted.

Art. 9. The proprietors of existing journals are granted, provided they do not violate the provisions of article first, the space of six months from the promulgation of this law, to appoint one, two or three responsible agents, possessing the qualifications required by the preceding articles, and also to make the declaration prescribed by article 6th.

If the responsible agents do not possess in their own right the fourth of the security, they shall be permitted to prove, that, besides their share in the undertaking, they are true and legal proprietors of real estate, paying, at least, 500 francs direct taxes, if the journal is published in the departments of the Seine, of the Seine and Oise, and of the Seine and Moine, and 150 francs in the other departments. The real estate must be free from all incumbrances.

This fact must be expressly mentioned in the declaration.

Art. 10. In case of any dispute as to the regularity or sincerity of the declaration prescribed by article, sixth and the securities, it shall be decided by the tribunals, at the instance of the prefect, summarily, and without expense; the party or his counsel, and the public minister, having been heard.

If the journal has not yet appeared, the publication shall be suspended until the judgment, which shall be executed without appeal.

Art. 11. If the declaration prescribed by article 6th is decided to be false and fraudulent in any particular, the journal shall be discontinued. The authors of the declaration shall be punished by a fine, of which the *minimum* shall be equal to one tenth, and the maximum equal to one half of the security.

Art. 12. Where the journal is established and published by a sole proprietor, if the proprietor should die, his widow or heirs shall be permitted, within three months, to appoint a responsible agent. This agent must be the owner of real estate, free from incumbrances, and paying 500 francs direct taxes, if the journal be published in the departments of the Seine, of the Seine and Oise, and of the Seine and Marne, and 150 franks in the other departments.

The agent appointed by the widow or heirs, must possess the qualifications prescribed in art. 980 of the civil code. Within 10 days after the decease, the widow or heirs shall appoint an editor, who shall be responsible for the journal until the agent shall be accepted.

The security of the deceased proprietor shall be liable until the completion of the business.

Art. 13. The pecuniary penalties, decreed against the responsible signers, or against the authors of libellous paragraphs, shall be levied (*prélévées*) 1st. upon that part of the security, belonging to the responsible signers: 2d. upon the residue of the security, where that shall be insufficient, without prejudice, for the surplus, after the rules prescribed by articles 3 and 4 of the law of June 9th, 1819.

Art. 14. Penalties other than those imposed by this law, which

shall have been incurred for the crime of libelling through a journal or periodical publication, shall not be less than double the minimum imposed by the laws relative to repressing the offences of the press.

Art. 15. In case of a repetition of the offence by the same agent, and in the case provided for, by article 58 of penal code, besides the provisions of the 10th article of the law of June 9th, 1819, the tribunals may, according to the gravity of the offence, decree the suspension of the journal, for a period not exceeding two months, and not less than 10 days. During this time, the security shall remain in deposite *a la caisse des consignations*, and shall not alter its character.

Art. 16. In all proceedings relative to defamation, if the tribunals decree according to the provisions of article 64 of the charter, that the discussion shall take place with closed doors; the journals shall not, under the penalty of 2000 francs, publish the facts of the defamation, nor give extracts of the records, or any writings which contain them.

In all civil or criminal proceedings, where the doors are ordered to be closed, they shall not, under the same penalty, publish any thing but the passing of the sentence.

Art. 17. When, in pursuance of the last paragraph of the 23d article of the law of May 17th, 1819, the tribunals shall, on account of defamatory evidence foreign to the cause reserved, either a public prosecution or a civil action between parties, the journals shall not, under a similar penalty, publish the evidence, nor extracts from the records containing it.

Art. 18. The law of March 17th, 1822, concerning the police of journals and periodical publications, is repealed.

This law, having been discussed, deliberated, and adopted by the chamber of peers, and by that of the deputies, and sanctioned by us this day, shall be carried into effect as a law of the state.

Given in our Chateau de St. Cloud, the 18th day of July, in the year of grace 1828.

CHARLES.

By the king. Keeper of the Seals, Minister Secretary of State of the department of justice.

COMPTE PORTALIS.

RUSSIA AND TURKEY.

PROTOCOL RELATIVE TO THE AFFAIRS OF GREECE.

His Britannic Majesty having been requested by the Greeks to interpose his good offices, in order to obtain their reconciliation with the Ottoman Porte—having, in consequence, offered his mediation to that power, and being desirous of concerting the measures of his government upon this subject with his majesty the emperor of all the Russias; and his Imperial majesty, on the other hand, being equally animated by the desire of putting an end to the contest of which Greece and the Archipelago are the theatre, by an arrangement which shall be consistent with the principles of religion, justice, and humanity, the undersigned have agreed:

1. That the arrangement to be proposed to the Porte, if that Government should accept the proffered mediation, should have for its object to place the Greeks towards the Ottoman Porte in the relation hereafter mentioned.

Greece should be a dependency of that empire, and the Greeks should pay to the Porte an annual tribute, the amount of which should be permanently fixed by common consent. They should be exclusively governed by authorities, to be chosen and named by themselves, but in the nomination of which authorities the Porte should have a certain influence.

In this state, the Greeks should enjoy a complete liberty of conscience, entire freedom of commerce, and should, exclusively, conduct their own internal government.

In order to effect a complete separation between individuals of the two nations, and to prevent the collisions which must be the necessary consequences of a contest of such duration, the Greeks should purchase the property of the Turks, whether situated on the continent of Greece, or in the islands.

2. In case the principle of a mediation between the Turks and Greeks should have been admitted, in consequence of the steps taken with that view by his Britannic Majesty's Ambassador at Constantinople, his Imperial Majesty would exert, in every case, his influence to forward the object of that mediation. The mode in which, and the time at which, his Imperial Majesty should take part in the ulterior negotiations with the Ottoman Porte, which may be the consequence of that mediation, should be determined hereafter by the common consent of the governments of his Britannic Majesty and his Imperial Majesty.

3. If the mediation offered by his Britannic Majesty should not have been accepted by the Porte, and whatever may be the nature of the relations between his Imperial Majesty and the Turkish government, his Britannic Majesty and his Imperial Majesty will still consider the terms of the arrangement specified in No. 1. of this Protocol, as the basis of any reconciliation to be effected by their intervention, whether in concert or separately, between the Porte and the Greeks; and they will avail themselves of every favourable opportunity to exert their influence with both parties, in order to effect their reconciliation on the above-mentioned basis.

4. That his Britannic Majesty and his Imperial Majesty should reserve to themselves to adopt, hereafter, the measures necessary for the settlement of the details of the arrangement in question, as well as the limits of the territory and the names of the islands of the Archipelago to which it shall be applicable, and it shall be proposed to the Porte to comprise under the domination of Greece.

5. That, moreover, his Britannic Majesty and his Imperial Majesty will not seek, in this arrangement, any increase of territory, nor any exclusive influence, nor advantage in commerce for their subjects, which shall not be equally attainable by all other nations.

6. That his Britannic Majesty and his Imperial Majesty, being desirous that their Allies should become parties to the definitive arrangement of which this Protocol contains the outline, will communi-

cate this instrument, confidentially, to the Courts of Vienna, Paris, and Berlin, and will propose to them that they should, in concert with the Emperor of Russia, guaranty the treaty by which the reconciliation of the Turks and Greeks shall be effected, as his Britannic Majesty cannot guaranty such a treaty.

St. Petersburgh, April 4, (March 23,) 1826. WELLINGTON.
(Signed) NESSELRODE.
LIEVEN.

MANIFESTO OF THE OTTOMAN PORTE, JUSTIFICATORY OF ITS CONDUCT TOWARDS THE GREEKS.

The following document was delivered on the 9th and 10th of June, 1827, by the Reis Effendi to the Dragomans of the French, English, Russian, Austrian, and Prussian missions, in the order in which they repaired to the Porte.

To every man endowed with intelligence and penetration, it is clear and evident that conformably to the decrees of Divine Providence, the flourishing condition of this world is owing to the union of the human species in the social state; and that, as on account of their diversity of manners and character, this union could only be accomplished by the subjection of different nations, Almighty wisdom, in dividing the universe into different countries, has assigned to each a Sovereign, into whose hands the reins of absolute authority over the nations subject to his dominion are placed; and that it is the wise manner the Creator has established and regulated the order of the universe.

If, on the one hand, the consistency and duration of such a state of things principally depend on monarchs and sovereigns respectively abstaining from every kind of interference in each other's internal and private affairs, it is, on the other hand, not less evident that the essential object of treaties between empires is to guard against the infringement of a system of order so admirable, and thus to establish the security of people and kingdoms. In this way each independent power, besides the obligations which its treaties and foreign relations impose, possesses also institutions and relations which concern only itself and its internal state, and which are the offspring of its legislation and form of government. It belongs, then, to itself alone to judge of what befits itself, and to busy itself therewith exclusively. Moreover, it is matter of public notoriety, that all the affairs of the Sublime Ottoman Porte are founded on its sacred legislation, and that all its regulations, national and political, are strictly connected with the precepts of religion.

Now the Greeks, who form part of the nations inhabiting the countries conquered ages ago by the Ottoman arms, and who, from generation to generation, have been tributary subjects of the Sublime Porte, have, like the other nations that since the origin of Islamism remained faithfully in submission, always enjoyed perfect repose and tranquillity under the ægis of our legislation. It is notorious that these Greeks have been treated like Mussulmans in every respect, and as to every thing which regards their property, the maintenance of their personal security, and the defence of their honour; that they have been, particularly under the glorious reign of the present sovereign, loaded with benefits far exceeding those

which their ancestors enjoyed; but it is precisely this great degree of favour, this height of comfort and tranquillity, that has been the cause of the revolt, excited by malignant men, incapable of appreciating the value of such marks of benevolence. Yielding to the delusions of a heated imagination, they have dared to raise the standard of revolt, not only against their benefactor and legitimate sovereign, but also against all the mussulman people, by committing the most horrible excesses, sacrificing to their vengeance defenceless women and innocent children with unexampled atrocity.

As each power has its own particular penal code and political ordinances, the tenor whereof forms the basis for its acts of sovereignty, so the Sublime Porte, in every thing relating to the exercise of its sovereignty, rests exclusively upon its holy legislation, according to which, the rebels fall to be treated. But in inflicting necessary punishment on some with the sole view of amending them, the Porte has never refused to pardon those who implore its mercy, and to replace them as before, under the ægis of its protection. In the same manner, the Sublime Porte, always resolved to conform to the ordinances of its sacred law, notwithstanding the attention devoted to its domestic affairs, has never neglected to cultivate the relations of good understanding with friendly powers. The Sublime Porte has always been ready to comply with whatever treaties and the duties of friendship prescribe. Its most sincere prayers are offered up for that peace and general tranquillity which, with the aid of the Most High, will be re-established in the same manner as the Sublime Porte has always extended its conquests,—namely, by separating its faithful subjects from the refractory and malevolent, and by terminating the existing troubles by its own resources, without giving occasion to discussions with the powers who are its friends, or to any demands on their part.

All the efforts of the Sublime Porte have but one object, which is the desire of the establishment of general tranquillity, while foreign interference can only tend to a prolongation of the rebellion. The firm and constant intention of the Sublime Porte to attend to its principal interests which spring from its sacred law, merits their approbation and respect, while any foreign interference must be liable to blame and animadversion. Now, it is clear and evident, that by adhering to this principle, every thing might have been terminated long since, but for the ill-founded propositions which have been advanced concerning the conformity of religion, and the fatal influence which this state of things has, perhaps, exercised throughout the whole of Europe, and the injury to which maritime commerce may have been exposed. At the same time, the hopes of the malevolent have been constantly encouraged by the improper conduct of giving them assistance of every kind, which at any time ought to have been reproved, conformably to the law of nations. It is besides to be observed, that the relations and treaties subsisting between the Sublime Porte and the powers in friendship with it, have been entered into with the monarchs and ministers of those powers only; and considering the obligation of

every independent power to govern its subjects itself, the Sublime Porte has not failed to address to some friendly courts complaints respecting the succours afforded to the insurgents. The only answer made to these representations has been, to give to machinations tending to subvert laws and treaties, the signification of liberty; and to interpret proceedings contrary to existing engagements by the expression of neutrality, alleging the insufficiency of means for restraining the people.

Setting aside the want of reciprocal security, which must finally result from such a state of things to the subjects of the respective powers, the Sublime Porte cannot allow such transactions to pass silently. Accordingly, the Porte has never omitted to reply to the different pretensions advanced, by appealing to the justice and the equity of the powers who are its friends, by often reiterating complaints respecting the assistance afforded to the insurgents, and by giving the necessary answers in the course of communications with its friends. In fine, a mediation has at last been proposed. The fact, however, is, that an answer restricted to one single object can neither be changed by the process of time, nor by the innovation of expressions. The reply which the Sublime Porte gave at the beginning will always be the same—namely, that which it has reiterated in the face of the whole world, and which is in the last result its sentiment on the position of affairs.

Those who are informed of the circumstances, and the details of events, are not ignorant that at the commencement of the insurrection, some ministers of friendly courts, resident at the Sublime Porte, offered effective assistance in punishing the rebels. As, however, this offer related to an affair which came exclusively within the resort of the Sublime Porte, in pursuance of important considerations, both with regard to the present and future, the Porte confined itself to replying, that though such an offer had for its object to give aid to the Ottoman government, it would never permit foreign interference. What is more, when the ambassador of a friendly power, at the period of his journey to the congress of Verona, entered into explanations in conferences with the Ottoman minister on the proposed mediation, the Sublime Porte declared, in the most unequivocal manner, that such a proposition could not be listened to; reiterating, every time that the subject was resumed, the assurance that political, national, and religious considerations, rendered such refusal indispensable.

In yielding to this reasoning, and in admitting more than once that right was on the side of the Porte, the before mentioned ambassador, on his return from Verona to Constantinople, again clearly and officially declared in several conferences, by order of his court, and in the name of the other powers, that the Greek question was recognised as belonging to the internal affairs of the Sublime Porte; that as such it ought to be brought to a termination exclusively by the Porte itself; that no other power was to interfere in the sequel; and that if ever any one were to interfere, all the others would act according to the principles of the law of nations.

The agents of one of the great powers which has recently consolidated its relations of friendship and good understanding with the

Sublime Porte, also officially and explicitly declared, in their conferences with the Ottoman agents, that there should be no interference on this subject. That declaration having served as the basis for the result of those conferences, there cannot now be any question respecting this affair, which the Sublime Porte is entitled to consider as completely and radically adjusted. Nevertheless, the Porte still considers itself authorized here to add the following observations in support of its antecedent assertions:—

The measures which the Sublime Porte has adopted from the commencement, and which it still pursues against the Greek insurgents, ought not to make the war be considered a war of religion. Those measures do not extend to all the people in general; for they have for their sole object to repress the revolt, and to punish those subjects of the Porte, who, acting as true chiefs of brigands, have committed atrocities equally serious and reprehensible. The Sublime Porte never has refused pardon to those who submit. The gates of clemency and mercy have always been open. This the Sublime Porte has proved by facts, and still proves it, by granting protection to those who return to their duty.

The real cause of the continuance of this revolt is to be found in the different propositions made to the Sublime Porte. The injury arising from the war, too, has only been felt by the Porte; for it is known to all the world that European navigation has never been interrupted by this state of things, which, far from prejudicing European merchants, has afforded them considerable advantages.

Moreover, the troubles and the revolt exist only in one single country of the Ottoman empire, and among the partisans of malevolence; for, thanks be to God, the other provinces of this vast empire have no way suffered, and with all their inhabitants enjoy the most perfect repose. It is not easy, therefore, to understand how these troubles are to be communicated to other European countries. Suppose, however, that this were the case, as each power is paramount within itself, it ought to know such of its subjects on its own territory as manifest seditious dispositions, and it ought to punish them according to its own laws, and in pursuance of the duties inherent in its own sovereignty. It may be superfluous to add, that the Sublime Porte will never interfere in such transactions.

Considering the points above set forth with reference to justice and equity, every one must be easily convinced that there remains no ground for discussion upon these affairs. However, though it is fit that all ulterior interference should cease, an offer of a mediation has been in the last result made.

Now, in political language, it is understood by this expression, that if there arise differences on hostilities between two independent powers, a reconciliation may be brought about by the interference of a third friendly power. It is the same with respect to armistices and treaties of peace, which cannot be concluded but between recognised powers. But the Sublime Porte being engaged in punishing, on its own territory, and in conformity with its sacred law, such of its turbulent subjects as

have revolted, how can this case ever be made applicable to its situation; and must not the Ottoman government attribute to those who advance such propositions, views tending to give consequence to a troop of brigands? A Greek government is spoken of, which is to be recognised in case the Sublime Porte does not consent to some arrangement; and it has even been proposed to conclude a treaty with the rebels. Has not the Sublime Porte great reason to be struck with astonishment at hearing such language from friendly powers, for history presents no example of a conduct in all respects so opposed to the principles and duties of governments?

The Sublime Porte, therefore, can never listen to such propositions—to such propositions to which it will neither hear nor understand, so long as the country inhabited by the Greeks, forms part of the Ottoman dominions, and they are tributary subjects of the Porte, which never will renounce its rights. If, with the aid of the Almighty, the Sublime Porte resume full possession of that country, it will then always act as well for the present as for the future, in comformity with the ordinances which its holy law prescribes with respect to its subjects.

The Sublime Porte, then, finding that in respect to this affair, it is impossible for it to listen to any thing except to the precepts of its religion and the code of its legislation, considers itself justified in declaring, that from religious, political, administrative, and national considerations, it cannot give the slightest countenance to the propositions which have been framed and finally brought forward. Always prepared to comply with the duties imposed by the treaties concluded with the friendly powers who now render this categorical reply necessary, the Sublime Porte hereby declares, for the last time, that every thing which has been stated above entirely accords with the sovereign intentions of his highness, of his ministers, and of all the mussulman people.

In the hope that this faithful exposition will suffice to convince its equitable friends of the justice of its cause, the Sublime Porte embraces this opportunity for reiterating the assurance of its high consideration.

Health and peace to him who followeth the path of rectitude.

Note presented on the 16th of August by the Ambassadors of the three Allied Powers to the Reis Effendi, announcing the treaty of London.

To his Excellency the Reis Effendi.

The undersigned are charged by their respective governments to make to his Excellency the Reis Effendi the following declaration:

During six years, the great powers of Europe have been engaged in endeavours to induce the Sublime Porte to enter into a pacification with Greece; but these endeavours have been constantly unavailing, and thus a war of extermination has been prolonged between it and the Greeks, the results of which have been, on the one hand, calamities, the contemplation of which is dreadful for humanity; and on the other hand, severe and intolerable losses to the commerce of all nations, while at the same time it has not been possible to admit that the fate of Greece has been at all within the control of the Ottoman power.

The European Powers have

consequently redoubled the zeal and renewed the instances which they before made, to determine the Porte, with the aid of their mediation, to put an end to a struggle that it was essential to its own interests should be no longer kept up. The European powers have the more flattered themselves in the hope of arriving at so happy a conclusion, as the Greeks themselves have in the interval shown a desire to avail themselves of their mediation; but the Sublime Porte has hitherto refused to listen to counsels dictated by sentiments of benevolence and friendship. In this state of affairs, the courts of France, England, and Russia, have considered it their duty to define, by a special treaty, the line of conduct they are resolved to observe, in order to arrive at the object towards which the wishes and interests of all the Christian powers tend.

In execution of one of the clauses of the treaty, the undersigned have been charged to declare to the government of the Sublime Porte, that they now in a formal manner offer their mediation between it and the Greeks, to put an end to the war, and to regulate by a friendly negotiation the relations which are to exist between them in future.

That further, and to the end that the succes of this mediation may be facilitated, they propose to the government of the Sublime Porte an armistice for suspending all acts of hostility against the Greeks, to whom a similar proposition is this moment addressed. Finally, they expect that at the end of 15 days the Divan will clearly make known its determination.

The undersigned flatter themselves that it will be conformable to the wish of the Allied Courts; but it is their duty not to conceal from the Reis Effendi, that a new refusal, an evasive or insufficient answer, even a total silence on the part of his government, will place the Allied Courts under the necessity of recurring to such measures as they shall judge most efficacious for putting an end to a state of things, which is become incompatible even with the true interests of the Sublime Porte, with the security of commerce in general, and with the perfect tranquillity of Europe.

(Signed) C. Guilleminot.
S. Canning.
Ribeaupierre.

Aug. 16, 1827.

[For treaty of London, vide Am. Ann. Reg. for 1826–7, page 228.]

Note of the Sultan to his Viziers, Pashas of three tails, on communicating to them the note of the allied Ambassadors, announcing the Treaty of London.

Though from the beginning of the rebellion of the infidels, our Greek subjects, the European powers not only have declared their neutrality, but appeared even desirous to see the rebels and insurgents punished, it must be too surprising to reason, that after the lapse of some space of time, they begin to proceed differently; that is, in the opposite direction.

But of all the other powers, England administered to the rebels, in various modes and circumstances, mediately and immediately, different aids for their support in the cause of rebellion, without ever consenting to listen to the most just and reasonable complaints of my Sublime Porte, advanced solemnly at various times.

Besides this, it wished formerly to interpose its mediation in favour

of the rebels, and chiefly within a few months, in union with other powers. My royal majesty, by means of the Reis Effendi, gave always, at the fit time, suitable answers; and the last and definite one in the month of Zilchizzé, just passed.

But instead of our reasons having found their fit place and due force and figure, beyond all expectation, in these days, the ministers of the powers of England, France, and Russia, abiding in this, my capital, advanced, in the name of their respective courts, another new declaration, still more absurd, as well as most unjust, in which it is manifestly expressed that they imperiously require the independence and emancipation of the insurgents, our rebel subjects; and that they iniquitously determine, that my royal majesty and our faithful mussulmans shall abandon to the infidel Greeks, the property conquered for so many centuries by our ancestors, by arms, and by the shedding of so much blood; and that in case of opposition, they will take means to carry their purpose into execution, without obtaining my consent.

My royal majesty, therefore, having examined the affair profoundly and maturely, observing where their purpose tends, determine on what is to be done, and conforming itself to the doctrines of our holy religion, decides to prefer, if it should so happen, to subject by means of arms, its most powerful throne to general and entire ruin, (which God, as all powerful, avert,) than to consent to the absurd and iniquitous propositions of those powers as most fatal.

Hence, my royal majesty has deigned to warn you also, my viziers and agents, and invite you to express sincerely your opinion on this important affair; ordering at the same time that you must be more cautious and attentive than at any other time, to resist, and most prompt to meet every hostile attack that may occur on the part of these pagan powers; so that through the aid of the Most High, and the grace of our prophet, we may be able, as I trust, to defend our incontestible reasons against the injustice of others.

Hereafter, you shall have particular and detailed instructions on the part of my royal majesty.

Peace and health to all the faithful, and the opposite to the unfaithful.

Given the 2d of the month Safer, (12th Aug. old style,) 1827.

Proclamation of the Greek Government.

Burtzi, (the fort in the harbour of Napoli,) 21st of Aug. N. S. 1827.

The committee of government announces to all Greece—An important and decisive circumstance has now occurred, and the government considers it as its imperative duty to make it known.

The conventions of the 24th of June, (6th July,) concluded at London by the plenipotentiaries of the three powers, England, France, and Russia, and which have been almost every where known, do not allow us to doubt that those great powers have resolved to put an end to our struggle by their powerful and persevering intervention. The Greek nation had already sought this intervention through its representatives in the third na-

tional assembly, which met first at Epidaurus, and afterwards at Trægene; and the resolution of the great Christian powers proves that the Greeks did not hope in vain for their interference. Great, however, as their desire for the termination of the war may be, the Greeks must not forget that their future fate depends in a great measure on themselves—that is to say, on their actions, which, in this decisive moment, must be guided by prudence, and accompanied by active zeal.

The Greeks are especially in need of perfect union among themselves, to prove to the world that they are unjustly accused of being friends to confusion and anarchy. Their firm resolution to show themselves obedient to the laws, united in one object, the welfare of the country, will make them worthy of the good will of all the Christian powers, and chiefly contribute to the happy result of the powerful intervention.

According to art. 4, of the convention, the three powers will first of all require an armistice. The Greeks certainly cannot oppose what they themselves asked at the time of the assembly at Epidaurus; but they must also reflect, that it depends on themselves, that the armistice shall be honourable and advantageous to them. They must, therefore, redouble their energy, and show greater obedience and readiness than hitherto, that the enemy may not reap advantage at their expense. The committee of government, considering this, will do its utmost to support the expert energy and readiness of the Greeks.

Greeks! The reading of the treaty will convince you what important interests of the Greek nation are now discussed, and how necessary it is that the government should be in a situation calmly to devote a great share of its attention to the developement of those important interests.

The town of Napoli, though the late troubles have been appeased, is allowed to be the best place for attaining this great object. The agitation still remaining after such great disorders, and the fear of new possible disagreements, would engage almost the whole attention of the government at Napoli. It has, therefore, been resolved to remove it to Egina, where it will be able, as before, calmly to attend to the great interests of the nation, and be in a favourable situation to superintend and second the military operations, as they continue. But while the government removes to Egina, it will not forget the necessity of maintaining tranquillity at Napoli, nor neglect the rights and interests of that city, but take the necessary measures before its departure.

Greeks! the more the government feels the importance of present circumstances, the more does it increase its zeal, and activity, and attention, to show itself worthy of your confidence, but the more necessary is it also that you should be ready to support it. It therefore calls upon you to show sincere concord, perfect obedience, and to act as becomes men who are sensible of the blessings of liberty, and wish to enjoy them. All the representatives of the people who are not present in the senate, must consider that now, more than ever, the legislative body has need of their presence, and the aid of their various know-

ledge; and they must hasten to fulfil the sacred duties which Greece has imposed on them. Every Greek, who by counsel or actions can contribute to the support of the laws and the maintenance of order, is bound to aid the government of the country in this important task. But should any systematically turbulent individuals attempt at the present time to agitate the citizens, and thus prepare certain ruin for their country, they may be assured that they will not escape the punishment which their wickedness merits, and the government will employ with energy the measures which circumstances and the laws command.

The government has not only the hope, but the certainty that the mediating powers will also co-operate in enforcing the measures which it may take for the maintenance of internal order against such enemies of their country, and doubts not that the efforts of the Greeks, strengthened by their concord and supported by the benevolent sentiments of the powers, will be crowned with a happy issue.

The Committee of Government.
GEO. MAUROMICHALI.
JOHN M. MILAITI.
JANNULI MAKO.

The Secretary of State for the Interior and Police,
ANASTASIOS LONDO.

The Secretary for Foreign Affairs,
G. GALARIKI.

Protocol on the question of intervention between the Ministers of Russia, France, and England, finally agreed upon in London on the 21st December, 1826.

All the efforts made to induce the Porte to adopt the intervention of the three powers having been fruitless, the contracting powers will make use of the means which are in their power to require with energy of the Porte to attend at length to the proposals which have been made to it for the good of humanity, and for the security of the commerce of all nations. Though military operations by sea and by land, says the protocol, may perhaps become necessary to attain this object, every thing will be done in the spirit of the treaty of the 8th of July, and no one of the contracting powers shall have the right, under any pretext, to seek an aggrandizement of territory, or any other advantages whatever. The expenses caused by carrying the measures into execution, shall be subjected to a common estimation, and the nature of the indemnities shall be stipulated.

Protocol of the conference between the Admirals of the allied powers.

The admirals commanding the squadrons of the three powers which signed the treaty of London, having met before Navarino, for the purpose of concerting the means of effecting the object specified in the said treaty, viz. an armistice de facto between the Turks and the Greeks, have set forth in the present protocol the result of their conference.

Considering that after the provisional suspension of hostilities, to which Ibrahim Pacha consented in his conference of the 25th of September last, with the English and French admirals, acting likewise in the name of the Russian admiral, the said pacha did, the very next day, violate his engagement by causing his fleet to come out, with a view

to its proceeding to another point in the Morea.

Considering that since the return of that fleet to the Navarino, in consequence of a second requisition addressed to Ibrahim by Admiral Codrington, who had met him near Patras, the troops of this pacha have not ceased carrying on a species of warfare more destructive and exterminating than before, putting women and children to the sword, burning the habitations, tearing up trees by the roots, in order to complete the devastation of the country.

Considering that, with a view of putting a stop to the atrocities which exceed all that has hitherto taken place, the means of persuasion and conciliation, the representations made to the Turkish chiefs, and the advice given to Mehemet Ali and his son, have been treated as mockeries, whilst they might, with one word, have suspended the course of so many barbarities.

Considering that there only remains to the commanders of the allied squadrons the choice between three modes of fulfilling the intentions of their respective courts, namely.

1st. That continuing, throughout the whole of the winter, a blockade, difficult, expensive, and perhaps useless, since a storm may disperse the squadrons, and afford to Ibrahim the facility of conveying his destroying army to different points of the Morea and the islands.

2dly. The uniting the allied squadron in Navarino itself, and securing by this permanent presence, the inaction of the Ottoman fleets; but which mode alone leads to no termination, since the Porte persists in not changing its system.

3dly. The proceeding to take a position with the squadrons in Navarino, in order to renew to Ibrahim propositions which, entering into the spirit of the treaty, were evidently to the advantage of the Porte itself.

After having taken these three modes into consideration, we have unanimously agreed, that this third mode may, without effusion of blood, and without hostilities, but simply by the imposing presence of the squadrons, produce a determination leading to the third object.

We have in consequence adopted it, and set it forth in the present protocol. October 18, 1827.

Edward Codrington,
Vice admiral and commander in chief of his Britannic majesty's ships and vessels in the Mediterranean.

Louis, Count de Heiden,
Rear admiral of his imperial majesty the emperor of all the Russias.

Rear admiral H. de Rigny,
Commanding the squadron of his most Christian majesty.

GENERAL ORDERS.

Asia, 24th October, 1827,
in the port of Navarino.

Before the united squadrons remove from this theatre, on which they have gained so complete a victory, the vice admiral, commander-in-chief, is desirous of making known to the whole of the officers, seamen and marines, employed in them, the high sense which he has of their gallant and steady conduct on the 20th instant. He is persuaded that there is no instance of the fleet of any one country showing more complete union of spirit, and of action, than was exhibited by the squadrons of the allied powers together, in this bloody and destructive battle. He attributes to

the bright example set by his gallant colleagues, the rear-admirals, the able and cordial support which the ships of the several squadrons gave to each other during the heat and confusion of the battle. Such union of spirit, and of purpose; such coolness and bravery under fire, and such consequent precision in the use of their guns, insured a victory over the well prepared arrangements of greatly superior numbers, and the whole Turkish and Egyptian fleets have paid the penalty of their treacherous breach of faith.

The boasted Ibrahim Pacha promised not to quit Navarino, or oppose the allied fleet, and basely broke his word. The allied commanders promised to destroy the Turkish and Egyptian fleets, if a single gun was fired at either of their flags; and, with the assistance of the brave men whom they have had the satisfaction of commanding, they have performed their promise to the very letter. Out of a fleet composed of sixty* men of war, there remained only one frigate and fifteen smaller vessels in a state ever to be again put to sea. Such a victory cannot be gained without a great sacrifice of life; and the commander-in-chief has to deplore the loss of many of the best and bravest men which the fleet contained. The consolation is, that they died in the service of their country, and in the cause of suffering humanity.

The commander-in-chief returns his most cordial thanks to his noble colleagues, the two rear-admirals, for the able manner in which they directed the movements of their squadrons, and to the captains, commanders, officers, seamen and royal marines, who so faithfully obeyed their orders, and so bravely completed the destruction of their opponents.

EDWARD CODRINGTON,
Vice-Admiral.

Letter from the Admirals, to the Greek Government.

Port of Navarino, the
25th October, 1827.

Gentlemen—We learn, with lively feelings of indignation, that, while the ships of the allied powers have destroyed the Turkish fleet, which had refused submitting to an armistice *de facto*, the Greek cruisers continue to infest the seas; and that the prize court, the only tribunal recognised by the Greek code, seeks by legal forms to justify their excesses.

Your provisional government appear to think, that the chiefs of the allied squadrons are not agreed on the measures to be adopted for putting a stop to this system of lawless plunder. It deceives itself. We here declare to you, with one voice, that we will not suffer your seeking, under false pretexts, to enlarge the theatre of war; that is to say, the circle of piracies.

We will not suffer any expedition, any cruise, any blockade, to be made by the Greeks beyond the limits of from Volo to Lepanto, including Salamina, Egina, Hydra, Spezzia.

We will not suffer the Greeks to incite insurrection at Scio, or in Albania, thereby exposing the po-

---

* Mons. Bompard, a French officer who retired from the service of Ibrahim Pacha, by direction of admira de Rigny, reports the whole number to be eighty-one, including the smaller ones.

pulation to be massacred by the Turks, in retaliation.

We will consider as void, papers given to cruisers found beyond the prescribed limits; and ships of war of the allied powers will have orders to arrest them, wherever they will be found.

There remains for you no pretext. The armistice, by sea, exists on the part of the Turks, *de facto*. Their fleet exists no more. Take care of yours—for we will also destroy it, if need be, to put a stop to a system of robbery on the high seas, which would end in your exclusion from the law of nations.

As the present provisional government is as weak as it is immoral, we address these final and irrevocable resolutions to the legislative body.

With respect to the prize court which it has instituted, we declare it incompetent to judge any of our vessels without our concurrence.

We have the honour to be, gentlemen, your most obedient servants,

(Signed,)

Rear Admiral H. DE RIGNY,
commanding his most Christian majesty's squadron.

EDWARD CODRINGTON,
vice-admiral, of his Britannic majesty's ships.

The count L. DE HEIDEN,
Rear-admiral, of his imperial majesty the Emperor of all the Russias.

To the members of the permanent committee of the legislative body.

Hatti-Sheriff of the Ottoman Porte, to the Mussulmans of Europe and Asia, (*December*, 18, 1827.)

Whatever little understanding we may have, we know that if all the mussulmans naturally hate the infidels, the infidels on their part are the enemies of the mussulmans; that Russia, in particular, bears a particular hatred to Islamism, and that she is the principal enemy of the Sublime Porte.

For fifty or sixty years, anxious to put in execution her guilty projects against the Moslem nation and the Ottoman empire, she has always profited by the least pretence for declaring war; the disorders committed by the janissaries, who, thanks to God, are annihilated, favoured her projects; she has by degrees invaded our provinces; her arrogance and pretensions have only increased, and she has thought to find an easy means of fulfilling her ancient plan against the Sublime Porte, by exciting the Greeks, who are of the same religion. The latter, assembled in the name of religion, revolted simultaneously; they did the Moslems all possible evil, and concert with the Russians, who, on their side, attacked the Ottoman empire. This union had for its object the extermination of all the faithful, and the ruin of the Sublime Porte, which God preserve.

Thanks to the divine assistance, and the protection of our Holy Prophet, this perfidious plot was discovered a short time before it was put into execution. The measures taken in the capital stopped in the beginning the guilty progress, the fulfilment of which seemed so easy. The sword did justice on many rebels of the Morea, Negropont, Acarnania, Missolonghi, Athens, and other parts of the continent and the isles, who dared at first to oppose the Moslems; they killed several of them;

reduced the women and children to slavery; and under the title of "Government of Greece," carried on the most unheard of excesses.

For several years, both by sea and land, forces have been sent against them; but our land troops, discouraged by a want of pay, did not show the necessary zeal; our fleet also could not succeed on account of the former disorganization of the arsenal. The affair thus proceeded slowly; other Europeans, besides the Russians, furnished all sorts of assistance to the rebels, and became the peculiar cause of the prolongation of these disturbances. At length, led by the tricks and insinuations of Russia, England and France united with her; and, under the pretence that their commerce suffered from the long continuance of these disturbances, they made the Greeks renounce their duties of Rayas by all sorts of artifices.

It was proposed at different times to the Sublime Porte not to interfere in the affairs of Greece, by giving them a form of independent government; to separate them totally from the Moslems; to establish a chief, as in Wallachia and Moldavia; and to grant them their liberty on payment of an annual tribute. Such were the vain propositions made. As it is evident that their pretension to liberty tended to nothing less (Heaven preserve us from it) than to make all the countries of Europe and Asia, where the Greeks are mingled with the Moslems, fall into the hands of the infidels; to place insensibly the Rayas in the place of the Ottomans, and the Ottomans in the place of the Rayas; to convert, perhaps, our mosques into churches, and to make the bell again resound—in a word, to annihilate, easily and promptly, Islamism; neither reason, law, policy, nor religion, permitted such propositions to be accepted. The Porte gave frequently, either in writing or verbally, the necessary answers, with all the official forms, and according to the tenor of treaties. Although the object of the Franks has been perceived from the beginning, and, every thing announced, that in the end the sabre alone must answer the propositions, yet, not to disturb the repose of the Moslems, and on the other hand, to gain the time necessary for the preparation of war, the Porte endeavoured to temporize, as much as possible, with satisfactory answers and official conferences, of the subject of the dishonour and prejudice which the proposition of the three powers would cause to the empire and the nation.

Here we must observe, that although the demands made by the Russians at Akerman, on the subject of indemnification, and particularly with regard to the Servians, could be by no means admitted, although the circumstances being pressing, they were acquiesced in, in order to seize the opportunity of concluding a treaty for the safety of the Mahommedan nation; hitherto the greater part of them had been fulfilled; conferences were also commenced relative to the indemnified persons and Servia, and although these two affairs could not be amicably arranged, they were taken into consideration as acts of violence.

Russia did not, however, stop here. The military reforms adopted by the Porte gave her umbrage; she felt that resignation might make

that evil fall on her, which she had prepared for Islamism. Then she determined to give the Moslems no further respite. Russia, England, and France were to attack by force that liberty which was alone mentioned.

For a year past these three powers have together demanded Greek liberty through the medium of their ambassadors officially and openly, as a simple concession. The Porte could not yield according to the dictates of reason, policy, and religion; the Moslem nation has been insulted by the proposition; and it is impossible that it can ever consent to it. The Porte endeavoured to make them renounce their pretensions, but without effect; proud of their strength, they persisted obstinately and rigorously to procure the acceptance of their demand, and ended by sending fleets into the Mediterranean. They openly prevented the Ottoman and Egyptian squadrons, destined to punish the rebels, from attacking the isles. These two squadrons having entered the port of Navarino, awaited quietly the orders of the Porte, when the Russian, English, and French fleet entered unexpectedly as friends, into the same port, began a fire altogether, and every one knows the catastrophe which befell the imperial squadron.

The three powers having thus openly broken treaties, and declared war, the Porte had a good right to make reprisals, and to act very differently in the first instance with the ambassadors, the foreigners, and vessels which were here; but the ministers of those three courts having endeavoured to justify themselves by declaring that the commanders of the fleet had given rise to the battle, the Porte had regard to circumstances, still preserved silence, and made use of policy for a last effort; at the same time it invited the three ambassadors to abstain from interference in Greek affairs. Deaf to the voice of justice, these infidels did not cease to require that their demand should be admitted, such as it was, relative to Greek liberty. It may be said, even, that their remonstrances became more pressing. At length the hostile views of the Franks against Islamism became evident. Yet, for the sake of gaining time, at least till the summer, all possible caution was used in the conferences which took place some weeks ago. It was notified several times to the Ambassadors, that as soon as the Greeks sued for their pardon, their faults should be forgotten—that their lives, their properties, and their lands, should be granted to them—that they should enjoy the most perfect tranquillity and security—that they should be remitted the capitation and other taxes owing since the insurrection; that no further questions relative to other imposts should be entertained; that besides, to please the three powers, they should be exempt from tribute for a year; in short, that they should enjoy all the privileges of Rayas, but nothing beyond would be allowed.

In the course of the conferences, the Porte requested them to transmit to their courts these friendly declarations and sincere explanations, with the promise that the armistice demanded by themselves should be preserved till the receipt of the answer. This invitation only increased their pride and their pretensions. Finally, they de-

clared that they would consent to nothing, unless the privileges in question were granted to the Greeks inhabiting ancient Greece, that is, the Morea, Attica, the Isles of the Archipelago; and they announced that they would leave the capital altogether.

Affairs are now in this situation. If now, God preserve us from it, after seeing such conduct, and such condition, it were necessary to beat a retreat, and yield to the demand in question, that is, the independence of the Greeks, the contagion would soon reach the Greeks of Rumelia and Anatolia, without any possibility of stopping the evil; they would all pretend to the same independence, or renounce the duties of Rayas; and in the course of one or two years, triumphing over the generous Moslem nation, they would end one day, by dictating law to us, and (Heaven preserve us from it) the ruin of our religion and empire would be the result. While, thanks to God, the numerous provinces of Europe and Asia are filled with an immense population of Moslems, will the sacred book and law allow us to permit, through fear of war, our religion to be trampled under foot—to yield ourselves to the infidels, our country, our wives, our children, our possessions?

Although at first, the whole world were in the power of the infidels, yet, at the appearance of the true religion, God assisting the faithful, the Mussulmans our brothers, who have appeared and disappeared from the happy times of our great prophet till now, have never, in any war, from their sincere devotion and unshaking courage, considered the number of the infidels; but, united in heart for the defence of religion, how many thousands of times have they not sent to the thousands of infidels! How many states and provinces have they not conquered with the sabre in their hands! So often as we unite together like them, and we fight for the glory of God, the Most High will enlighten us with his inspirations, and our holy legislator will cover us with his tutelary shield; his absent companions will serve as guides, and no doubt, under their auspices, we shall gain splendid victories.

If the three powers, seeing us, as before, determined to reject their vain demands, admit our answers and explanations, and cease to interfere in Greek affairs, good; if, on the contrary, they should persist in wishing to force us to accept their demand, then, even if (according to the tradition that all the infidels are only one nation) they should all league against us, we shouldd recommend ourselves to God; we should place ourselves under the protection of our holy prophet; and, united for the defence of religion and the empire, all the Visirs, Ulemas, Ridjas, perhaps even all the Musselmans, would only form one body.

This war is not like the preceding one—a political war for provinces or frontiers—the object of the infidels being to destroy Islamism, and to trample on the Mohammedan nation. This war ought to be considered as a purely religious and national war. May all the faithful, rich or poor, great or small, know that combat is a duty for us. Let them not then think of any pay; far from that, let us sacrifice our property and our persons; let us fulfil with zeal the duties which the honour of Is-

lamism imposes upon us; let us unite our efforts—let us labour, body and soul, for the maintenance of religion till the day of judgment. The Moslems have no other means of obtaining their salvation in this world or the other.

We hope that the Most High will deign to confound and disperse every where the infidels—the enemies of our religion and our empire: and that, at all times, in all places, and on all occasions, he will grant to the faithful both victory and triumph. Our true situation being known to all Mussulmen, can we doubt that, however little faith and piety they may have, they will acknowledge their duty; that they will unite heart and soul for the maintenance of our religion and empire, as well for their salvation in this world as in the other;—that in time of need they will perform with valour and zeal the duties of war, and fulfil the requisitions of our holy law? Succour is sent from God!

Circular note of Count Nesselrode to the legation, respecting the relations with the Porte.

St. Petersburg, Nov. 12, 1827.

At the moment when the decisive battle which the allied squadrons were obliged to fight with the Turkish and Egyptian fleet in the Bay of Navarino excites general attention, I consider it as proper to acquaint you, sir, of the point of view in which the imperial cabinet considers that remarkable event. Undoubtedly, it would have been our first wish to see the treaty of London carried into effect without bloodshed, and on this account we lament our victory; but, on the other hand, the emperor has immediately perceived, that in the alternative of seeing the main object of that convention disappointed, by the annihilation of the Greeks on the continent, and the attack with which Ibrahim Pasha threatened the islands of the Archipelago, after the faithlessness of the latter had been proved by two violations, on the 13th and 21st of September, of the armistice solemnly concluded with him, the Admirals who had entered the Bay of Navarino with the most pacific intentions, but were then attacked, had merely fulfilled the instructions given them in accepting the combat, and that they have successfully served the common cause. The battle of Navarino places, in a clear light, the alliance, and the policy of the powers who signed the treaty of London; it gives reason to hope that the Porte, being at length made sensible of its error, will hasten to accept the terms, which certainly call for some sacrifices; but, at the same time, secure to it valuable compensation. The resolutions of the sultan must now decide those which our august monarch will take. At all events, whether the Porte may determine upon a conduct conformable to our wishes, or whether it may add to the disadvantages of its situation by hostile measures, his majesty the emperor is firmly resolved, in concert with England and France, to proceed in the execution of the treaty of the 6th of July; to effect with them the beneficent stipulations of that treaty; and, in every state of affairs, to observe the generous principle which forbids the contracting powers to form any views of an aggrandizement by conquest, or of any exclusive advantage.

(Signed) NESSELRODE.

Manifesto of Russia, against the Porte.

By the grace of God, we, Nicholas I. emperor and autocrat of all the Russias, &c. &c. The treaty of Bucharest, concluded in the year 1812 with the Ottoman Porte, after having been for sixteen years the subject of reiterated disputes, now no longer subsists, in spite of all of our exertions to maintain it, and to preserve it from all attacks. The Porte, not satisfied with having destroyed the basis of that treaty, now defies Russia, and prepares to wage against it a *bellum ad internacionem*; it summons its people in a mass to arms—accuses Russia of being its irreconcilable enemy, and tramples under foot the convention of Akerman, and with it that of all preceding treaties.

Lastly, the Porte does not hesitate to declare that it accepted the conditions of this peace only as a mask to conceal its intentions and its preparations for a new war. Scarcely is this remarkable confession made, when the rights of the Russian flag are violated—the vessels which it covers detained—and the cargoes made the prey of a rapacious and arbitrary government. Our subjects found themselves compelled to break their oath, or to leave without delay a hostile country. The Bosphorus is closed—our trade annihilated—our southern provinces, deprived of the only channel for the exportation of their produce, are threatened with incalculable injury. Nay more:—At the moment when the negotiations between Russia and Persia are nearly concluded, a sudden change on the part of the Persian government checks the course of them. It soon appears that the Ottoman Porte exerts itself to make Persia waver, by promising powerful aid; arming in haste the troops in the adjoining provinces, and preparing to support, by a threatening attack, this treacherous hostile language. This is the series of injuries of which Turkey has been guilty, from the conclusion of the treaty of Akerman up to this day, and this is unhappily the fruit of the sacrifices and the generous exertions by which Russia has incessantly endeavoured to maintain peace with a neighbouring nation.

But all patience has its limit. The honour of the Russian name—the dignity of the empire—the inviolability of its rights, and that of our national glory, have prescribed to us the bounds of it.

It is not till after having weighed in their fullest extent the duties imposed on us by imperative necessity, and inspired with the greatest confidence in the justice of our cause, that we have ordered our army to advance, under the divine protection, against an enemy who violates the most sacred obligations of the law of nations.

We are convinced that our faithful subjects will join with our prayers, the most ardent wishes for the success of our enterprise, and that they will implore the Almighty to lend his support to our brave soldiers, and to shed his divine blessing on our arms, which are destined to defend our liberty, religion, and our beloved country.

Given at St. Petersburg, the 14th (26th) April, in the year of our Lord, 1828, and the third of our reign.

(Signed,) NICHOLAS.

(Countersigned by the vice chancellor,)

COUNT NESSELRODE.

Declaration.

All the wishes of Russia to remain at peace with a neighbouring nation have proved vain, notwithstanding its great patience and the most costly sacrifices: she has been obliged to confide to arms the defence of her rights in the Levant, and energetically to impress on the Ottoman Porte respect for existing treaties. It will, however, develope the imperative and just motives which impose on it the melancholy necessity of such a resolution. Sixteen years have passed since the peace of Bucharest, and for the same period we have seen the Porte act contrary to the stipulations of the treaty,—evade its promises, or indefinitely delay the fulfilment of them. But too many proofs which the imperial cabinet will adduce, irrefragably prove this infatuated hostile tendency of the policy of the divan. On more than one occasion, particularly in 1821, the Porte assumed with respect to Russia a character of defiance and open hostility. For these three months past it has again assumed this character, by formal acts and measures which are known to all Europe.

On the same day that the ambassadors of the three powers, who by a convention free from all self interestedness, are united in a cause which is no other than that of religion and of suffering humanity, expressed at their departure from Constantinople an ardent wish that peace might be preserved; on the same day when they pointed out the easy means of attaining that object, and when the Porte in the same manner, most positively expressed its pacific disposition, on that same day it summoned all nations professing the Mahometan faith to arms against Russia, denouncing it as the implacable enemy of Islamism, accusing it of a design to overthrow the Ottoman empire, and while it announces its resolution to negotiate, for the sole purpose of gaining time for arming, but never intending to fulfil the essential articles of the treaty of Akerman, it declares at the same time, that it concluded that treaty with no other design than that of breaking it; the Porte knew well that in this manner it also broke all preceding treaties, the renewal of which was expressly stipulated by that of Akerman; but it had already taken its resolutions beforehand, and regulated all its steps accordingly.

Scarcely had the sultan spoken with the vassals of his crown, when the privileges of the Russian flag were already violated, the ships covered by it detained, their cargoes sequestrated, the commanders of the ships obliged to dispose of them at prices arbitrarily fixed, the amount of an incomplete and tardy payment reduced to one half, and the subjects of his majesty the emperor, compelled either to descend into the class of cayas, or to leave in a body the dominions of the Ottoman government. Meantime the trade of the Bosphorus is closed, the trade of the Black Sea hindered, the Russian towns, whose existence depend upon it, see destruction before their eyes, and the southern provinces of his majesty the emperor, lose the only channel for the exportation of their produce, and the only maritime connexion which can promote the exchange of their commodities, render their industry productive, and favour their manufactures and prosperity. Even the boundaries of Turkey did

not limit the expression of these hostile sentiments. At the same time that they were expressed at Constantinople, General Pascovich, after the conclusion of a glorious campaign, was negotiating a treaty of peace with Persia, the conditions of which were already accepted by the court of Teheran. On a sudden, lukewarmness succeded to the eagerness which had hitherto been shown for the conclusion of a convention which was already approved by both parties in all its particulars. These delays were followed by difficulties, and then by an evidently hostile tendency; and while on the one hand the conduct of the neighbouring pachas, who hastily armed, manifested this tendency, on the other hand authentic information, and positive confessions, revealed the secret of the promise of a diversion which was to oblige us to make new efforts.

Thus the Turkish government, in its proclamations, announced its intention of breaking its treaties with Russia, while it annihilated them by its actions; thus it announced war for a remote future time; when it had already begun it in fact against the subjects and the commerce of Russia. Where war was just extinguished, it tried to rekindle it. Russia will no longer dwell on the motives which entitle it not to bear such evidently hostile actions. If a state could renounce its dearest interests, sacrifice its honour, and give up the transactions which are the monuments of its glory and the pledges of its prosperity, it would be a traitor to itself, and by disregarding its rights become guilty of disregarding its duties.

Such rights and such duties appear in a stronger light where they follow the most evident moderation, and the most irrefragible proofs of pacific intentions. The sacrifices which Russia, ever since the memorable epoch which overthrew at the same time military despotism, and the spirit of revolution, has imposed on itself, with a view to secure to the world a durable peace; these sacrifices, equally voluntary and numerous, inspired by the most liberal policy, are known to the world; the history of late years testifies them; and even Turkey, though little disposed duly to appreciate them, and in nowise entitled to pretend to them, has felt their favourable effects; yet it has not ceased to overlook the advantages of its stipulations with the cabinet of St. Petersburg, of the fundamental treaties of Kainurdjee, Jassy, and Bucharest, which, while they place the existence of the Porte and the integrity of its frontiers, under the protection of the law of nations, must naturally have an influence on the duration of the empire.

Scarcely was the peace of 1812 signed, when it was thought that the difficult, but eventful, circumstances in which Russia then was, might be said with impunity to redouble the violations of its engagements. An amnesty was promised to the Servians; instead of that an invasion took place and a dreadful massacre. The privileges of Moldavia and Wallachia were guaranteed; but a system of plunder completed the ruin of those unhappy provinces. The incursions of the tribes which inhabit the left bank of the Kuban were to be prevented by the care of the Porte; but Turkey, not contented with raising pretensions to several fortresses, ab-

solutely necessary for the security of our Asiatic possessions—pretensions, the weakness of which it had itself recognised by the convention of Akerman, made them still weaker, by favouring on the coasts of the Black Sea, and even in our vicinity, the slave trade, pillage, and disorders of all kinds. Nay, more: then, as now, ships bearing the Russian flag were detained in the Bosphorus, their cargoes sequestrated, and the stipulations of the commercial treaty of 1783, openly violated. This took place at the very moment when the purest glory and victory in a sacred cause crowned the arms of his majesty the emperor Alexander, of immortal memory. Nothing hindered him from turning his arms against the Ottoman empire. But that monarch, a pacific conqueror, superior to every feeling of enmity, avoided even the justest occasion to punish the insults offered him, and would not again interrupt the peace restored to Europe by generous exertions and with noble intentions, immediately after it had been consolidated. His situation offered him immense advantages; he renounced them, to commence, in 1816, negotiations with the Turkish government, founded on the principle and the wish to obtain, by amicable arrangement, securities for peace, and a faithful adherence to existing treaties, as well as for the maintenance of reciprocal pacific relations; securities which the emperor's hand might have extorted from the Porte, which was not able to resist him. Such great moderation was not, however, duly appreciated. For five years together the divan was unmoved by the conciliatory overtures of the emperor Alexander, and endeavoured to tire out his patience, to dispute his rights, to call in question his good intentions, to defy the superiority of Russia, which saw itself bound solely by the wish of preserving the general peace, and to try its patience to the utmost.

And yet war with Turkey would not in any way have embarrassed the relations of Russia with its other allies. No convention, containing a guaranty, no positive obligation, connected the fate of the Ottoman empire with the conciliatory stipulations of 1814 and 1815, under the protection of which civilized and Christain Europe reposed after its long dissentions, and the governments found themselves united by the recollections of common glory and a happy coincidence in principles and views. After five years of well-meant endeavours, supported by the representations of Russia, and equally long evasions and delays on the part of the Porte—after several points of the negotiation relative to the execution of the treaty of Bucharest seemed to be already settled, a general insurrection in the Morea, and the hostile invasion of a chief of a party unfaithful to his duty, excited in the Turkish government and nation, all the emotions of blind hatred against the Christians to it, without distinction between the guilty and the innocent. Russia did not hesitate a moment to testify its disapprobation of the enterprise of prince Ypsilanti. As protector of the two principalities, it approved of the legal measures of defence and suppression adopted by the divan, at the same time insisting on the necessity of not confounding the innocent part of the population with the seditious, who were to be disarmed and punished. These coun-

cils were rejected, the representative of his imperial majesty was insulted in his own residence, the chief Greek clergy, with the patriarch at their head, were subjected to an infamous capital punishment amidst the solemnities of our holy religion. Many Christians, without distinction, were seized, plundered, and massacred without trial; the remainder fled.

The flame of insurrection, far from abating, spread meantime on every side. In vain did the Russian ambassador endeavour to render the Porte a last service. In vain did he show by his note of the 6th July, 1827, a way to safety and reconciliation. After he had protested against the crimes and ebullitions of rage, unparalleled in history, he found himself obliged to obey the commands of his sovereign, and to leave Constantinople. About this time it happened that the powers allied with Russia, whose interest equally required the maintenance of general peace, were eager to offer and employ their services for the purpose of dispelling the storm which threatened to burst over the infatuated Turkish government. Russia on its part delayed the remedy of its own just grievances, in the hope that it should be able to conciliate what it owed to itself, with the moderation that the situation of Europe, and its tranquillity, at that time more than ever endangered, seemed to require. Great as these sacrifices were, they were fruitless. All the efforts of the emperor's allies were successively baffled by the obstinacy of the Porte, which, perhaps, equally in error with respect to the motives of our conduct, and the extent of its own resources, persisted in the execution of a plan for the destruction of all the Christians subject to its power. The war with the Greeks was prosecuted with increased acrimony, in spite of the mediation, the object of which then was the pacification of the Greeks.

The situation of the divan, notwithstanding the exemplary fidelity of the Servians, became, from day to day, more hostile towards them, and the occupation of Moldavia and Wallachia was protracted, notwithstanding the solemn promises made to the representative of Great Britain, and even notwithstanding the manifest willingness of Russia, as soon as those promises were given, to restore its former relations with the Porte. So many hostile measures could not fail, in the end, to exhaust the patience of the emperor Alexander. In the month of October, 1825, he caused an energetic protest to be presented to the Ottoman ministry, and when a premature death snatched him away, from the love of his people, he had just made a declaration that he would regulate the relations with Turkey according to the rights and interests of his empire. A new reign began, and a further proof was furnished of that love of peace, which the former government had left as a fair inheritance. Scarcely had the emperor Nicholas ascended the throne, when he commenced negotiations with the Porte, to settle various differences which concerned only Russia, and on the 23d March, and 4th April, 1827, laid down, in common with his majesty the king of Great Britain, the basis of a mediation, which the general good preremp-

torily called for. The evident wish to avoid extreme measures guarded his conduct.

As his imperial majesty promised himself, from the union of the great courts, a more easy and speedy termination of the war which desolates the east, he renounced on the one hand, the employment of every partial influence, and banished every idea of exclusive measures in this important cause; on the other hand he endeavoured by direct negotiations with the divan, to remove a farther impediment to the reconciliation of the Turks and the Greeks. Under such auspices the conferences at Ackerman were opened. The result of them was the conclusion of an additional convention to the treaty of Bucharest, the terms of which bear the stamp of that deliberate moderation, which, subjecting every demand to the immutable principles of strict justice, calculates neither the advantages of situation, nor the superiority of strength, nor the facility of success. The sending of a permanent mission to Constantinople soon followed this convention, on which the Porte could not sufficiently congratulate itself, and the treaty of July 6th, 1827, soon confirmed in the face of the world, the disinterested principles proclaimed by the protocol of April 4.

While this convention duly recognised the rights and the wishes of an unhappy people, it was to conciliate them by an equitable combination with the integrity, the repose, and the true interests of the Ottoman empire. The most amicable means were tried to induce the Porte to accept this beneficent convention,—urgent entreaties called on it to put an end to the shedding of blood. Confidential overtures, which unfolded to it all the plan of the three courts, informed it at the same time that in case of refusal, the united fleets of these three courts would be obliged to put an end to a contest which was no longer compatible with the security of the seas, the necessities of commerce, and the civilization of the rest of Europe.

The Porte did not take the least notice of these hints. A commander of the Ottoman troops had scarcely concluded a provisional armistice, when he broke the word he had given, and led at length to the employment of force. The battle of Navarin ensued. This necessary result of evident breach of faith and open attacks, this battle itself gave Russia and her allies another opportunity to express to the divan its wishes for the maintenance of the general peace, and to urge it to consolidate this peace, to extend it to the whole of the Levant, and to establish it on the conditions which the Ottoman empire should add to the reciprocal guaranties attending them, and which, by reasonable concessions, would secure it the benefits of perfect security.

This is the system—these the acts—to which the Porte replied by its manifesto of the 20th December, and by measures, which are only so many breaches of the treaties with Russia; so many violations of its rights; so many violent attacks on its commercial prosperity; so many proofs of desire to bring upon it embarrassment and enemies.

Russia, now placed in a situation in which its honour and its interests will not suffer it any longer to remain, declares war against the

Ottoman Porte, not without regret, after having, however, for sixteen years neglected nothing to spare it the evils which will accompany it. The causes of this war sufficiently indicate the objects of it. Brought on by Turkey, it will impose upon it the burden of making good all the expenses caused by it, and the losses sustained by the subjects of his imperial majesty; undertaken for the purpose of enforcing the treaties which the Porte considers as no longer existing, it will aim at securing their observance and efficacy; induced by the imperative necessity of securing, for the future, inviolable liberty to the commerce of the Black Sea, and the navigation of the Bosphorus, it will be directed to this object, which is equally advantageous to all the European states.

While Russia has recourse to arms, it thinks that far from having indulged in hatred to the Ottoman power, or from having contemplated its overthrow, according to the accusation of the divan, it has given a convincing proof that if it had designed to combat it to the utmost, or to overturn it, it would have seized all the opportunities for war which its relations with the Porte have incessantly presented.

Russia, nevertheless, is very far from entertaining ambitious plans; enough of countries and nations already obey its laws; cares enough are already united, with the extent of its dominions.

Lastly, Russia, though at war with the Porte for reasons which are independent of the convention of the 6th July, has not departed, and will not depart from the stipulations of that act. It did not, and could not, condemn Russia to sacrifice its earlier important rights, to endure decided affronts, and to demand no indemnity for the most sensible injuries. But the duties which it imposes upon it, and the principles on which it is founded, will be fulfilled with sedulous fidelity and strictly observed. The allies will find Russia always ready to act in concert with them in the execution of the treaty of London, always zealous to co-operate in a work which is recommended to its care by religion, and all the feelings which do honour to humanity, always inclined to make use of its situation only for the speedy fulfilment of the stipulations of the treaty of the 6th of July, but not to make any change in its nature and effects.

The emperor will not lay down his arms till he has obtained the results stated in this declaration, and he expects them from the benedictions of Him to whom justice and a pure conscience have never yet appealed in vain.

Given at St. Petersburgh, the 14th (26) April, 1828.

Letter from the Grand Vizier to Count Nesselrode, dated December 11, 1827.

Our very illustrious and kind friend,—While we express our wishes for the preservation of your health and the continuance of your friendly sentiments, we remark that in consequence of the convention of Akerman, happily concluded between the Sublime Porte and the Russian court, by which the relations of reciprocal friendship are still greater confirmed, the illustrious Ribeaupierre,

who had arrived as extraordiary ambassador and minister plenipotentiary of the imperial court, has in the usual form delivered the letters of his majesty to the sultan, and his credentials to the grand vizier, and was received on this occasion with all the distinctions and honours due to the friendly and pacific intentions of both parties. Together with the fulfilment of these formalities, care was taken to direct, in a suitable manner, all affairs relative to the discussion of the treaties concluded, and to regulate various other matters. Meantime certain injurious proposals, contrary to the treaties, were pressed upon the Sublime Porte, with respect to which the Russian government has made known in repeated communications and conferences, its frank and sincere answers, founded on truth and justice. Lastly, it has repeatedly requested and urged the said minister to announce to the imperial court the motives of urgent necessity, and the real causes of excuse which guided it, and to wait for the equitable answer that would be returned; but that minister, contrary to all expectation, without regard to the right of governments and the duty of a representative, has refused to pay reasonable attention to the motives alleged by the Sublime Porte, and while he prepared to leave Constantinople, asked permission so to do, without a motive. Yet it is certain that as the coming to the residence of the representatives of friendly powers has no object, but the maintenance and execution of the existing treaties, it is acting contrary to the law of nations to desire to leave the place of residence, entering into such discussion, unconnected with the treaties.

On this consideration, the said minister was at length informed that if he were authorized by his court to leave Constantinople in this manner, he had to deliver to the Sublime Porte, only a note, containing the motive assigned him, and serving as a proof that by this formality the rights of both parties might be regarded; but he refused this also, so that the nature of his proposal was not free from doubt. The Porte then saw itself obliged to take a middle course between giving permission and refusing it. The ambassador has in this manner left Constantinople of himself, and the present friendly letter has been composed and sent to acquaint your excellency with this circumstance. When you shall learn on receipt of it, that the Sublime Porte has at all times no other desire or wish than to preserve peace and understanding, and that the event in question has been brought about entirely by the acts of the said minister, we hope that you will endeavour, on every occasion, to fulfil the duties of friendship.

Letter from the Vice-Chancellor Count Nesselrode, to the Grand Vizier, in reply.

Very illustrious grand vizier: I have received the letter which your excellency did me the honour to write to me on the 12th of December, 1827, and laid it before the emperor. Had not my august master thought fit to delay the answer to it, and to leave the Sublime Porte time to change its deplorable resolutions, I should have received orders to reply to your excellency on the very day that I received your letter. That the

Ottoman ministry was greatly mistaken, if it believed that the conduct of the Russian ambassador at Constantinople was not entirely approved by his imperial majesty.

The Sublime Porte could not be ignorant that M. de Ribeaupierre had not ceased to act on the affairs of Greece, according to the express commands of his sovereign, as it had before it the obligations which must guide, in this respect, all the measures of the three courts; and the Russian ambassador had officially declared that he was the organ of all the views and wishes of the emperor; as little could the Porte deceive itself with regard to the real motives of the proposals made to it for the pacification of Greece, as it was proved to it, that according to those tendering the peace, which was indispensable for the security of commerce, and the repose of Europe, would be established in those countries upon foundations which, far from affecting the integrity of the Ottoman empire, and merely altering the form of its old rights, would have afforded it great political advantages, means for promoting its internal prosperity, and pecuniary indemnities, for they are by no means burthensome concessions which it would make. After the Russian ambassador had fully developed these important considerations in all his conferences with the Turkish ministry, and as all his official and confidential notes he was not bound to allege them again in another official note, which was required of him without cause, and without object. He was besides acquainted with the resolutions and sentiments of the emperor, and the constant refusals of the Porte. He could not, therefore, agree to wait, in the present case, for instructions, which he must consider as wholly superfluous. In the situation in which the Porte itself placed him, he had no alternative left but to maintain the dignity of his court by leaving Constantinople, at the same time giving to the Sublime Porte a salutary hint, and leaving it time, by the removal of pernicious and passionate counsels, to reflect on the dangers that surrounded it. The emperor sees with grief that the Porte, instead of duly appreciating this truly friendly policy, replies to it by actions which make its treaties with Russia null and void—that it has violated the principal conditions, impeded the trade of the Black Sea, and at the same time, attacked his subjects; and, lastly, has announced to all Mussulmen its resolution to return evil for good, war for peace—and never to fulfil solemn conventions. After so many hostile measures combined, notwithstanding the representations and the endeavours of the courts allied and in amity with Russia, your excellency will not be surprised to learn that I am ordered to reply to your letter of the 12th of December by the annexed declaration, which will be immediately followed by the march of the Russian troops, which the emperor orders to enter the dominions of the sultan, to obtain satisfaction for his just complaints.

The more sincere the sorrow of my august master at the necessity of being obliged to have recourse to force, the more agreeable would it be to him to shorten its duration, and if plenipotentiaries from the sultan present themselves at the head-quarters of the commander-in-chief of the Russian army, they

will meet with the best reception: that is to say, if the Porte sends them with the sincere intention of renewing and restoring the conventions that subsisted between the two empires, to accede to the terms of the treaty agreed upon on the 6th July, 1827, between Russia, England and France, to provide for ever against the recurrence of such acts as those which have given the emperor just grounds for war, and to make good the losses caused by the measures of the Ottoman government, as well as the expenses of the war, which will be increased in proportion to the duration of the hostilities. The emperor will not, indeed, be able to stop the progress of the military operations during the negotiations to be opened for this purpose; but he feels convinced that, with his moderate views, they will speedily lead to the conclusion of a durable peace, which is the object of his most ardent wishes. I have the honour to be, &c. &c.

Signed. Count NESSELRODE.

St. Petersburgh, 14th (26th) of April, 1828.

ANSWER OF THE PORTE TO THE RUSSIAN MANIFESTO.

Men of sound judgment and upright minds know, and reflection united with experience clearly proves, that the principal means of preserving order in the world, and the repose of nations, consists in the good understanding between sovereigns, to whom the Supreme Master, in the plenitude of his mercy, has intrusted, as servants of God, with absolute and unlimited power, the reigns of government and the administration of the affairs of their subjects. It results from this principle, that the solid existence and maintenance of this order of things essentially depends upon an equal and reciprocal observation of the obligations established between sovereigns, which ought, therefore, to be respected in common, and scrupulously executed.

God, all powerful, be praised for this, that the Sublime Porte has, since the commencement of her political existence, observed those salutary principles more than any other power; and as the confidence of the Porte is founded on the precepts of the pure and sacred law, and of the religion which Mussulmans observe in peace as well as in war, and having never consulted any thing but the law, even in the slightest circumstances, she has never deviated from the maxims of equity and justice, and as is generally known, has never been placed in the situation of compromising her dignity, by infringing without any legitimate motive, treaties concluded with friendly powers.

It is equally well known to the whole world and incontestible, that with regard to the treaties, conventions, and stipulations, for peace and friendship, concluded under diplomatic forms with Russia, as a neighbouring power, the Porte has constantly exercised the greatest care in respecting the duties and rights of good neighbourhood, and in availing herself of all proper means for consolidating the bonds of friendship between the two nations.

The Court of Russia has, however, without any motive, disturbed the existing peace—has declared war, and invaded the territory of the Sublime Porte. Russia alleges that the Sublime Porte has caused this war, and has published a ma-

nifesto, in which she accuses the Porte of not having executed the conditions of the treaties of Bucharest and Akermann—of having punished and ruined the Servians, after having promised them pardon and amnesty—of having demanded fortresses in Asia, which were essentially necessary to Russia—of having, without regard to the two provinces of Wallachia and Moldavia, punished with death the most distinguished men of Greece—with having, while publicly declaring that Russia is a natural enemy of the Mussulman nation, endeavoured to provoke to vengeance, and direct against her, the bravery of all the Mussulman people—of having signed the treaty of Akermann with mental reservation, seized the cargoes of Russian ships, and instigated the Court of Persia to make war upon Russia; and, finally, it is made the subject of complaint, that the Pachas of the Porte were making warlike preparations. It is these and other charges of the same nature, that Russia has brought forward—a series of vain inculpations, destitute of all real foundation. It will be proper to make each the subject of a reply, founded on equity and justice, as well as on the real state of the facts.

Though Russia has published that these are the principal motives for the declaration of war, it is, however, generally known, that the war which terminated with the treaty of Bucharest was commenced by herself. In fact, before that war she had, on just and equitable grounds, dismissed the Waivodes of Wallachia and Moldavia, and Russia then pretended that the dismissals were contrary to treaties; and though the Sublime Port represented in an amicable manner things under the real aspect, Russia refused to listen to the reasons advanced; and as she continued to insist in her pretension, the Sublime Porte, with the sole view of preserving peace, and in maintaining the relations of friendship, did not hesitate to restore the dismissed Waivodes, without paying attention to the consequences of such a condescension, but with Russia declared herself fully satisfied, and under the ministry of Gahib Pacha, then Reis Effendi, officially notified, through the first interpreter, Counsellor Fonton, that the differences and difficulties existing on that account, between the two courts, was completely removed, she immediately and unexpectedly made an attack on the side of Chotieu and Bender. According to the regular course, the Sublime Porte demanded explanations from the Russian Ambassador, who tried to deceive, and formally disavowed what had taken place, adding that Russia was in a state of peace and friendship with the Sublime Porte; that if war had been intended, the ambassador must necessarily have known it; and that it could only be supposed that the Russian troops had some motive for advancing.

When the fact was finally proved, the Sublime Porte was under the necessity of resisting: but having a natural repugnance to war and the shedding of blood, she imposed on herself a sacrifice, and signed the treaty of Bucharest. Russia did not respect the treaty. Among other infractions, instead of evacuating the Asiatic frontier, according to the basis and the tenor of the treaty, she unjustly annulled that article, and regarded with indifference all the well founded remonstrances of the Sublime Porte. Finally, the Russian plenipotentiaries at Ackermann, having altered

and misinterpreted the pure sense of the treaty, and being no longer able to answer the convincing arguments of the Turkish plenipotentiaries, declared that a long space of time having elapsed since the article in question had been executed, the fortress claimed could not be given up. To such language the Turkish plenipotentiaries might well have replied, that if the non-execution in due time and place, of articles officially stipulated, warranted a total renunciation, the other articles, the more or less prompt fulfilment of which was demanded of the Sublime Porte, might also remain *in statu quo*. But their instructions did not authorize them to hold a language so foreign to the treaties, and so contrary to the law of nations. And their mission restricting them to the consolidation of the bonds of peace, they acceded. Nevertheless, the Russian declaration represents this demand of evacuation as having had no foundation in fact; and by pretending that we had already renounced it, evidently deviates from the path of truth.

It was agreed that the Russian tariff should be renewed every two years, and the other friendly powers have renewed their tariffs according to agreement. The tariff of Russia, however, has undergone no changes for 27 years. Since the expiration of the term, the renewal has oft times been proposed to the Russian Envoys and Charge d'Affaires at Constantinople, but the application was always made in vain; Russia refused to do justice to the well-founded demands of the Sublime Porte. The conduct of Russia, as well in words as in actions, in these two affairs of the evacuation and the tariff, showing so strikingly to what degree she respects treaties and principles of equity, how can she attribute to the Sublime Porte their violation? and how can such an imputation ever be admitted?

The Imperial amnesty promised to the Servians for the part they took in the war with Russia was fully granted after the peace; and as a consequence of the national clemency of his Serene Highness, particular concessions assured to them their welfare and their repose. The same nation afterwards disregarded the authority of the Sublime Porte, and dared to revolt separately and by itself. As the Servians are the subjects of the Sublime Porte, and as the Ottoman government is entitled to treat them according to their character, either by punishing or pardoning, the merited chastisement was inflicted, and happiness was restored to the country, without the sligtest injury to Russia, or infringement of the treaty of Bucharest. This affair of Servia, as well as other like points distinct from treaties, and even some events of smaller importance, which ought to be classed under natural accidents, always served as motives of complaints on the part of Russia, and also never renounced her embarrassing proceedings.—However, the Sublime Porte continued to regard her as a public friend, to pay attention to all affairs which could have possibly any analogy with the treaties concluded between the two states, and to observe scrupulously the rules of good understanding.

Some time before the Greek insurrection, the Russian Envoy, Baron Strogonoff, pretending that the Sublime Porte had not executed certain stipulations, insisted in a

demand for conferences relative to the treaty of Bucharest. Positive answers and conclusive coversations made known to him at different times, that as the articles had already been executed, or were being effectively and entirely carrying into execution by the Sublime Porte, while, on the contrary, Russia had yet to prove her amicable fidelity by fulfilling stipulations, the accomplishment of which had been deferred on her part, there was of course no occasion for the required conferences. However, as he persisted in exceeding the orders of his court, the opening of the conferences was at last conceded, but on the express condition of not introducing such objects as might extend the meaning of treaties, or change the tenor of conventions. In the course of the conferences the Russian Minister did not fail to raise more than one unreasonable discussion. However, the articles of the above-mentioned treaty were in the course of being examined, one by one, when the Greek insurrection broke out, and it is notorious that the obstacles occasioned by that event were calculated to retard the labour in question.

The fugitive Ypsilante then issued from Russia to invade publicly and unexpectedly Moldavia, at the head of a troop of rebels. He spread trouble and disorder through the two principalities. Animated by the chimerical desire of establishing a pretended government for Greece, he excited to revolt the whole of the Greek people, who are tributary subjects of the Ottoman empire from father to son, misled them by his accursed proclamations circulated every where, and instigated them to disown the authority of the Sublime Porte.

Every power being authorized to arrest and punish malefactors within its own territories, and to manage all internal affairs tending to the maintenance of good order, as soon as the flame of rebellion was lit up on every side, the Sublime Porte resorted to suitable measures, sent troops against the rebels to restore tranquillity, crush rebellion and purge the country, and laboured to restore the privileges of the provinces, being far from wishing to annihilate them by the destruction of the malefactors. It is evident, that no person whatever had any right to object to those and other measures which the Sublime Porte was obliged to adopt, and which in such a conjuncture could not be delayed. Nevertheless, the Russian Envoy invented divers objections, and originated several unreasonable differences, by discourses and proceedings little becoming the agent of a powerful friend, in the midst of affairs so important which occupied the attention of the Sublime Porte.

Some time after, Ypsilante, being routed, returned to Russia, and the Hospodar of Moldavia, Michael Sutzo, having also taken refuge there with all his partizans, the Sublime Porte demanded, in the terms of treaties, that these persons should be delivered up, or punished where they were. Though between allied powers, there can be no greater humanity than fidelity to treaties, Russia merely gave a vague answer, inconsistent with all diplomatic rules, saying that humanity opposed their delivery. She thus violated and annihilated existing treaties and rights, to protect, and perhaps pay particular attention to these individuals.

The remains of the rebels were

still in the two principalities, and the refugees were protected by Russia. The flame of the insurrection was increasing daily, when Russia demanded the evacuation of the two principalities by the Ottoman troops, the nomination of the Hospodars, and the modification of indispensable measures, in which circumstances permitted no change to be made. At the period when the principal persons among the Greeks, and the insane leaders of the insurrection, received the chastisement due to their proved crimes, very improper pretensions were put forward in their favour by Russia. Not the slightest wish was shown to yield an equitable ear to the just answers and amicable declarations which the Sublime Porte opposed to these pretensions, both verbally and by writing. Finally, the Russian envoy left Constantinople in a manner contrary to the duties of an ambassador.—The Grand Vizer immediately wrote to the Russian prime minister, and explained the whole truth to him. He represented in detail, that the system adopted and adhered to at all times by the Sublime Porte, consisted in the pure intention of literally executing the treaties concluded with friendly powers, more particularly with Russia, her friend and neighbour, and in constantly attending to the means of maintaining good understanding and securing tranquillity. Contrary to our hope, the answer which we received was remote from the path of justice and truth.

As soon as the two principalities were purged of the rebels which had defiled them, the Hospodars were appointed, the ancient privileges completely restored, and these two provinces re-established on their former footing. Lord Strangford, the English ambassador, on his return from the congress of Verona, having in the course of his conversations on the existing circumstances, first observed the moderate conduct of the Porte to be free from all objection, declared officially and publicly, at different times, and in full conference, that if the Sublime Porte would also consent to reduce the number of the beshline-ferat who were under the command of Bash Beshli Aga of the principalities, there would then remain no object of dispute or difference between the Sublime Porte and Russia, and the good harmony of the two courts would rest on solid basis. Putting faith in this notification, and wishing to remove every cause of discord; the Sublime Porte acquiesced in this proposition also; the number of the beshline-ferat was reduced. M. Minziacki, then the Russian chargé d'affairs, expressed the great satisfaction of his court at this reduction.

Shortly after the question of the rank of the Bash Beshli Aga began to be discussed. Russia intimated officially that she wished them to be changed, and superseded by individuals without rank. This favour was also granted, solely to please Russia. Immediately after M. Minziacki presented an official note in the name of his court, demanding that plenipotentiaries should be sent to the frontiers, to explain the treaty of Bucharest. The plenipotentiaries whom the Sublime Porte sent to the frontier, with the view of terminating the conferences, began for the same object with Baron Strogonoff, and in the hope that this time at least, all discussion being terminated between the two empires, the desired

peace would be obtained. Having been afterwards artfully drawn by Russia, as far as Ackermann, they began by laying down the principles of not departing from the circle of treaties, and not altering or changing the sense of the stipulations, in the same manner as had been previously agreed upon with the same envoy. The two parties agreed to this basis, and the conferences were opened. After some meetings, the Russian plenipotentiaries presented, contrary to the agreement, a detached document, under the title of "Ultimatum," demanding that the same should be accepted and approved, such as it was. In vain the Turkish negotiators endeavoured to obtain the abandonment of this proposition, by representing how contrary it was to diplomatic forms, and to the basis of the conferences. "Our mission," replied the Russians, "has for its sole object to procure the acceptance of this document." And here the conferences closed.

Finally, as the Russian plenipotentiaries had, in the course of the conference, admitted the Greek question to be an internal affair belonging to the Sublime Porte, and as they had officially declared in the name of their court, that Russia would not mix herself in any way therewith, and that they would completely tranquillise the Sublime Porte on this point, seeing that this declaration was entered in the protocols kept according to custom by both parties, seeing moreover, that according to the reasons, legislative, political, and national, which prevent the Sublime Porte from admitting any foreign interferences on the Greek question, the promise of Russia not to meddle with it was a sincere mark of regard towards the Sublime Porte; this declaration, therefore, appeared to be a pledge of peace and friendship between the two empires for the present and the future, the closing of the conferences was implicitly based on the said declaration, and the treaty was really concluded without much attention to each particular article.

M. de Ribeaupierre, envoy from Russia, on arriving at Constantinople, received all the accustomed honour—all the marks of respect due to his person. The greater part of the articles of the above treaty had already been carried into execution, and the means of equally executing the others were under consideration, when the Greek affair, the discussions concerning which had continued so long, and resounded in all ears, came again into question; an affair on which the Sublime Porte had already a thousand times given categorical and official replies; an affair, moreover, in which Russia had formally promised not to interfere. A treaty then appeared, unjustly concluded against the Sublime Porte, and without its knowledge. Notwithstanding the presence of M. de Ribeaupierre, who when at Ackermann, as second plenipotentiary of his court, was one of those who officially announced that Russia would not interfere with the Greek question—notwithstanding the existence of the protocols, the declaration was openly denied. This new proposition, so violent that it was impossible for the Sublime Porte to accept it, either consistently with law or policy, was put forward, and a hearty refusal given to the request to lend a favourable ear to the

legal excuses and real obstacles which the Sublime Porte had, with good faith, at different times alleged on this subject.

Finally, the fatal event at Navarin—an event unheard of and unexampled in the history of nations—still made no change in the amicable relations of the Sublime Porte; but, not content with the concessions which the Sublime Porte might, from regard solely to the three powers, and without any farther addition, grant to the country still in rebellion, the Russian envoy departed from Constantinople without motive or reason.

Were the Sublime Porte to detail her numerous complaints, and insist upon her just rights, each of the points above stated would become in itself a special declaration. But the circumstances which preceded and followed the Greek insurrection, having clearly demonstrated what was its origin and the natural progress of events having only tended to confirm the opinion previously formed, the Sublime Porte, without wishing to impute the origin of the revolution to any quarter, continued to testify towards Russia all the respect and all the friendship which treaties and vicinage required; she endeavoured to maintain the most favourable relations; but of this no account was taken. Besides, inasmuch as the Sublime Porte, from the desire of preserving peace, displayed a mildness and condescension, in so much did Russia oppose to her reserve and hostile proceedings. It was natural that such a conduct should excite in the minds of Mussulmans the idea of innate enmity, and awaken among them all the ardour of Islamism.

Besides that nothing can prove the reproach which Russia addresses to us of having concluded the treaty of Ackermann with a mental reservation—the proclamation which the Sublime Porte, for certain reasons, circulated in its states, being an internal transaction, of which the Sublime Porte alone knows the motive, it is evident that the language held by a government to its own subjects cannot be a ground for another government picking a quarrel with it.

Nevertheless, immediately after the departure of the envoy, the Grand Vizier, in an official letter to the Prime Minister of Russia, clearly expressed that, faithful to the good intentions so long manifested, the Sublime Porte was always desirous of maintaining peace. Now, if Russia had equally desired, as she pretended in her declaration, sincerely to maintain peace between the two states, as all discussions between powers ought to be based on the text of treaties, or on official documents, the official letter of the Grand Vizier well deserved to be accepted and taken into consideration according to diplomatic practice, and in the hypothesis of this proclamation having given some suspicion to Russia, the course of communication not being obstructed between the two courts, Russia might have applied amicably to the Sublime Porte to ascertain the truth, and to clear up her doubts. Far from following this course, perhaps even without taking into consideration the correct information transmitted on the subject by the representatives of other friendly powers who were still here, she hastened to class that proclamation among the number of her com-

plaints and pretexts. Then is not the party which has declared war evidently that which must have concluded the treaty of Ackermann with a mental reservation? The facts carry their proof along with them, and relieve us from the necessity of further demonstration.

We come now to the seizure of the cargoes of Russian vessels. Though the corn which the Ottoman provinces furnished is, thanks be to God, sufficient for the consumption of the capital, nevertheless the blockade, established contrary to peace and good understanding for the purpose of preventing the Mussulman troops in the Morea from receiving provisions, we had determined to transport from certain parts of Romelia to that peninsula the grain destined to the capital, it became necessary to supply the deficit thereby created here in a way heretofore practised, and which equally affected the merchants of other friendly nations. The corn of the Russian merchants was purchased at the current market price for the subsistence of Constantinople, and the amount paid to the owners. This measure, arising solely from the blockade, cannot be made a just cause of complaint against the Sublime Porte. Besides, the immense losses which the Sublime Porte has experienced in consequence of the Greek revolution, as well as the damage caused at Navarin, give it a full right to complain, while others had no right to speak of their losses, their commerce enjoying greater advantages than before.

As to the reproach of having excited Persia against Russia, it is a pure calumny. Never did the Sublime Porte think it consistent with its dignity to instigate one nation against another. Far from exciting Persia, the Sublime Porte observed the strictest neutrality, neither mixing itself up with the origin or the issue of the war or the peace between the two empires. If some neighbouring pachas made preparations, they were only measures of precaution usual to every state bordering upon two other nations at war. It thus clearly appears that the endeavour of Russia to ascribe these preparations to hostile intentions towards herself, has as little foundation as the rest.

Russia has constantly made use of the protection, and of the interests which she felt or possessed, in favour of the unfortunate inhabitants of Wallachia and Moldavia, to excite all sorts of dissentions against the Sublime Porte. Would any one wish to convince himself that her true object was not to protect them, but to pick a quarrel with us, let him consider the evils which have been inflicted upon them by the invasion of Ypsilante, and by the unjust inroad of the Russian army in contempt of treaties. Such are the inhabitants whom Russia pretends to protect: It is to Russia to whom they owe their ruin. It was very easy for the Sublime Porte to cause her victorious troops to enter the two principalities after she knew that Russia was making preparations to invade them; but never having at any time permitted, contrary to the divine law, the least vexation towards her subjects, and being anxious to secure the welfare and tranquillity of the provinces under the shade of the imperial throne, she

abstained in order to spare the misfortunes of the inhabitants.

In a word, the Sublime Porte makes the present declaration that none may have any thing to say against her; that it may be weighed in the balance of equity and truth, how much injustice there was on the part of Russia in resisting the important demands and grave complaints of the Sublime Porte, which are as clear as the sun; in inventing all kinds of objections; in interpreting in a thousand different ways the system followed by the Ottoman government; and in declaring war without motive or necessity; in fine, that, exempt from every kind of regret respecting the means of resistance which the Mussulman nation will employ, relying upon the divine assistance, and acting in conformity with the holy law, she may be able to clear her conscience of an event which will occasion now and henceforward trouble to so many beings, and perhaps may shake the tranquillity of the whole world.

Declaration addressed by the government of Greece to the powers signing the treaty of July 6th, 1827, in relation to the boundaries of Greece.

Egina, Dec. 30th, 1827.

The treaty of July 6th, concluded between France, Great Britain and Russia, with the view of putting an end to the effusion of blood in the east, does not fix the frontier line between the belligerent parties. The serious difficulties presented by this question in more than one aspect, without doubt occasioned this omission. Hoping to be able to remove a portion of them, the permanent commission of the national assembly has the honour to submit some views on that subject, which it believes to be better founded as they result from actual observation and local knowledge.

In considering the question of the frontiers of Greece, one is struck with the necessity of not limiting them too much. A state, rising on the border of a vast empire, its natural enemy, without sufficient territory presents an easy prey, creating by its very weakness the disposition to invade it on the first opportunity. If, in the desire of bringing about a peace, this view of the subject is disregarded, the seeds of speedy destruction will be sown in the work itself.

This inconvenience becomes still more serious, if the new state at its birth is burdened with a public debt and a yearly tribute, without sufficient extent of territory to furnish the necessary revenues to discharge these obligations. This will at the same time call into existence and pronounce a decree of death upon the state, by placing it in a situation to fail in its sacred engagements—engagements to which it owes its creation and territory. But since the allied powers have thought it worthy of their solicitude to undertake the pacification of Greece, reposing upon their good will, we confide these questions wholly to their wisdom, trusting that the work will be as solid as worthy of their high reputation, and confine ourselves to lay before them same observations upon the localities. It is certain, that the best frontiers will be those, which form the shortest possible line of demarkation and which may be at

the same time easily guarded. The more obstacles that they offer to an invasion on either part, the more certain and durable will be the peace.

The line of mountains in the south of Thessaly and those of Phocia or of Bœotia do not present these advantages. The famous passes of Thermopylæ, since the recession of the waters of the gulf bounding it, only form an ordinary passage. Besides, they may be passed on the flank in many places, and especially by the very large road of Assaniana, not distant from Neopatra. The expedition of Brennus, who with the Gauls, passed and repassed these mountains at pleasure, proves this; and all the conquerers who have come among us, as the Romans, the crusaders, and the Turks, have not met with any serious resistance.

The frontiers which are comtemplated on the west of Greece upon the same line in Acarnaia or Lower Epirus do not afford any greater security. In the Peloponnesian war, the belligerent armies traversed them without difficulty. The Romans, in the Macedonian, and afterwards in the Etolian war, did the same; and we also find that the Albanians did in the middle ages. The events in the present war but too well prove the same facts.

Another inconvenience not less serious is, that a line of demarkation cannot be traced in this part of Greece, without many windings, which considerably elongate the frontier line. A strong line is vainly sought in the courses of rivers, unless they are bordered by mountains. Greece is a narrow strip of land projecting between two seas, and the rivers running from its mountains to one or the other of these seas, do not traverse a sufficient tract to enlarge them before they discharge themselves at their mouths. They are consequently too small to serve for frontier lines.

The true line of demarkation which nature seems to have formed expressly to separate for ever the north of Greece from the adjoining countries, and which has constantly triumphed over political and military events in all ages, is traced on one side by the northern mountains of Thessaly, and on the other by the course of the river Aous or Vojussa, and the mountains that crown it. The first part of this line begins in the environs of Hatrin, to pass by Savia, at Grenuera, following, at the same time, the course of the Haleacmon, at the highest elevation of Pindus; the other would commence at the district of Canitza, to descend to Vehemera. This second part is called by some geographers the defiles of Pyrrhus. It was these defiles that the Roman general Flaminius, after having reduced Macedonia, vainly attempted to pass, and after long and useless efforts, was forced to write to Rome, that the inhabitants of Upper Epirus were a savage and barbarous people, who little deserved the protection of the senate; and it was necessary to draw a military cordon on their frontiers, to check their invasions on neighbouring countries. We have just said that it is nature herself who seems to have separated, by these frontiers, Greece from the neighbouring countries. In fact, Lower Epirus, or Epirus, consisting of Thesprotia, Molossida, is still go-

verned by the population of that nation, and the towns of Prevesa, Asta, Janina, Paramythea, recal the acts of Nicopopolus, Angos, Amphilocheum, Battenotum, &c. However great the tendency of the Greeks in their prosperity to extend their colonies, which they pushed into Italy, Gibraltar, and the coasts of the Euxine, they were never able to establish themselves beyond the banks of the Atus or Vojussa. On the other hand, numerous eruptions made in the middle ages, by various conquering nations, and especially by the slaves, and by the Albanians in Epirus, did not succeed in destroying the Greek race, its language, and that spirit which is natural to it; that race, on the contrary, remained essentially predominating, so powerfully did its local connexions prevail over the effects of time and the force of events. As much may be said for the natural frontier, which separates Macedonia from Thessaly. The first of those provinces is peopled, in a great measure, by Mirous or Bulgarians, who have been established there for many centuries, while we do not find those heterogeneous elements in Thessaly, which has been enabled, from its geographical position, to preserve itself more entire through successive ages. It will not be useless to remark, *en passant*, that even the Turks, according to their national prejudices, considered all the countries on this side of the Nardar, as less Mussulman, and attached less value to them, than the other parts or states which form the Ottoman empire. In fact the Albanians, and other Mahommedans there established, present a strange difference in their language and ideas. It appears clearly that this line of frontier, or rather this separation, formed, in ancient times, the true limit of Greece, properly so called, as it forms at the present day that of New Greece. It avoids, at the same time, by its regular direction, the zigzags, if they sought not to follow it, and which, among other inconveniences, would have that of too greatly extending its limits. It may be objected, that it embraces some small points where the population has remained the tranquil spectators of events; but there are other localities, such as Naourta, the Peninsulas, Capaddra, Modena, Choria, &c. which have taken an active part in the war, and are not comprehended in it. The necessity of this *arrondissement* justifies, and even demands, these beneficial measures. The plea of necessity would find even here its application in the interest of the belligerent parties, and the powers who would be their guarantees; for unhappy facilities for violating the frontiers of the neighbouring states would drag, sooner or later, one of the parties into a war, in which the guarantees would be compelled to offer a new intervention, which could not be other than onerous to them in more than one respect. The commission demands nothing further, but proposes that which it believes to be founded on justice, and for the interests of the general safety. The tribute which the three allied powers have in their wisdom stipulated shall be paid, and which the Greeks have consented to pay, would only be a species of indemnity for the concessions which the Porte would make to them.

CONSTITUTIONAL CHARTER OF GREECE.

[*Adopted at Napoli, May*, 1827.]

In the name of the Holy and Indivisible Trinity.

The Greek nation, met for a third time in a national assembly, proclaims by its legitimate representatives, before God and man, its political existence and independence, and establishes the following fundamental principles to serve as a constitution:

CHAP. 1.—*Of Religion.*

Art. 1. In Greece every man shall profess freely his own religion, and obtain for his worship the same protection; but the orthodox religion of the Greek church is the religion of the state.

CHAP. 2.—*Of the State.*

2. Greece is one and indivisible.

3. It consists of *eparchates*, (provinces.)

4. All those provinces shall be esteemed eparchates of Greece which have taken, or shall take up arms against the despotic government of the Turks.

CHAP. 3.—*Of the Public Law of the Hellenians.*

5. The sovereign power resides in the nation; all power emanates from it, and only exists for it.

6. Hellenians are—1. All the native Greeks who believe in Jesus Christ. 2. Those who, oppressed by the Ottoman yoke, and, believing in Jesus Christ, are come, or shall come, to Greece, to take up arms, or dwell there. 3. Those who are born abroad, of a Greek father, or those native and others, and their descendants, naturalized before the publication of the present constitution, and born abroad, who shall come to Greece and take the oaths. 4. Foreigners who come to Greece and are there naturalized.

7. All Hellenians are equal in the eye of the law.

8. Every Hellenian shall be eligible, according to his personal talents, to public employments, both political and military.

9. Foreigners who come to inhabit Greece for a time, or for ever, are equal to the Hellenians before the civil law.

10. The taxes shall be levied from the inhabitants of the state, with justice, and in proportion to the fortunes of individuals; but no tax can be levied without a law being promulgated, and no law for levying taxes can be published for more than one year.

11. The law guaranties the personal liberty of every individual; no person can be arrested or imprisoned, but according to law.

The life, the honour, and the property of all those who are within the bounds of the state, are under the protection of the laws.

13. No order to seek for, or arrest persons, or property, can be given, unless it be founded on sufficient proof, and unless the place of search be pointed out, as well as the persons and things which are to be arrested.

14. In all judicial proceedings, every one has a right to demand the cause and the nature of the accusation made against him; to reply to his accusers, and their witnesses, and to bring forward witnesses in his defence; to have counsel, and to require a speedy decision from the court.

15. No person shall be esteemed guilty till he is condemned.

16. No person is to be tried twice for the same offence, nor condemned and deprived of his property without a previous trial. A definitive judgment cannot be appealed from.

17. The government may require private property to be given up for the public good, when sufficiently demonstrated, but previous indemnity must be granted.

18. Torture and confiscation are abolished.

19. The law cannot be made retroactive.

20. The Hellenians have a right to form establishments of every description, for science, for philanthropy, for industry and arts, and to select professors for their instruction.

21. In Greece it is not permitted to buy and sell a man; every slave of every nation and of every religion, as soon as he places his foot on the Greek soil, his master can no longer pursue him.

22. No person can decline submitting to his competent judge, nor be prevented from having recourse to him.

23. No person can be detained in prison more than 24 hours without the cause of his arrest being made known to him; nor more than three days without the proceedings against him beginning.

24. The clergy, according to the rules of the Greek church, can take no part in any public employment: the presbyters (minor priests) alone have the right of election.

25. Every one may write to the senate, and state his opinion on any public object.

26. The Hellenians have the right to write and publish, freely, by the press, or otherwise, their thoughts and opinions, without being subjected to any censorship, but always within the following limits:

1. Not to attack the Christian religion.

2. Not to violate decency.

3. To avoid insults and personal calumny.

27. The Greek government bestows no title of nobility, and no Hellenian can, without the consent of his own government, receive a service, gift, recompense, employment, or title of any description whatever, from any monarch, prince, or foreign state.

28. The epithets of illustrious, excellency, &c. shall not be given to any Hellenian within the limits of the state; only the governor shall bear the name of excellency, which shall cease with his functions.

29. No native, nor person naturalized and inhabiting Greece, and enjoying the rights of a citizen, can have recourse to foreign protection; in case he does, he ceases to be a citzen of Greece.

Chap. 4.—*Of Naturalization.*

30. The government shall naturalize foreigners, who bring certificates from Greek functionaries, attesting: 1. That they have passed three whole years in the country; 2. That during this time they have not been visited by any infamous punishment; 3. That they have acquired within the state landed property of the value of at least 100 dollars.

31. Great actions and notorious services, during the need of the country, are sufficient claims to naturalization.

32. The government may also naturalize those foreigners who

founded in Greece remarkable establishments, tending to the progress of the sciences, of arts, of commerce, and of industry. It may also abridge the time necessary for naturalization.

33. Those foreigners who have served, or who shall serve in a military capacity in Greece two years, and who have the necessary certificates of service, are by that made Hellenic citizens.

34. A man when naturalized immediately enjoys all the rights of a citizen, but the right of representation shall be regulated by the law of elections which the senate will publish.

35. Every person naturalized shall take the Greek oath.

CHAP. 5.—*Of the Organization of the Government.*

36. The sovereign power of the nation is divided into three powers —the legislative, the executive, and the judicial.

37. The legislative power makes laws.

38. The executive power sanctions them, agreeably to article 74 and carries them into execution.

39. The judicial power applies them.

40. The legislative power belongs in particular to the body of representatives of the people, who will take the name of senate, (*boule.*)

41. The executive power belongs to one alone, who will take the name of governor, and who has under his orders different secretaries.

42. The judicial power belongs to the tribunals.

CHAP.—*Of the Senate.*

43. The senate is composed of the representatives of the provinces of Greece.

44. Each of the representatives, upon taking his seat in the senate, shall take the oath required by law.

45. The representatives shall be elected by the people, according to the law of election.

46. The senate, as a body, is declared inviolable.

47. The senate shall have a president, a vice-president, 1st and 2d secretaries, with the necessary vice-secretaries.

48. The president and the vice-president shall be elected by the senate, a plurality of votes governing. The president may be elected from persons not belonging to the Senate, but the vice-president must be taken from among their own body.

49. The two first secretaries shall be elected from without the body, by a plurality of votes of the members.

50 The president shall preside in the daily sittings; he shall fix the day and hour of opening; he shall prorogue the senate, and in cases of necessity, shall convoke them in extraordinary sessions.

51. Upon the request of twenty senators present, the president shall open the session.

52. When the president is absent, the vice-president shall perform his duties, and in case of the absence of both, the eldest representative shall fill provisionally the place of president.

53. In case of either of them dying or becoming infirm, the other shall fill his place, according to article 48.

54. The term of office of the president and vice-president shall be one year.

55. Two thirds of the whole

number of the senators shall compose a quorum.

56. No member shall leave the senate without the written and formal permission of the senate.

57. The senators are elected for three years, and the body shall be renewed by annual elections of one third each year. The 1st and 2d years the vacancies shall be determined by lot.

58. No member shall be elected twice in succession.

59. The senate shall commence its sessions the 1st of October of each year.

60. The sessions shall continue from 4 to 5 months.

61. A plurality of voices shall govern, and in case of an equality of votes, the president shall decide.

62. When the president is not a representative, he has no vote, except in case of a division; but when he is a representative, he shall vote in that character, and in case of a division shall also have a casting vote.

63. No representative shall be permitted to hold any other public office, nor to take any part directly or indirectly in the receipt of the public revenue, under pain of losing his seat.

64. The senators shall receive from the public treasury their full pay when they attend the sittings of the senate, and half pay when absent.

65. No senator shall be arrested during the session, nor for 4 months before, nor 4 months after the session; but they may during the vacation be subjected to a judgment.

66. If they shall be condemned to a capital punishment, the judgment shall be executory.

67. Senators shall not be called to account for what they may say in the senate.

68. The sittings of the senate shall be public, except when there is a necessity of declaring them secret, which shall be done by a majority of the members.

69. The members of the senate shall form themselves into permanent committees for the public service, and their duties shall be prescribed by the senate.

70. Any senator may, through the president, propose in writing the projet of a law to the senate.

71. The decrees and other official documents from the senate shall be signed by the president, countersigned by the first secretary, and sealed with the seal of the senate.

72. The first secretary shall record the decrees and acts of the senate, and correctly keep its archives and the minutes of its sittings.

73. When the first secretary is absent, the second secretary shall perform his duties.

74. Every decree shall be presented to the president; if he approve it, he shall sanction it within 15 days thereafter, and promulgate it as a law; but if he do not approve it, he shall return it within 15 days to the senate, with his amendments and remarks, which shall be recorded by the senate, and referred to a competent committee to deliberate upon them, and to report them for revision. If the senate does not approve of the amendments, the decree shall be again sent to the president, who shall return it to the senate within 15 days, provided he still objects to it, with the reasons of his objections; and if the senate by a plu-

rality of votes adheres to the decree, it shall be again sent to the president, who shall immediately sanction and promulgate it as a law of the state.

75. If towards the end of the session, a decree in discussion between the president and the senate is not completed, the senate, at the next session, shall take into account the steps taken at the preceding session.

76. If a projet of a law, proposed by the president to the senate, is considered by that body, and sent to him three times without being accepted, he shall lose the right.

77. Upon the opening of the session, an estimate of the public expenses, submitted by the government, having been discussed, appropriations for the necessary expenses of the government shall be made by the senate.

78. A statement in detail of the expenses and revenues of the preceding year, and of the public debt, shall be made annually to the senate, which the secretary of finance shall record and cause to be published.

79. It shall take care of the sinking fund and of the regular payment of the interest of the public debt.

80. It shall regulate, by law, the direct and indirect taxes, and the other contributions which are to be levied throughout the state by virtue of article 10.

81. It shall pass a law to make a loan upon the guaranty of the nation, or upon a mortgage of the national property.

82. It shall authorize the alienation of the public property. This shall be sold as soon as possible in all the provinces, and notice shall be regularly given of the sales, by the executive power in each province.

83. It shall guard the public treasury, and as often as is necessary shall demand the accounts of the secretary of finance, always granting sufficient time to register them.

84. Any representative may require from the secretaries the necessary information upon matters before the senate.

85. The senate shall regulate the currency, and fix the weight, the quality, the form and name of the coins.

86. It shall watch over and foster public education, the freedom of the press, agriculture, commerce, the sciences, and arts, and industry. It shall secure by law to inventors, and authors, the exclusive right for a limited period to the profits of their productions.

87. It shall make laws relative to captures.

88. It shall make laws against piracy.

89. It shall regulate the mode of recruiting the army by enrolment.

90. It shall provide for constructing and purchasing national vessels.

91. It shall take charge of the national property.

92. It shall provide for the farming of the national domains, and the indirect taxes.

93. It shall establish one kind of weights and measures throughout the state.

94. It shall fix the compensation of the president, secretaries and judges.

95. It shall declare the boundaries of the provinces, and the kind of administration best adapted to the interests of the inhabitans.

96. It may modify or repeal any laws, except those contained in the constitution.

97. The president shall not, without the consent of the senate, declare war, nor make any treaty of peace, alliance, friendship, commerce, or neutrality, &c., except truces of limited duration, of which notification must be immediately given to the senate.

98. The senate shall receive reports concerning all the business of the state, and those which shall be deemed important, shall be referred to a competent committee without any directions.

99. The journalists shall have free admission in all sittings of the senate, which shall not be declared secret.

100. The senate shall make rules for its own government.

101. The senate shall institute civil, criminal and military codes, upon the basis of the French system of jurisprudence.

102. Each representative shall vote according to his own opinion, without asking the advice of his constituents.

103. In case of the death, the dismission, or incapacity from infirmity, of the president, the senate shall name a vice-gubernatorial commission of three members, chosen from persons not members of the senate.

This commission shall provisionally execute the laws, with the consent of the secretaries, until the election of a new president. If the senate is not in session, the secretaries shall form provisionally a vice-gubernatorial council to convoke the senate immediately, which, however, shall also assemble without being specially summoned. In each of these cases, the senate or the council shall immediately inform the provinces to send their representatives (mandataires) to elect a president.

CHAP. 7. *Concerning the President of Greece.*

104. The executive power is vested in the president, (προεδρος.)

105. The president is declared to be inviolable.

106. The secretaries are responsible for their public acts.

107. He shall put the laws in force, through the secretaries, throughout the state.

108. All orders shall be signed by the president, countersigned by the secretary of the proper department, and sealed with his seal.

109. He shall command the forces of the state by sea and land.

110. He shall propose laws, pursuant to article 76, directing one or more secretaries of the state, to assist in the discussions thereof, at which the secretary of the proper department of course must be present.

111. He shall take care of the public security, foreign and domestic.

112. He shall appoint the secretaries of state, assign their duties and employments, and determine their qualifications and privileges.

113. He shall correspond with foreign powers.

114. He shall have the power to declare war, make treaties of peace, alliance, &c., according to article 97.

115. He shall appoint ambassadors, consuls, chargé d'affaires in foreign governments, and receive them from foreign powers.

116. He may convoke the senate on extraordinary occasions,

and prolong the session, according to the exigency of the occasion, until 4 or 5 months.

117. He shall take care that the laws are carried into full effect.

118. He shall cause the judgments of the courts to be executed.

119. He shall propose a law upon the organization of the militia.

120. The president shall not have the right to enter the senate, but upon the opening and close of the session.

121. At the opening of the session, he shall make a statement of the foreign relations, and of the domestic concerns, especially of the revenues and expenditure, of the estimates for the ensuing year, and of anticipated improvements in the public business.

122. The election of the president shall be regulated by a special law to be passed by the senate for the present year.

123. The term of office of the president is seven years.

124. The president elect shall swear publicly before the senate, that he will protect and preserve the constitution of Greece.

125. He shall sanction and promulgate the laws pursuant to article 74.

126. The president shall have the power to commute capital punishment, but he shall be bound to consult the secretaries of state convened in special council.

127. The president and senate are prohibited from consenting to any treaty, which shall aim at the destruction of the political existence of the nation, and of its independence.

CHAP. 8.—*Concerning the Secretaries of State.*

128. The executive power shall have secretaries: 1. Of foreign affairs; 2. Of domestic police; 3. Of finance; 4. Of war; 5. Of marine; 6. Of justice, religion, and public instruction.

129. They shall publish and carry into effect all the ordinances of the president which shall be countersigned by the secretary of the proper department.

130. Each of the secretaries shall furnish the senate with the necessary information of matters appertaining to his department, but the secretary of foreign relations may defer communicating matters important to be kept secret for a time.

131. They shall have free access to the senate when in session, and the right to debate therein.

132. They shall not directly nor indirectly share in the farming of the public revenues, under pain of being deprived of their office.

133. They shall be liable to be accused before the senate of treason, of extortion, and of violating the fundamental laws, by signing an ordonnance.

134. The senate shall inquire into accusations made against the secretaries of state. When the inquiry is agreed to by a majority of votes, a committee of seven members shall be named to inquire into the matter. After being sworn, the committee shall choose a president and commence the inquiry.

135. When the report of the committee is made to the senate, it may accept or reject the same. In case of acceptance, a day is fixed for the senate to resolve itself into a court. The president of the supreme court shall preside in the senate during the inquiry; but the president of the senate and

the committee of inquiry shall take no part in the matter.

136. The president shall administer the following oath to the senators:

You swear before God and man, to hear the accusation which the president of the committee of inquiry is about to read; neither to betray the rights of the accused, nor of the public; not to yield to any hatred, nor personal animosity, fear nor compassion; to pronounce sentences upon the accusation, and the defence, with that impartiality which belongs to a just and free man.

137. After the oath has been taken, and the examination taken by the president alone, the pleadings shall commence, but no senator shall be permitted to speak on either side. The president, or another member of the committee of inquest, shall perform the duties of a public prosecutor.

138. A majority of votes shall be sufficient to convict the accused. The senate shall impose no other punishment than dismission from office; but the accused, after conviction, may be prosecuted before the proper tribunals, and punished for the offences according to law.

CHAP. 9.—*Concerning the Courts.*

139. The judiciary is independent of the other powers in its decisions.

140. It shall determine according to the written laws of the state.

141. The courts shall give their judgments in the name of the nation.

142. There shall be recognised only three kinds of tribunals in Greece; 1. Judges of the peace; 2. That of the prefects; 3. The court of appeal.

143. Independent of these courts, a court of cassation or supreme court, shall be established, to be held near the government.

144. The trial by jury being adopted, the senate shall provide therefor by special law.

145. Judicial commissions or extraordinary courts are prohibited in future.

146. The Hellenes shall be at liberty to appoint arbitrators to determine their differences, either with or without appeal.

147. Trials shall be public, but whenever the proceedings shall be offensive to decency, the courts shall declare them to be so by a decree.

148. The decisions of the courts shall always be in public.

149. Until the promulgation of the codes pursuant to art. 101, the laws of the autocrats of Bysance, the criminal laws of the second national Hellenian assembly, and those promulgated by the Greek government, shall continue in force. As to those relating to commerce, the commercial code of France shall be in force.

150. The present constitutional laws shall be paramount to all others, and the laws promulgated by the Greek government to the old laws.

151. The judges may be deemed guilty of fraud, venality, and of all the crimes specified in the law organizing the court.

152. The inferior courts shall be accountable to the superior, and the supreme court to the senate.

153. The law organizing the courts, published after the 13th art. of the legal code, is in force.

and the courts shall be organized according to its provisions.

154. The senate shall appoint this year a committee to examine this law, and to report the result of their examination.

A law organizing the domestic government, and prescribing the forms of official oaths, and the duties of the governors of provinces, and mayors of cities, then follows; and a provision for the promulgation and observance of the constitution, sanctioned at Trésene, May, 1827, the 7th year of independence.

Note addressed by Mr. Dawkins to the Greek Government, transmitting the protocol of the 22d March, and demanding the suspension of hostilities.

To his excellency the President of the Provisional Government of Greece, &c.

The undersigned, Resident of his Britannic Majesty with the Provisional Government of Greece, has received orders from his court to communicate to his Excellency the Count Capo d'Istria, President of the said Government, the copy of a protocol, signed on the 22d of March, by the plenipotentiaries of the Allied Powers who were parties to the treaty of the 6th of July, 1827.

The ambassadors of his Britannic majesty and his majesty the king of France are now on their way to Constantinople for the purposes of opening with the Ottoman Porte a negotiation on the basis established by this protocol, and in the hope of concluding a definitive arrangement on the affairs of Greece.

The President of the Provisional Government of Greece will, with a lively satisfaction, perceive in this transaction the determination of the three powers to exact from the Ottoman Porte the maintenance of the armistice announced by the Reis Effendi on the 10th of September, 1828, as existing *de facto* on the part of the Turks; and, in consequence of that determination, the undersigned has no doubt that his Excellency will appreciate the just hope of the Allied Courts, to see immediately adopted by the Greek government measures conformable to their wishes, either by declaring a suspension of hostilities on all points on which the contest is at present carried on, or by recalling its troops within the limits of the territory placed under the guaranty of the three powers by the act of the 16th of November, 1828.

This measure will prove the good faith and loyalty of the principles which animate this government, and the just confidene which it places in the solicitude of the august powers of the alliance for the true interests and happiness of Greece.

The undersigned avails himself of this opportunity to offer to his Excellency the President of the Government the assurance of his highest consideration.

(Signed) E. Dawkins.

Egina, May 18.

Answer of the Greek government to the note addressed to it by Mr. Dawkins, relative to the armistice.

The Provisional Government of Greece has received the note which Mr. Dawkins did it the honour to present to it on the 18th of May, in order to communicate to it, by order of his court, the protocol of the 22d

of March, Signed by the plenipotentiaries of the powers who were parties to the treaty of the 6th of July, 1827, and in order to call its attention more particularly to the clause of that protocol which relates to the armistice.

The Resident announces the hopes which the Allied Powers entertain of hearing, that, in conformity to the wishes which they express in the aforesaid clause, the Greek government will declare a suspension of hostilities, and will recall its troops within the territory, placed under the guaranty of the three powers by the act of the 16th of November, 1828. The Greek government must acknowledge, in the first place, the sentiments of gratitude with which it receives for the first time the official communication of acts which relate to the measures by which the allied courts hope to attain, without further delay, the philanthropic and Christian object which gave rise to the treaty of the 6th of July.

"This communication, however, leaves the Greek Government to desire much information, which it has not received even up to this day. It has never had any oficial knowledge of the note of the Reis Efiendi of the date of the 10th September, upon which the hope of an armistice appears to depend.

"If that document, in conformity with the text, which private correspondence has placed within its knowledge, of other information, did not more particularly characterize the nature of it, the Greek Government could only see in the letter of the Reis Effendi an evasive answer, by means of which the Porte rejects once more in principle the mediation which was offered to it by the treaty of the 6th of July.

"In resting upon an armistice *de facto*, which is in reality nothing more than a defensive attitude revocable at pleasure—in declaring on its side, and upon that basis, the cessation of hostilities, the Greek government would depart from the principles laid down in the said treaty, and would at the same time contract an engagement which it would not be in its power to fulfil. It is ignorant of the extent of territory guarantied by the alliance, seeing that the protocol of the 16th of November, 1828, which Mr. Dawkins mentions, has never been communicated to it; but even though that communication had been made to it in due season, it would deem itself to have failed in good faith and loyality, which alone can entitle it to the confidence of the august allied sovereigns, if, placing before their eyes the real state of affairs, it had not proved to them that it was not in its power at the end of last year, as it never will be, to transport by an act of authority, into the heart of the Peloponnesus and the adjacent islands, the miserable population of the provinces situate beyond the isthmus of of Corinth.

"These provinces, as well as those of the Peloponnesus and the islands, contracted in the hour of trial and misfortune a solemn engagement never to separate their cause. These engagements are confirmed by public acts under a double sanction—the sanction of the national congress, and the still more inviolable one of oaths.

"Can the Greek government, whose only power is founded on these same acts, infringe them by establishing a line of separation between continental Greece and the Peloponnesus, seeing that it is

to the immense sacrifices of this country that the peninsula has more than once owed its salvation; and should the government arbitrarily assume to itself this right, would it have the means of effecting this separation without exposing to new calamities people who are just beginning to regain their habitations, and to hope for that repose which the Morea enjoys from the protection and services of the allied powers? It is not in their power, either by persuasion or force, to obtain such a result.

"The inhabitants of the provinces would answer them, that the third article of the treaty of the 6th of July, and the clause of the demarcation contained in the protocol of the 22d March, encourage them to hope that the justice and magnanimity of the august allies will not abandon them, and that it would be an abandonment without redemption to constrain them to quit the defensible positions they now occupy.

"They will answer in short, that the experience of their long calamities obliges them to be unshaken in the resolution never to quit their native soil, or the ruins which they defend with arms in their hands, except under the influence of superior force. In the number of the positions which they have occupied latterly, are Vonizza, Lepanto, Missolonghi, and Anatolico. The Mussulmans who composed the garrisons of these places, being completely left to themselves by their government, and deprived of external resources by the blockade of their coasts, have themselves, demanded to return to their own country. This retreat, far from giving occasion to bloodshed and other miseries, has been effected under the safeguard of conventions, which demonstrate the moderate and pacific views of the Greek government, and which deserve the confidence which they inspire in the Mussulmans themselves. The letters which the commandant of the castle of Romelia and the pacha of Lepanto addressed to us at the time of the evacuation of these garrisons, furnish an irrefragable proof of this fact.

"In this state of things, it is not impossible that the feeble garrison of Athens, and of the two or three other places included in the demarcation laid down in the protocol of the 22d of March, may follow the example of the garrisons of western Greece.

"By such results the Greek government would have contributed, as far as its feeble means allow, to the success of the negotiations with which, in the names of the three courts, the plenipotentiaries of England and France, who are going to Constantinople, have been intrusted.

"Independently of these observations, there are others which it is the duty of the Greek government to submit to the consideration of the allied courts on the different articles of the protocol of the 22d of March, and especially on those which relate to the indemnity of the sovereignty.

"Feeling it right to lose no time in transmitting to Mr. Dawkins the present note, it reserves to itself to make at a future time some observations on the points above menioned. The Greek government entreats Mr. Dawkins to communicate this answer to his court, and in our own capacity we offer to him the assurance of our distinguished consideration.

"Egina, 11 (23) May, 1829."

Protocol of the conference held in London at the office of foreign affairs, on the 22d of March, 1829.

Present, the plenipotentiaries of Great Britain, France, and Russia.

Immediately after their arrival the plenipotentiaries of France and England will open with the government of the Ottoman Porte, and in the name of the three allied courts, a negotiation founded on the treaty of the 6th of July, 1827, respecting the pacification and future organization of Greece. It is well understood that each of the three courts reserves for itself the right of weighing the value of the objections which the Porte may make to the propositions addressed to it in fulfilment of the present protocol; and that, should those objections induce the courts to present other propositions, they would yet endeavour to come to a determination on the question of fixing, as promptly as possible, the limits of the continent and the isles of Greece.

It will be proposed to the Porte that the frontiers of continental Greece should extend to the mouth of the gulph of Volo, along the reverse of Oflhy mountains, up to the western point of Agrapha, where those mountains form their junction with the chain of Pindus. From that point the frontier will edge the valley of Aspro-Potamos as far as Leontelos, which remains part of the Turkish territory. It will then pass through the chain of the Macrinoros mountains, and the river which bears that name, and which, coming from the plain of Arta, throws itself into the sea through the Ambracian gulf.

All the countries south of this line will form part of the new state of Greece. The islands in the neighbourhood of the Morea, that of Eubœa or Negropont, and the isles known under the name of Cyclades, will also belong to that state.

Tribute.—It will be proposed to the Porte, in the name of the three courts, that Greece do pay her annual tribute of 1,500,000 Turkish piastres. The rate of the Turkish piastre shall be settled at once, that it may never be taken for the high Spanish piastre.

In consequence of the present poverty of Greece, it will be agreed that, from the moment when the payment of the tribute shall commence, the first year, there shall not be paid more than one third, or less than one fifth of this sum of 1,500,000 Turkish piastres, and that this proposition shall be raised from year to year until the fourth, when the maximum of 1,500,000 shall be paid. At the expiration of these four years Greece shall pay the whole tribute annually, without any diminution or augmentation.

Indemnity.—It will be proposed to the Porte that the indemnity mentioned in the second article of the treaty of July 6th, be determined and settled in the following manner.

1st. The Mussulman (private individuals) proprietors of estates on the newly constituted Greek territory.

2dly. The Mussulman (private individuals) who, in the capacity of tenants or hereditary administractors, have an interest in the Vacuf. Sady, of mosques on lands formerly Turkish, deduction being made of the amount of the impost levied on that Vacuf.

Both these classes of Mussulmen, whose claims shall have been recognised as valid, shall be bound to proceed themselves to the sale of their property, within the space of a year,

with a proper reserve for the amount of the debts secured upon those estates. If within that time sales cannot be effected, commissaries shall be appointed to estimate the value of the unsold lands; and when once that value shall have been ascertained and fixed, the Greek government shall give to the proprietors or heirs, whose claims and rights shall have been established, bills upon the state, payable at periods agreed upon.

The verifications of the titles and debts, and the appraisement of the estates to be sold, shall be made by a commission composed in equal numbers of Mussulmans and Greeks. It will be authorized to do justice to every claim, and to pronounce upon every case submitted for its consideration, and on the losses experienced by the claimants during the revolution.

In order to prevent all difficulties and differences which might arise between the commissioners of the two nations, with respect to the above mentioned operations, to abridge and facilitate liquidation, and to arrive at a prompt and universally convenient settlement, a court of appeal shall be formed, and a tribunal of revision, composed of commissioners from the three allied courts, who shall decide in the cases in which the Greek and Mussulman commissioners shall not be able to agree.

Suzerainete.—Greece, under the suzerainete of the Ottoman Porte, shall possess that internal administration best suited to her wants, and best calculated to secure to her liberty of conscience, of worship, and trade, and the enjoyment of property and peace. For this purpose the administration of Greece shall assume, as nearly as possible, a monarchical form, and shall be intrusted to a Christian chief or prince, whose authority shall be hereditary in the order of primogeniture.

In no case shall the choice of this chief fall on the family of any of the three courts parties to the treaty of 6th of July. It shall be agreed in common between them and the Ottoman Porte.

To secure to the Porte the stability of the tribute allowed her by the present treaty, every chief shall receive the investiture of his dignity from her, and at his accession shall pay her the additional tribute of a year. Should the reigning branch be extinguished, the Porte shall take the same part in the nominations of a new chief as she did in that of the first.

Amnesty and right of departure.—The Ottoman Porte will proclaim full and entire amnesty, in order that in future no Greek may be called to account, in the whole extent of her empire, for having taken part in the Greek insurrection. On its side the Greek government shall grant the same security, within the limits of its territory, to every Greek or Mussulman of the contrary side.

The Porte will allow a whole year to any of his subjects who may wish to leave her empire to settle in Greece, for the purpose of selling their property. They shall be permitted to depart freely. Greece will insure the same facility and the same period for the sale of their property to the Greeks, who will prefer returning under Mussulman domination.

The commercial relations between Turkey and Greece shall be settled as soon as the articles specified in the present protocol shall have been reciprocally adopted.

The ambassadors of France and England shall claim from the Ottoman Porte the continuance of the

truce which the Reis Effendi stated existed *de facto* on the part of the Turks towards the Greeks, in his address to the representatives of the allied powers in the Archipelago, dated the 10th of Sept. 1828.

At the same time the three allied courts having decided upon the step which they take in opening fresh negotiations at Constantinople, with the sole view of settling the fate of the Greeks, shall claim from the provisional government of Greece the cessation of hostilities on every point, and the return of the Greek troops within the line of the limits described in the foregoing proposition, without, however, any detriment to the future boundaries of Greece.

As soon as the preceding dispositions shall have been agreed to by the Porte, their execution shall be placed, conformably with the sixth article of the treaty of the 6th of July, under the guaranty of the three powers by whom the treaty was signed, and the rest will become the object of ampler stipulations between the three allied courts, as declared in the pre-recited article.

Let it be understood that from the present instant the guaranty of the Greek state now about to be formed is insured by the three powers against all hostile enterprise on the part of Turkey against the Greeks.

The ambassadors of France and England shall reject all dispositions which might militate against this fixed basis.

Although Russia, while adhering to these dispositions, be not represented at Constantinople by any individual invested with special powers, it is understood that the negotiation will be carried on in her name as in the name of France and England; that all the articles shall be debated and agreed to in common by the three courts, and that under no pretence whatever shall any thing be acceded to which might tend to exclude Russia from the negotiation or its results.

The ambassadors of France and England shall employ every means in their power to attain, in the shortest period possible, the accession of the Porte to the propositions which they are authorized to make to her. They will require from the Ottoman government a prompt and decisive answer.

The official documents, to which the present negotiation may give rise, shall be drawn up in common by the two ambassadors in the name of the three powers; a triple copy shall be signed, and one shall be forwarded to each of the contracting parties.

The basis of the present protocol shall serve as instructions for the two ambassadors in their negotiations which they are to open with the Porte.

The plenipotentiary of his majesty the emperor of Russia has formally declared, on the part of his sovereign, that he has been authorized to negotiate with the Turkish government on all the points making part of the present protocol, and the plenipotentiaries of England and France have announced that in order to attain the end in view, the representatives of their courts at the Ottoman Porte considered themselves authorized to negociate, without any other formalities, in the name of his majesty the emperor of Russia, as in the names of their respective sovereigns, and will for that purpose immediately repair to Constantino-

ple, to act in a collective name and in concert. (Signed)—ABERDEEN,
POLIGNAC,
LIEVEN.

TREATY OF PEACE BETWEEN RUSSIA AND TURKEY.

In the name of God Almighty!—His imperial majesty, the most high and most mighty emperor and autocrat of all the Russias, and his highness the most high and most mighty emperor of the Ottomans, animated with an equal desire to put an end to the calamities of war, and to establish, on a solid and immutable basis, peace, friendship, and good harmony between their empires, have resolved, with a common accord, to intrust this salutary work to, &c. [Here follow the names and titles of the different plenipotentiaries on both sides.]

ARTICLE I.—All enmity and all differences which have subsisted hitherto between the two empires shall cease from this day, as well on land as on sea, and there shall be in perpetuity peace, friendship, and good intelligence, between his majesty the emperor and padishah of all the Russias, and his highness the padishah of the Ottomans, their heirs and successors to the throne, as well as between their respective empires. The two high contracting parties will devote their particular attention to prevent all that might cause misunderstandings to revive between their respective subjects. They will scrupulously fulfil all the conditions of the present treaty of peace, and will watch, at the same time, lest it should be infringed in any manner, directly or indirectly.

ARTICLE II.—His majesty the emperor and padishah of all the Russias, wishing to give to his highness the emperor and padishah of the Ottomans a pledge of the sincerity of his friendly disposition, restores to the Sublime Porte the principality of Moldavia, with all the boundaries which it had before the commencement of the war to which this present treaty has put an end.

His imperial majesty also restores the principality of Wallachia, the Banat of Crayova, Bulgaria, and the country of Dobridge, from the Danube as far as the sea, together with Silistria, Hirsova, Matzia, Isakiya, Toulza, Babadag, Bazardjik; Varna, Pravedy, and the other towns, burghs, and villages, which it contains, the whole extent of the Balkan, from Emine Bouroun as far as Kazan, and all the country from the Balkans as far as the sea, with Siliminea, Jomboli, Aidos, Karnabat, Missanovica, Akhioly, Bourgas, Sizopolis, Kirkkilissi, the city of Adrianople, Lule Bourgas, and all the towns, burghs, and villages, and in general all places which the Russian troops have occupied in Roumelia.

ARTICLE III. The Pruth shall continue to form the limit of the two empires, from the point where the river touches the territory of Moldavia to its junction with the Danube; from that spot the frontier line will follow the course of the Danube as far as the mouth of St. George's, so that, leaving all the islands formed by the different arms of that river, in possession of Russia, the right bank shall remain, as formerly, in the possession of the Ottoman Porte. Nevertheless, it is agreed that this right bank shall remain uninhabited from the point where the arm of the St. George separates itself from that of Souline, to a distance

of two hours from the river, and that no establishment of any kind shall be formed there, any more than on the islands which shall remain in possession of the court of Russia, where, with the exception of the quarantines which may be established there, it shall not be allowed to make any other establishment or fortification. The merchant-vessels of the powers shall have the liberty of navigating the Danube in all its course; and those which bear the Ottoman flag shall have free entrance into the mouth of Keli and Souline, that of Saint George remaining common to the ships of war and merchant vessels of the two contracting powers. But the Russian ships of war, when ascending the Danube, shall not go beyond the point of its junction with the Pruth.

Article iv. Georgia, Imeritia, Mingrelia, and several other provinces of the Caucasus, having been for many years and in perpetuity united to the empire of Russia, and that empire having besides, by the treaty concluded with Persia, at Tourkmantchai, on the 10th of February, 1828, acquired the Khanats of Erivan and of Naktchivan, the two high contracting powers have recognised the necessity of establishing between their respective states, on the whole of that line, a well determined frontier, capable of preventing all future discussion. They have equally taken into consideration the proper means to oppose insurmountable obstacles to the incursions and depredations which the neighbouring tribes hitherto committed, and which have so often compromised the relations of friendship and good feeling between the two empires: consequently, it has been agreed upon, to consider, herceforward, as the frontiers between the territories of the imperial court of Russia, and those of the Sublime Ottoman Porte in Asia, the line which, following the present limit of the Gouriel from the Black Sea, ascends as far as the border of Imeritia, and from thence, in the straighest direction, as far as the point where the frontiers of the Pochaliks of Akhaltzik and of Kars meet those of Georgia, leaving in this manner to the north of, and within that line, the town of Akhaltzik and the fort of Khallnalick, at a distance of not less than two hours.

All the countries situate to the south and west of this line of demarkation towards the Pachaliks of Kars and Trebisond, together with the major part of the Pachalik of Akhaltzik, shall remain in perpetuity under the domination of the Sublime Porte, whilst those which are situated to the north and east of the said line towards Georgia, Imeritia, and the Gouriel, as well as all the littoral of the Black Sea, from the mouth of the Kouben, as far as the port of St. Nicholas inclusively, under the domination of the emperor of Russia. In consequence, the imperial court of Russia gives up and restores to the Sublime Porte the remainder of the Pachalik of Akhaltzik, the town and the Pachalik of Kars, the town and Pachalik of Bayazid, the town and Pachalik of Erzeroum, as well as all the places occupied by the Russian troops, and which may be out of the above mentioned line.

Article v. The principalities of Moldavia and Wallachia having, by a capitulation, placed themselves under the suzerainete of the

Sublime Porte, and Russia having guarantied their prosperity, it is understood that they shall preserve all the privileges and immunities granted to them in virtue of their capitulation, whether by the treaties concluded between the imperial courts, or by the Hatti Sheriffs issued at different times. In consequence, they shall enjoy the free exercise of their religion, perfect security, a national and independent administration, and the full liberty of trade. The additional clauses to antecedent stipulations, considered necessary to secure to these two provinces the enjoyment of their rights, shall be inscribed in the next separate act, which is and shall be considered as forming an integral part of the present treaty.

Article vi. The circumstances which have occurred since the conclusion of the convention of Akermann not having permitted the Sublime Porte to undertake immediately the execution of the clauses of the separate act relative to Servia, and annexed to the 5th article of the said convention, the Sublime Porte engages in the most solemn manner to fulfil them without the least delay, and with the most scrupulous exactness; and to proceed in particular, to the immediate restitution of the six districts detached from Servia, so as to insure forever the tranquillity and the welfare of that faithful and obedient nation. The firman, confirmed by the Hatti Sheriff, which shall order the execution of the aforesaid clauses, shall be delivered and communicated to the imperial court of Russia, within the period of a month within the date of the signature of the treaty of peace.

Article vii. Russian subjects shall enjoy, throughout the whole extent of the Ottoman empire, as well by land as by sea, the full and entire liberty of commerce secured to them by the former treaties concluded between the two high contracting powers.- No infringement of that liberty of commerce shall be committed, neither shall it be permitted to be checked, in any case or under any pretence, by a prohibition or any restriction whatever, nor in consequence of any regulation or measure, whether it be one of internal administration or of internal legislation. Russian subjects, vessels and merchandise, shall be secure against all violence and all chicanery. The former shall live under the exclusive jurisdiction and police of the ministers and consuls of Russia. The Russian vessels shall not be subjected to any visit on board whatever, on the part of the Ottoman authorities, neither out at sea, nor in any of the ports or roadsteads belonging to the dominions of the Sublime Porte. And all merchandize and commodities belonging to a Russian subject, after having paid the custom-house duties required by the tariffs, shall be freely conveyed, deposited on land, in the warehouses of the proprietor or of his consignee, or else transferred to the vessels of any other nation whatever, without the Russian subjects being required to give notice to the local authorities, and still less to ask their permission. It is expressly agreed upon, that all grain proceeding from Russia shall enjoy the same privileges, and that its free transit shall never experience, under any pretence, any difficulty or impediment. The Sublime Porte engages besides, to watch carefully that the commerce

and navigation of the Black Sea shall not experience the slightest obstruction of any nature whatever. For this purpose, the Sublime Porte recognises and declares that the passage of the canal of Constantinople, and the strait of the Dardanelles, entirely free and open to Russian ships under merchant flags, laden or in ballast, whether they come from the Black Sea to go into the Mediterranean, or whether, returning from the Mediterranean, they wish to re-enter the Black Sea. These vessels, provided they be merchantmen, of whatever size or tonnage they may be, shall not be exposed to any impediment or vexation whatever, as it has been stipulated above. The two courts shall come to an understanding with respect to the best means for preventing all delay in the delivery of the necessary clearances. In virtue of the same principle, the passage of the canal of Constantinople and of the strait of the Dardanelles is declared free and open for all the merchant vessels of the powers at peace with the Sublime Porte, whether bound to the Russian ports of the Black Sea, or returning from them—whether laden or in ballast—upon the same conditions as those stipulated for the vessels under the Russian flag. In fine, the Sublime Porte, acknowledging the right of the Imperial Court of Russia to obtain guaranty of this full liberty of commerce and navigation in the Black Sea, solemnly declares that she will never, under any pretence whatever, throw the least obstacle in its way. She promises, above all, never to permit herself in future to stop or detain vessels, laden or in ballast, whether Russian or belonging to nations with which the Ottoman empire shall not be in a state of declared war, passing through the strait of Constantinople and the strait of the Dardanelles, to repair from the Black Sea into the Mediterranean, or from the Mediterranean to the Russian ports of the Black Sea. And if, which God forbid! any of the stipulations contained in the present article should be infringed, and the reclamation of the Russian minister on that subject should not obtain a full and prompt satisfaction, the Sublime Porte recognises, beforehand, the right in the Imperial Court of Russia to consider such an infraction an act of hostility, and immediately to retaliate on the Ottoman empire.

Article viii. The arrangements formerly stipulated by the 6th Article of the Convention of Akerman, for the purpose of regulating and liquidating the claims of the respective subjects and merchants of both empires, relating to the indemnity for the losses experienced, at different periods, since the war of 1806, not having been yet carried into effect, and Russian commerce having, since the conclusion of the aforesaid convention, suffered new and considerable injury in consequence of the measures adopted respecting the navigation of the Bosphorus, it is agreed and determined that the Sublime Porte, as a reparation for that injury and those losses, shall pay to the Imperial Court of Russia, in the course of eighteen months, at periods which shall be settled hereafter, the sum of one million five hundred thousand ducats of Holland; so that the payment of this sum shall put an end to all claim or reciprocal pretensions on the part

of the two contracting Powers, on the subject of the aforesaid circumstances.

Article ix. The prolongation of the war, to which the present treaty of peace happily puts an end, having occasioned, to the Imperial Court of Russia, considerable expenses, the Sublime Porte recognises the necessity of offering it an adequate indemnity. For this purpose, independently of the cession of a small portion of territory in Asia, stipulated by the fourth article, which the court of Russia consents to receive on account of the said indemnity, the Sublime Porte engages to pay to the said court, a sum of money, the amount of which shall be regulated by mutual accord.

Article x. The Sublime Porte, whilst declaring its entire adhesion to the stipulations of the treaty concluded in London on the 24th of June, (the 6th of July) 1827, between Russia, Great Britain, and France, accedes, equally, to the act drawn up on the 10th of March, (22d) 1829, by mutual consent, between these same powers, on the basis of the said treaty, and containing the arrangement of detail, relative to its definitive execution. Immediately after the exchange of the ratification of the present treaty of peace, the Sublime Porte shall appoint plenipotentiaries to settle with those of the Imperial Court of Russia, and of the courts of England and France, the execution of the said stipulation, and arrangements.

Article xi. Immediately after the signature of the present treaty of peace between the two empires, and the exchange of the ratification of the two sovereigns, the Sublime Porte shall take the necessary measures for the prompt and scrupulous execution of the stipulations which it contains, and particularly of the third and fourth articles, relative to the limits which are to separate the two empires, as well in Europe as in Asia; and of the fifth and sixth articles, respecting the principalities of Wallachia and Moldavia, as well as Servia; and from the moment when these stipulations can be considered as having been fulfilled, the Imperial Court of Russia will proceed to the evacuation of the territory of the Ottoman empire, conformable to the basis established by a separate act, which forms an integral part of the present treaty of peace. Until the complete evacuation of the territories occupied by the Russian troops, the administration and the order of things there established at the present time, under the influence of the Imperial Court of Russia, shall be maintained, and the Sublime Ottoman Porte shall not interfere with them in any manner.

Article xii. Immediately after the signature of the present treaty of peace, orders shall be given to the commanders of the respective troops, as well by land as by sea, to cease hostilities. Those committed after the signature of the present treaty shall be considered as not having taken place, and shall occasion no change in the stipulations which it contains. In the same manner any thing which in that interval shall have been conquered by the troops of either one or the other of the high contracting powers, shall be restored without the least delay.

Article xiii. The high contracting powers, while re-establish-

ing between themselves the relations of sincere amity, grant general pardon, and a full and entire amnesty, to all those of their subjects, of whatever condition they may be, who, during the course of the war happily terminated this day, shall have taken part in military operations, or manifested, either by their conduct or their opinions, their attachment to one or the other of the two contracting powers. In consequence, not one of these individuals shall be molested or prosecuted, either in his person or goods, on account of his past conduct; and every one of them, recovering the property which he possessed before, shall enjoy it peaceably under the protection of the laws, or shall be at liberty to transport himself, with his family, his goods, his furniture, &c., into any country which he may please to choose, without experiencing any vexations or impediments whatever.

There shall be granted besides to the respective subjects of the two powers established in the territories restored to the Sublime Porte, or ceded to the imperial court of Russia, the same term of 18 months, to commence from the exchange of the ratification of the present treaty of peace, to dispose, if they think proper, of their property acquired either before or since the war, and to retire, with their capital, their goods, furniture, &c., from the states of one of the contracting powers into those of the other, and reciprocally.

Article xiv. All prisoners of war, of whatever nation, condition, or sex they may be, which are in the two empires, must immediately, after the exchange of the ratifications of the present treaty of peace, be set free, and restored without the least ransom or payment; with the exception of the Christians who, of their own free will, have embraced the Mahomedan religion in the states of the Sublime Porte, or the Mahomedans who, also of their own free will, have embraced the Christian religion in the territories of the Russian empire.

The same conduct shall be adopted towards the Russian subjects, who, after the signature of the present treaty of peace, may in any manner whatever have fallen into captivity, and be found in the states of the Sublime Porte.

The imperial court of Russia promises, on its part, to act in the same way towards the subjects of the Sublime Porte. No repayment shall be required for the sums which have been applied by the two high contracting parties to the support of prisoners. Each of them shall provide the prisoners with all that may be necessary for their journey as far as the frontiers; where they shall be exchanged by commissioners appointed on both sides.

Article xv. All the treaties, conventions, and stipulations, settled and concluded at different periods between the imperial court of Russia and the Ottoman Porte, with the exception of those which have been annulled by the present treaty of peace, are confirmed in all their force and effect, and the two high contracting parties engage to observe them religiously and inviolably.

Article xvi. The present treaty of peace shall be ratified by the two high contracting courts, and the exchange of the ratifications between the respective plenipoten-

tiaries shall take place within the space of six weeks, or earlier, if possible. In faith of which,

(Signed) Count Alexis Orlif.
Count J. Pahlen.

In virtue, &c.

(Signed) Diebitsch Zabalkansky.

SEPARATE ACT,

Relating to the principalities of Moldavia and Wallachia.

In the name of Almighty God! The two high contracting powers, at the same time that they confirm all the stipulations of the separate act of Ackermann, relative to the forms to be observed on the election of the hospodars of Moldavia and Wallachia, have recognised the necessity of giving to the administration of those provinces a more durable basis, and one more in harmony with their true interests. With this view, it has been, and is definitively resolved, that the reign of the hospodars shall not, as formerly, be limited to seven years, but they shall be invested with the dignity for life, except in the case of a free and unconstrained abdication, or of an expulsion in consequence of crimes committed as detailed in the said separate act.

The hospodars are to administer the internal government of their provinces, with the assistance of their divan, according to their own pleasure, but without permitting themselves any infraction of the rights guarantied to the two countries by treaties or hatti sherifs, nor shall their administration be disturbed by any command tending to the violation of those rights.

The Sublime Porte obliges itself conscientiously to keep watch, that the privileges granted to Moldavia and Wallachia shall in no way be violated by the neighbouring governors, and that these shall in no way be allowed to interfere in the affairs of those two provinces; also to prevent the inhabitants of the right bank of the Danube from making excursions upon the territory of Moldavia and Wallachia. All isles situated nearest to the left bank of the Danube, are to be considered as part of the territory of those provinces; and from the point where it enters the Ottoman territory, to the point of its confluence with the Pruth, the channel of the Danube is to form the boundaries of the two principalities.

To provide the more securely for the more inviolability of the Moldavian and Wallachian territory, the Sublime Porte engages to retain no fortified point upon the left bank of the Danube, nor to permit any settlement there of its Mahometan subjects. It is accordingly irrevocably fixed, that no Mahometan shall ever be allowed to have his residence in Moldavia or Wallachia, and that only merchants, provided with firmans, shall be admitted for the purpose of buying, on their account, such articles as may be required for the consumption of Constantinople.

The Turkish cities, situated on the left bank of the Danube, are to be restored to Wallachia, to remain incorporated with that principality; and the fortifications previously existing on that bank, are never to be repaired. Mahometans possessing landed property, either in those cities, or upon any point left of the Danube, provided they have not unfairly become possessed thereof, (*non usurpes sur des particuliers,*) shall be bound to sell such

property to natives within eighteen months.

The government of the principalities being entitled to all the privileges of independence in their internal administration, it shall be lawful for the same to draw sanatary cordons, and to establish quarantine stations along the line of the Danube, and wherever else it may seem necessary; nor shall any strangers, be they Christians or Mahometans, have a right to consider themselves above an exact compliance with such quarantine regulations. For the execution of the quarantine duty, the protection of the frontiers, the maintenance of order in the cities and in the open country, and for the purpose of obedience to their decrees, the government of each principality shall be permitted to maintain a sufficient military force. The numerical force of these troops is to be determined by the hospodars and their respective divans, upon the basis of former examples.

The Sublime Porte, animated by an earnest wish to secure to the two principalities every species of prosperity which they are capable of enjoying, and being aware of the abuses and oppression occasioned by the contributions for the supply of Constantinople, and the victualling of the fortresses of the Danube, renounces, in the most complete and unconditional manner, its rights in this respect. Moldavia and Wallachia are accordingly for ever relieved of all those contributions of corn, provisions, cattle, and timber, which they were formerly bound to furnish. Nor shall, in any case, labourers be demanded from those provinces for any forced service (*corvee.*) In order, however, in some degree to indemnify the grand seignorial treasury for the losses which may be sustained by this renunciation of rights, Moldavia and Wallachia are bound, independently of the yearly tribute paid under the denomination of Kharadsh Idiye, and Rakiabiye, by virtue of the hatti sherif of 1822, to pay the Sublime Porte yearly, a pecuniary indemnity, the amount of which is hereafter to be determined. Moreover, upon every fresh nomination of a hospodar, in consequence of death, resignation, or deposition, the principality where that event occurs, shall be bound to pay to the Sublime Porte, a sum equal to the yearly tribute of the province. With the exception of these sums, no tribute or present of any kind shall, under any pretext whatever, be demanded from the hospodars.

In consequence of the abolition of the above special contributions, the inhabitants of the principalities are to enjoy an unlimited freedom of trade for all the productions of their soil and industry, (as stipulated by the separate act of the treaty of Ackermann,) the same not to be liable to any other restraint, except such as the hospodars, with the consent of their divans, may consider necessary to the due provisioning of the country; they shall be allowed to navigate the Danube with their own vessels, being provided with passports from their own government; and it shall be lawful for them to proceed, for the purpose of trade, to the other harbours and ports of the Sublime Porte, without suffering any persecution from the collectors of the Kharadsh, and without being exposed to any other act of oppression whatever.

Duly considering, moreover, all the burdens which it has been necessary for Moldavia and Walla-

chia to support, the Sublime Porte, animated by a proper feeling of humanity, consents to release the inhabitants from the yearly tribute payable to the treasury, for the space of two years, to be reckoned from the day of the total evacuation of the principalities by the Russian troops.

Finally, the Sublime Porte, animated by the wish to secure, in every possible way, the future prosperity of the two principalities, binds itself to confirm every administrative measure which, during their occupation by the Russian army, may have been decreed, in conformity to a wish expressed in the assemblies of the principal inhabitants of the country, such decrees serving thenceforward as the basis of the internal administration of those provinces: provided always, that such decrees do not, in any way, infringe upon the rights of sovereignty vested in the Sublime Porte.

On this account, we, the undersigned plenipotentiaries of his majesty, the emperor and padishah of all the Russias, have, conjointly with the plenipotentiaries of the Sublime Ottoman Porte, regulated and fixed the points respecting Moldavia and Wallachia, the same being a continuation of article 5 of the treaty of peace concluded at Adrianople, between us and the Ottoman plenipotentiaries.

Done at Adrianople, 2d (14th) September, 1829.

(Signed)
Count Alexis Orloff,
Count F. V. Pahlen.

Confirmed in the original copy by Count Diebitsch Zabalkansky, *Commander-in-chief of the second army.*

Manifesto of his majesty the Emperor of Russia.

By the grace of God, we, Nicholas the First, emperor and autocrat of all the Russias, &c.

Thanks to the decrees of Divine Providence, the treaty of perpetual peace between Russia and the Ottoman Porte, was concluded and signed at Adrianople on the 2nd (14th) of September, by the respective plenipotentiaries of the two empires.

The whole world is sufficiently acquainted with the irresistible necessity which alone could force us to have recourse to arms. In this legitimate war, undertaken for the defence of the rights of our empire, our faithful subjects, incessantly animated by an ardent attachment to the throne and to the country, have eagerly offered to us the tribute of their property to second us with all their efforts, and God has blessed our cause.

Our intrepid warriors have given, both in Europe and Asia, by sea and by land, new proofs of their heroic valour. They have triumphed at once over the obstacles presented by nature, and the desperate resistance of the enemy. Hastening from victory to victory, they have crossed the chain of the Saganlouch mountains. They saw the summit of the Balkan sink bofore them, and have stopped only at the very gates of Constantinople. Formidable only to the enemy in arms, they have shown themselves to the peaceable inhabitants, full of clemency, humanity, and mildness.

In these days of combat and glory, constantly free from all desire of conquest, we have never ceased to invite the Porte to concur in re-establishing harmony between

the two empires. The commanders of our armies, after every victory, hastened, by our order, to offer to it peace and friendship. Nevertheless, our efforts were always fruitless. It was not till he saw our standards displayed not far from his capitol, that the Sultan was at length sensible, from our conduct, that our object was not to overturn his throne, but to obtain the execution of the treaties. Being then convinced of the purity of our intentions, he held out his hand to receive that peace which had been so often proposed to him. It promises to Russia happy and prosperous results. The blood of our warriors is redeemed by numerous advantages. The passage of the Dardanelles and the Bosphorus is henceforward free and open to the commerce of all the nations of the world. The security of our frontiers, especially on the Asiatic side, is for ever guarantied by the incorporation with the empire of the fortresses of Anapa, Poti, Akhaltzik, Atizkour, and Akhalkalaki.

Our preceding treaties with the Porte are confirmed by it, and re-established in all their force; just indemnities are secured for the expenses of the war, and the individual losses experienced by our subjects. The scourge of the plague, which has so often threatened the southern provinces of Russia, will, in future, be checked by a double barrier, by means of the establishment of a line of quarantine on the banks of the Danube, agreed to on both sides. Our solicitude has also been extended to the fate of the nations professing our religion, who are subjects to the Ottoman dominion. The ancient privileges of the principalities of Moldavia and Wallachia have been sanctioned, and their welfare consolidated by new advantages. The rights granted to the Servians by the treaty of Bucharest, and confirmed by the convention of Ackermann, were still suspended in their application.—These stipulations will, henceforward, be faithfully observed. The political existence of Greece, determined by Russia, in concert with the allied courts of France and England, has been formerly recognised by the Ottoman Porte.

Such are the fundamental bases of a peace which has happily terminated a sanguinary and obstinate war.

In announcing to all our beloved subjects this happy event, a new gift of the benedictions of heaven bestowed upon Russia, we addressed, with them, the most ardent thanksgivings to the Almighty, who has deigned, by his divine decrees, to raise our dear country to such a high degree of glory. May the fruits of this peace be developed and multiplied more and more to the advantage of our beloved subjects, whose welfare will always be the first object of our constant solicitude.

Given at St. Petersburg, the 19th September, (1st October,) the year 1829, and the fourth of our reign.

Address of the President of Greece to the Fourth National Congress.

July 23, 1829.

Let every heart glorify the Most High:
Let us celebrate his holy name.

Deputies of the Nation,

You have re-assembled in the fourth national congress at a time when the fortunes of Greece engage the benevolent attention and constant favour of the allied sovereigns of Europe.

Our circumstances are critical, but the sense of what they require being deep in all our breasts, God, we may be allowed to hope, will not abandon us.

His mercy has preserved Greece by miracles; and be most fully assured that these miracles have not been wrought in vain.

Greece, after bearing the yoke of slavery for four centuries, has at length shaken it off. Assisted by the peculiar favour of heaven, and by human wisdom and foresight, she has struggled against numerous and terrible foes, and against incessant trials and disasters. Her courage, her perseverance, her misfortunes, roused simultaneously the Christians of both hemispheres: and at the moment when her accumulated distresses had brought her to the most awful crisis, she received from every quarter proofs of generous protection; and when she was still enabled to defend those sacred interests which she had laboured to shield under the law of nations.

At the same time sad experience has proved to Greece that all her noble efforts, all her bloody sacrifices, were unattended with any real and permanent success, so long as they were unaided by the august and powerful sanction of the European monarchs.

The convention of April, 1826, signed at St. Petersburg, the treaty of London of the 6th of July, 1827, and that ever memorable day the 8th (20th) of October, prove to Greece that Great Britain, France and Russia, acknowledge the justice of her cause, and interpose their powerful aid to terminate her long continued sufferings.

The election of the congress of Trœzen of April, 1827, was communicated to me in June of the same year. I cannot better repay the confidence which the Greeks have reposed in me, than by endeavouring to be able to announce to them, ere long, with certainty, that the allied courts will not refuse their generous support, so soon as Greece, by restoring order in her interior, can give to the sovereigns a guaranty that she will also resume her national and political standing. With the design therefore of seeking the opportunity and the means of preserving and consolidating these expectations, I undertook long journeys and distant embassies before touching the soil of Greece.

You are all aware, gentlemen, what was her condition at that period. You are not ignorant of the basis on which the provisional government of Greece was founded, with the approbation of her council and the kind feelings of her inhabitants.

I shall now present you with an account of our proceedings, and it will be for you to judge of them.

After having established the council, we wished to gain that knowledge which would maintain in trust the authorities to which the nation had once more confided its peculiar interests.

We wished likewise to convince Europe that Greece sighed for order, and that the government to expedite the fulfilment of this wish considered it indispensably necessary to own no allegiance to any arbitrary power, and to pay particular regard to our army, to our navy, and to our political economy.

The decree respecting the organization of the regiments, the edict which relates to the marine service, as well as the measures

taken to establish a national bank, and a general college, have been the first steps towards the regulation of the interior. After the publication of these edicts, the national cabinet obtained from the bank a loan of 2,034,660,03 piastres.

The Archipelago has been freed from the pirates who infested, it and who cast unmerited infamy on the Greek navy. Our valiant soldiers, having re-assembled at Trœzen and Megara, are again united under their standards; those very men, I say, who, dejected by the vicissitudes of fortune, and exhausted by fatigue and sufferings, amid the confusion, might naturally have forgotten every feeling of duty. One division under the command of Admiral Miaulis insured the free navigation of the Archipelago, and conveyed to our distressed brethern in Chios, every consolation which it was in our power to offer. A second division under vice-admiral Sachtouri was destined for the blockade which *the admirals of the allied powers compelled us to abandon.*

Scarcely were these measures taken, scarcely had we begun gradually to spread over all the provinces of the country, the renovating influence of a moderate and well regulated administration, when every arrangement was destroyed by an evil of a new and dreadful species. The soldiery of Ibrahim Pacha brought the plague among us, spreading it over the islands of Hydra and Spezzia, even to Argos and other provinces of Peloponnesus. The nation supported this novel calamity with characteristic fortitude and admirable resignation, struggling even with this invincible enemy.

Although the *sanitary cordon* presented to the internal organization of the provinces almost insurmountable difficulties, still however it was effected. Primates, their adjuncts in ordinary, and provisional governors were appointed. Lazarettos, ports, a civil police, and custom houses, were established. At this time, the very moment when our treasury was at the lowest ebb, Divine Providence sent us consolation.

Their majesties, the king of France and the emperor of Russia, in the kindest manner furnished us with pecuniary supplies: those of France being accompanied by a minister plenipotentiary to the Greek government. Thus, every hope that we had fondly entertained whilst presenting the prayers of Greece to the allied sovereigns, every hope, I repeat, began to be realized.

The accomplishment of our expectations was no less due to the magnanimous efforts of admiral Codrington. This noble friend of Grecian liberty had resolved, in Alexandria, on the expulsion of the Egyptian force from Peloponnesus; when the French exhibition, having made a descent on Chersonesus, effected the complete deliverance of our country.

The Mussulmans having in effect evacuated the fortresses of Mesene and Achaia, the inhabitants of those places—those, at least, who had survived their protracted misfortunes—have at length taken possession of the ruined mansions and desolated fields of their beloved country; all that the enemy has left of their once flourishishing cities and thriving towns, of their fertile and cultivated plains.

Thanks to the French troops; to their valour, to their deeds, to the

abundant relief which was experienced wherever they spread their tents!

The fortresses of Coron, of Modon, of Mio-castro, and of Patras, have risen as it were by magic from their ruins, and are even now possessed of all their former strength.

In November the plague again visited the province of Calavrita, and threatened Chersonesus with new calamities. But the French soldiers, at the first summons of their generous leader, abandoned their tents, and having established a *sanitary cordon*, over which General Hygonet presided in person, in the midst of dangers and sufferings of every description, afforded food and clothing to thousands of unhappy people, and in a short time wholly destroyed the germ of this frightful epidemic. The French army halted in Chersonesus. The Greeks of the continent, watching incessantly to see the borders of Peloponnesus passed, manifested their wishes in this regard. We ourselves hoped to see them accomplished, for we were far from apprehending the diplomatic act which decided it otherwise.

Meanwhile, at a time when the army was preparing to leave this country, which it had saved from destruction, we received new marks of generosity from Charles X. This monarch benevolently continued to supply us with money, whilst the French soldiers provided a garrison for the fortress of Mesene. To them also we are indebted for training our young soldiers to military discipline, with which they were before entirely unacquainted.

The beneficence of his majesty the king of France did not end here. All the unfortunate men who had been carried slaves into Egypt, by his interposition regained the blessings of liberty, and returned to the embrace of their country.

A body of learned men of the French Institute, and of distinguished artists, are commissioned to explore the classic grounds of Greece; and while they will be engaged in the discovery of all that relates to archæology, to geography, and to the arts and sciences, Greece will reap the whole fruit of the precious labours.

The representatives of the allied sovereigns arrived at Poros in September, and requested us to furnish them with the information which they deemed suitable to answer the claims which the mediating powers should make, in conformity with the articles of the treaty of London.

This duty we performed, keeping always in view the instructions which the congress of Epidaurus delivered to the diplomatic committee, and acting, as far as was possible, in pursuance of those instructions.

Their majesties, the emperor of Russia and the king of Great Britain, also honoured Greece by sending ministers plenipotentiary to her government.

In the autumn of last year, the conferences of London resumed their activity. The protocol of the 16th November was signed. This act, however, was not officially communicated to us.

You will be made acquainted with the communications which were sent to the Greek government on these great and interesting matters, and I trust that you

also will approve of the considerations which we have submitted to the allied kings.

You will perceive that we endeavoured to adhere to the principles which governed the national assembly of Epidaurus, without, however, neglecting those which are a necessary consequence of the position of Greece relative to herself, to the mediating powers, and to the Ottoman Porte. The treaty of the 6th July contains distinctly all that applies to these relations; thus the present negotiations tend to settle them for ever.

I deem it useless to address you concerning the causes which have prevented the complete execution of the laws of the assembly of Epidaurus, of Astræa and of Træzen. We are of opinion that the same causes will operate so long as formal treaties do not determine the boundary of the Greek territory, and our relations with the mediating powers, and with the Ottoman Porte. Until this is accomplished, it appears to me that we can only regulate provisionally the internal police; insure, by just and severe means, those rights which our citizens have purchased with their blood, and occupy our attention in the revision of the fundamental laws, by a conscientious improvement from the lessons of experience.

Such are the views which have dictated all the provisional regulations forming the body of laws of the present government.

The Secretary of State will lay before you all the documents, as soon as you may desire it.

The organization of the judiciary is scarcely commenced; and having, on our part great difficulties to surmount, we have succeeded, as far as was possible, in answering satisfactorily, the questions which were frequently addressed to us from the provinces. They express their acknowledgments to us in a manner which does honour to the character of members of the Greek family. Many disputes have been settled to the satisfaction of contending parties, on which the tribunals would otherwise have been obliged to pronounce judgments. Some of these call for particular regulations. We have published one on old debts; there are others which, doubtless, you may deem equally necessary.

The church has suffered a large share of the national evils; and it should be a part of our duty to acquire an accurate knowledge of its real condition. For this purpose an ecclesiastical commission has been appointed, and we wait for its report.

Since we arrived in Greece, our attention has been occupied with a number of children, whom them isfortunes and losses of their country have rendered idle and vicious. The hospital of Egina contains already five hundred orphans; and the schools of mutual instruction which have been founded in several provinces, extend their benefits to more than six thousand children. A normal school will be established at Egina, in which pupils will be rendered capable of teaching according to the Lancasterian system.

We hope, with the favour of God, and the assistance of the generous friends of Greece, to extend the benefits of elementary schools through every town and every province of the state. When this first object shall be effected, it will be

the duty of the government to found central academies in the several provinces, in order that the pupils leaving the elementary departments may obtain in the former a more extensive knowledge of general literature, and of the arts and sciences.

A military school is already in operation, under the direction of an able and zealous principal, which promises success. This establishment forms a part of the corps of regular Greek troops. The report which was recently addressed to us by Colonel Heydeck, who had hitherto superintended the school, will make you acquainted with all that has been and will be done, to give to our troops of the line, and the branches of the military system connected with the fortresses, the extent and consistency which are indispensable.

When you have attentively examined, in this report, all that the general college has addressed to us, as well as our own observations, you will be enabled to judge of the actual condition of the national forces, and of the measures necessary to be taken, in order to insure a suitable rank to the citizens who may be engaged in the military service, both by land and sea; that the army and navy may be organized in a manner corresponding to the resources and to the position of Greece.

Both have performed their duty equally well, and the nation owes to both acknowledgments for their efficient services to the state in the complete conquest of the provinces still held by the Turks, who kept Greece in a state of incessant disquietude.

The sacred standard of the cross now waves in these provinces. Divine Providence, and the humanity of the allied sovereigns, will doubtless never suffer them again to experience the dreadful evils of former times.

The account which the committee of finance will lay before you, will present to you details which must increase your gratitude towards the benefactors of Greece, and towards the illustrious and generous personages who displayed such zeal in her cause.

Amount of the Receipts and Expenditures of the state from January, 1828, to the 30th of April, 1828.

RECEIPTS.	*Turkish Piastres.*
Revenue of the state,	8,539,969 04
Funds of the National Bank,	2,034,660 03
Prizes unliquidated,	233,414 02
Several state loans,	455,845 14
Funds administered by me,	1,706,576 11
Subsidy from France,	8,265,000 00
Subsidy from Russia,	4,383,200 00
	25,618,664 34

EXPENDITURES.	*Turkish Piastres.*
Army and Navy,	18,647,214 01
Several establishments for the Public use,	684,335 22
Interest paid by the National Bank,	38,779 28
Monthly pay to public funtionaries and to the internal government,	1,879,864 17
Orphan Hospital, for food and clothing,	666,508 21
Alms and food for the poor, &c.	356,880 00
Urgent payments to State creditors,	281,771 09
Unpaid rents of public lands,	653,948 03
Paid to Lord Cochrane,	159,510 00
Unliquidated prizes paid to the Austrian rear-admiral Dandolo,	115,831 08

Ready money of the Treasury,	1,789,022 05	
Money as yet unaccounted for,	342,000 03	——2,129,022 05
		*25,618,664 34

It must here be observed,

1. That, in addition to the supplies of money received from the King of France, his majesty has benevolently granted to Greece, since the first of April of this year, 100,000 francs monthly, to answer the wants, and assist the organization of the regular troops; that the French army has furnished us with horses, &c.; and, lastly, that M. the Baron de Rouen has finally announced to us, that he will place at the disposal of the Greek government, 500,000 francs.

2. That, agreeably to the order of his majesty, the emperor of Russia, there have been assigned to us, within a few days past, bills of exchange for the sum of 1,000,000 rubles. These bills have been sent to Naples for payment; so that we may expect to receive the money in a few days.

3. That, of the sum of 1,706,576 piastres, employed to build and defray the expenses of an orphan hospital, and other public institutions, by means of which, thousands of unhappy people were supplied with daily sustenance, 900,000 piastres were the gift of the generous friends of the Greeks. The balance, that is, 800,000 piastres, added to 212,000, which we sent, previously to our arrival in Greece, to supply the army of the west, is all that remains at our disposal.

We shall present a more detailed account to our benefactors, that they may see what uses we have made of the funds with which they so generously intrusted us.

You perceive, gentlemen, the weak state of our revenue, and you can, therefore, appreciate the importance of the duty which is imposed on you, of placing the government in a condition to satisfy its pressing necessities, and to fulfil the obligations which it has contracted.

We have neglected nothing to raise funds. You will learn our proceedings with the allied courts, in order to negotiate a loan of sixty millions of francs, under their sovereign protection. When you shall have read the communications which have been addressed to us, on this subject, you will entertain the same bopes with ourselves.

We desire, above all things, that in the present highly important state of affairs, you will attentively consider the expectations of the country, of the allied powers, and of the civilized world at large.

By comparing the past with the present, you will not find it difficult to put in practice those wise measures which should conduct the nation to that state of prosperity which is reserved for it by Divine Providence. All that we can do towards the attainment of it, is to declare the deep feelings which the sanctity of our cause excites in our bosom, by adopting principles fraught with purity and moderation, and fit to preserve the honour of this hallowed cause.

Negotiations have been opened, and if we are invited to participate in them, agreeably to the articles

* A Turkish piastre is about 14 cents of our currency; the amount will therefore be about $3,586,613.

of the treaty of London, you must invest the government with full and necessary powers. You may henceforward be employed to this end, since you are fully instructed, and have before you documents which can leave no doubt on your minds, respecting the plan of pacification, which was adopted in the conferences held at London.

I cannot too frequently repeat this advice to you, the truth of which your own hearts will tell you, namely, let all your endeavours—all your thoughts, be directed to the promotion of the Greek interests, never doubting the justice of the allied sovereigns. Pay, then, the most particular attention to the internal government of the state; and, if you adopt the opinion which I have declared, you will perceive that it will be impossible to establish constitutional and permanent laws, before the fate of Greece has been definitively determined. You will, perhaps, sanction the provisional system which exists at present, until that desirable period; modified, however, in such a manner, that the government, having new councils brought to its assistance, may restore tranquillity and order in the interior, commence the examination of such laws as should be proposed, and take, in fine, every measure which honour, justice and prudent foresight recommend to your attention. Among such measures, must be numbered those which relate to the financial department, to our exterior relations, and to the indemnification which the government should proffer to the citizens who sacrificed their property for the good of Greece; in order that it may fulfil the promises of the assemblies of Astræa, of Epidaurus, and Træzen; not only to these citizens, but to the valiant men who shed their blood in defence of their country. You should, in particular, afford relief and consolation, on the one hand, to the cities which are now unhappily reduced to ruins, and, on the other, to the honorable, though deplorable condition of the husbandmen.

In order to resolve all these problems with real advantage, as well as others which will hereafter present themselves, we must have time; or, I should rather say, we must have information, which can come only from abroad, and which we do not now possess, in addition to the advices obtained within our own territory, and which I have carefully collected. When, however, you had laid down the principles on which the government, together with its council, should act with regard to those important questions and interests which are connected with it, you will have performed half your task. Having re-assembled, you will then finish and perfect it; you will also be required to examine the acts of government, and to regulate the laws which it will offer for your sanction.

If this preliminary plan meet your approbation, the government, according to the rules which you will have laid down, will answer the powers of Europe on any question concerning the execution of the contracts of the treaty of London.

These contracts bind the nation only so far as they have been ratified by you. The same may be said of the constitutional laws: they will be administered as you may direct; and it depends on you, after mature consideration, to give them your sanction. You will, in fine, establish the principles and

forms on which all other interests will be regulated until a new national assembly shall be convoked.

During the sitting, and previously to the dissolution of this assembly, you will doubtless impress on your minds that, as you have become, on the one hand, the organs of the nation, through which it addresses thanksgivings to the Providence which presides over the fate of nations; you are, on the other, the conspicuous witnesses of its acknowledgments to the august allied monarchs, its benefactors, to their admirals, to the naval force and its worthy chief, and, lastly, to all the Philhellenists who, by so many proofs of generous commiseration, especially by memorable exploits, have displayed their attachment to Greece.

In all that I have thus candidly submitted to you, gentlemen, I have done my duty to the nation.

Having taken upon myself the direction of the affairs of the state, I deem myself happy in being able to sacrifice to it the remainder of my days; but the more particularly, if I could serve it as I desire, in the quality of a private citizen. I could them show to the Greeks, in the most satisfactory manner, the feelings which I entertain for the numerous proofs of confidence with which they have so generously honoured me.

PORTUGAL.

PROCLAMATION of the INFANTA REGENT OF PORTUGAL.

July 12th, 1826.

PORTUGUESE!—The regency of the kingdom is about to relieve you from anxiety, and to fix your attention upon decrees, which interest you generally, and which his most faithful majesty Don Pedro IV., has deigned to issue from his court at Rio Janeiro. With these decrees will be also published the Constitutional Charter of the Portuguese Monarchy, which the same sovereign has deigned to decree, and which, according to his intentions, must be sworn to by the three orders of the state, in order that it may govern the kingdom of Portugal and its dependencies. In the mean time, the regency informs you, that this charter differs essentially from the Constitution produced by infatuation in 1822, and which contained principles incompatible with each other, and condemned by experience. The character of the Constitutional Charter which his most faithful majesty gives you is quite another thing. It is not a forced concession; it is a voluntary and spontaneous gift of the legitimate power of his majesty, and matured by his profound and royal wisdom. This charter tends to terminate the contest between the two extreme principles which have agitated the universe. It summons all Portuguese to reconciliation, by the same means which have served to reconcile other people; by it are maintained, in all their vigour, the religion of our fathers, decorum, and the rights and dignity of the monarchy; all the orders of the state are respected, and all are alike interested in uniting their efforts to surround and strengthen the throne, to contribute to the common good, and to

secure the preservation and amelioration of the country to which they owe their existence, and of the society of which they form a part; the ancient institutions are adapted and accommodated to our age, as far as the lapse of seven centuries will permit; and finally, this charter has prototypes among other nations who are esteemed among the most civilized and the most happy. It is our duty to await tranquilly the execution of this charter, and of the preparatory acts which it prescribes. If any among you should, by words or actions, aggravate resentments, excite hatred, or inspire vengeance, and interpose between the provisions of the law and its execution, he will be considered as a disturber of public order, and as an enemy of the sovereign and of his country; and he will be punished with the utmost rigour of the law. The regency flatters itself that the Portuguese people, both from the national character and for their common interest, will recognise, on this occasion, both what is their most important duty, and the way in which they may become principally useful.

Given at the Palace of Ajuda, this 12th of July, 1826.

(Signed) THE INFANTA.

(Countersigned) JOSE JOAQUIM D'ALMEIDA E ARAUJO CORREA DE LA CERDA.

DECREE OF HIS MAJESTY THE EMPEROR DON PEDRO *to* HIS ROYAL HIGHNESS THE INFANT DON MIGUEL.

July 3, 1827.

Urged by motives worthy of my royal consideration, and considering that the safety of the state ought to be the supreme law for every sovereign who has at heart the welfare and the happiness of his subjects; and, moreover, having in view the good qualities, the activity and the firmness of character, which distinguish my very dear and beloved brother, the Infant Don Miguel; I name him my lieutenant, bestowing upon him all the powers which, as king of Portugal and the Algarves, belong to me, and which are marked out in the Constitutional Charter, in order that he may govern and rule over the same kingdoms in conformity with the dispositions of the above-mentioned charter. The Infant Don Miguel, my very dear and beloved brother, will thus execute it.

Given at the Palace of Rio de Janeiro, the 3d of July, 1827.

(Signed) R.

His Royal Highness the Infant Don Miguel.

HIS MAJESTY THE EMPEROR DON PEDRO *to* HIS ROYAL HIGHNESS THE INFANT DON MIGUEL.

Rio de Janeiro, July 3, 1827.

My dear brother,—I have the satisfaction to announce to you, that, taking into consideration your discreet conduct, and your known loyalty, I have just named you my lieutenant in the kingdom of Portugal, in order that you may govern it in my name, and according to the constitution that I have granted to the said kingdom. I expect, my dear brother, that you will look upon this resolution as the greatest proof I can give you of my confidence, and of the love I bear you.

(Signed) PEDRO.

His Royal Highness the Infant Don Miguel.

PROTOCOL.

Vienna, Oct. 18, 1827.

PRESENT.

On the part of Austria—M. le Prince de Metternich, M. le Comte

de Lebzeltern, M. le Chevalier de Neumann, M. le Comte Henri de Bombelles.

On the part of England—the British Ambassador.

On the part of his royal highness the Infant Don Miguel—M. le Baron de Villa-Secca, M. le Comte de Villa-Real.

Prince Metternich having invited the British ambassador and the Portuguese plenipotentiaries to meet at his house on the 18th of October, and those gentlemen having repaired there upon his invitation, he proposed that they should record, in an official protocol, the result of the confidential negotiations which had taken place between MM. de Villa-Secca and Villa-Real, since the time of his return to Vienna, relative to the departure of the infant, that prince's voyage, and the line of conduct he intended to pursue upon his arrival at Lisbon; and the British ambassador, as well as the Portuguese plenipotentiaries, having agreed to this proposition, it was decided that they should annex to the protocol of the present conference the following documents, namely—1. A copy of the note of the Marquis de Rezende to prince Metternich, dated 19th of September, 1827, which should serve as a commencement to the present negotiation. In this note the Brazilian envoy announces officially to the cabinet of Vienna, that the emperor Don Pedro, his master, by a decree dated the 3d of July, "has conferred on his royal highness, the infant Don Miguel, with the title of his lieutenant in Portugal, the regency of the said kingdom, agreeably to the laws existing in that state, and in conformity with the institutions given by the emperor, his august brother, to the Portuguese monarchy."

2. A translation of the abovementioned decree of the 3d of July, of the emperor Don Pedro to his royal highness Don Miguel.

3. A translation of the letter from that sovereign to the Infant, his brother, which accompanied the same.

4. A translation of the letter from the emperor Don Pedro to the king of England.

5. A translation of the letter from the emperor Don Pedro to his majesty the emperor of Austria.

6. A copy of the despatch which prince Metternich has this day addressed to prince Esterhazy, at London, directing his excellency to acquaint the British government of the determination to which the Infant has come, to send Portuguese ships forthwith to England, whither he himself will repair directly, for the purpose of embarking as quickly as possible for Portugal. This despatch, which contains an historical and faithful account of the whole negotiation relative to the present and future situation of the Infant, as well as the last determinations to which that prince had come, had been read at a confidential meeting which took place on the evening of the 16th of October, at prince Metternich's, and at which were present the British ambassador and the Portuguese plenipotentiaries. It was not until after having obtained their entire concurrence, that this despatch was this day sent to London. The Portuguese plenipotentiaries announced to the conference, that the Infant had likewise made them acquainted with his final determination relative to his voyage; that his royal highness had ordered

them to prepare letters which he wished to communicate in consequence, without delay, to the emperor his brother, to his majesty the king of England, and to the Infanta, his sister; that he had likewise ordered them to draw up the letter to the Infanta, in such manner that it might be made public, and that it should at the same time leave no doubt of the firm desire of that prince, in accepting the lieutenancy of the kingdom, which the emperor his brother had just confided to him, to maintain religiously its institutions, to bury what had passed in entire oblivion, but to restrain, at the same time, with energy and firmness, the spirit of party and of faction, which has too long agitated Portugal.

All the members of the conference could not but render unanimously the most entire justice to such laudable intentions on the part of the Infant; prince Metternich on his part added, that immediately after the Infant's letters should be written and signed, he had offered to send them speedily to England by M. de Neumann, who only awaited their completion, to depart, and to transmit duplicates to Portugal by a courier, whom he intended to send forthwith by Madrid to Lisbon. The Portuguese plenipotentiaries having accepted these offers, prince Metternich thought it proper still further to observe on this occasion, that, above all, the Infant ought undoubtedly to affirm, in the letters which he intends to write to the king of England, and to the Infanta his sister, the title of lieutenant of the kingdom, since it is under that title that the emperor intrusts to him the regency; and that it appeared to him proper, and even necessary, that the Infant should take, together with the title of lieutenant, that of regent of the kingdom, since, being called by the decree of the emperor Don Pedro, of the 3d of July, to succeed to the Infanta, his sister, in the office of the regency, it would be equally contrary to his personal dignity, to that of the Portuguese nation, and to the pleasure of the emperor Don Pedro, that he should take any title inferior to that which the Infanta had borne; that there could not, moreover, exist any doubt of the intentions of that sovereign in that respect; that they were clearly demonstrated by the tenor of the note of the marquis de Rezende of the 19th of September, by that of the instructions with which that envoy was furnished, and lastly, by that of the letter from the emperor Don Pedro to the king of England; since, in these different documents, it is explicitly or implicitly said, that that sovereign confers the regency upon the Infant. Moreover, there is no doubt, that the decree of the emperor Don Pedro, to the Infant, his brother, dated the 3d of July, was addressed "To the Infant, Don Miguel, regent of the kingdom of Portugal."

The British ambassador observed, that having been already informed, for several weeks past, of the opinion of the cabinet of Vienna in this respect, he had already made his government acquainted with it; that, in fact, he had not yet received any answer upon this subject, but that he flattered himself that it would be in conformity with the opinion of the Austrian cabinet. With respect to the Portuguese plenipotentiaries, they declared themselves in favour of that which prince Metternich had just expressed, and they undertook to

inform the Infant of it, observing that, for the interest of Portugal, it was undoubtedly desirable that the Infant should not scruple to take, in conformity with the intentions of the emperor Don Pedro, his brother, the title of regent of the kingdom. MM. de Villa-Secca and Villa-Real added, that they had received the order of the Infant to declare, that filled with gratitude for the paternal kindness, which his majesty the emperor of Austria has constantly shown to him since his first arrival at Vienna, and still more particularly on this last occasion, his highness would consider it his duty to express personally to his imperial majesty the deep and respectful gratitude which he feels, and that he relied upon his sentiments being made known to him by means of the conference.

Prince Metternich undertook with eagerness, in the mean time, to become the channel of his royal highness's sentiments to the emperor, his august master, adding, that his imperial majesty would receive the expression of them with the most sincere satisfaction.

(Signed)

METTERNICH.
LEBZELTERN.
NEUMANN.
H. DE BOMBELLES.
H. WELLESLEY.
CONDE DE VILLA-REAL.
BARAO DE VILLA-SECCA.

PROTOCOL.

Vienna, Oct. 20, 1827.

PRESENT.

On the part of Austria.—M. le Prince de Metternich, M. le Comte de Lebzeltern, M. le Chevalier de Neumann, M. le Comte Henri de Bombelles.

On the part of England.—The British Ambassador.

On the part of his royal highness the Infant Don Miguel.—M. le Baron de Villa-Secca, M. le Comte de Villa-Real.

The Portuguese plenipotentiaries having requested prince Metternich to have the goodness to assemble a second conference to receive the communication of the letters which his royal highness the Infant had written and signed on the preceding evening, for his majesty the emperor Don Pedro, his august brother, for his majesty the king of England, and for her royal highness the Infanta Donna Maria Isabella, regent of Portugal; in which letters the Infant, in conformity with the opinion of the Cabinet of Vienna, assumes the double character of lieutenant and regent of the kingdom; and prince Metternich being desirous to re-assemble the conference at his house on the 20th of October, according to the desire of the Portuguese plenipotentiaries, those gentlemen read the three letters above-mentioned, and annexed to the Protocol copies and translations of them. A just eulogium was generally paid to the wisdom, uprightness, and rectitude of the principles manifested in their composition. It was also observed, that the letter of the Infant to the emperor Don Pedro did not contain any reservation of his personal rights, but that at London, however, such a reservation was considered as desirable. But prince Metternich replied, that the Infant having already explicitly reserved all his rights in the letter which he has written to the emperor Don Pedro his brother, in sending to him his oath to the Portuguese

charter, a second reservation would at present be superfluous; that it was, notwithstanding, very natural that in Portugal a high value should be attached to that question, which is necessarily connected with those of the confirmation of the act of abdication of the emperor Don Pedro, of the sending the young queen Maria de Gloria to Portugal, and of the total and definitive separation of the two crowns; that they might remain perfectly tranquil on that head, seeing that Austria and England were convinced of the importance of not suffering a longer time to elapse, without deciding upon questions of so high an interest for the interior tranquillity of Portugal, and that those two powers were determined to unite their efforts to urge and obtain their decision at Rio de Janeiro.

The explanations furnished on this subject by prince Metternich having been found fully satisfactory, it was acknowledged that the reservation in question would be useless.

The Portuguese plenipontentiaries afterwards announced to the English ambassador, that the Infant had anticipated the wishes of his government, in deciding spontaneously to address a second confidential and affectionate letter to the Infanta, his sister, to tranquillize her on the subject of her future condition. Those gentlemen added, that the Infant had also decided to write in duplicate to the Infanta, his sister; that all the letters were ready, signed and sealed; that it only remained for them, consequently, to request prince Metternich to have the goodness to hasten their despatch by way of London and Madrid. Prince Metternich gave a positive assurance that these two expeditions should set out with the least possible delay, and he, in consequence, engaged MM. de Villa-Secca and de Villa-Real to send to him, in the course of to-morrow, the letters of his royal highness, as well as the despatches which those gentlemen may desire should accompany them.

The Portuguese plenipotentiaries observed, lastly, that the frank and loyal support which they have constantly met with from M. the marquis de Rezende, in regard to all the questions, relative as well to the departure of the Infant as to the direction and acceleration of the journey of that prince, has induced them to keep him generally acquainted with the course of their transactions, and to inquire of him respecting the desire which he might perhaps have to assist at the conferences destined to sanction the result; but that the envoy of Brazil had answered, that he had fulfilled the instructions of the emperor, his master, in causing the Infant to know distinctly the intentions of his august brother relative to his departure and voyage; but that not being specially authorized to take part in the affairs of Portugal, as he had announced in one of their former confidential meetings, he had preferred not assisting at the conferences relative to them.

In conformity with this declaration, it has been agreed not to invite the marquis de Rezende to assist at the present meeting, but to conclude the protocol of it, and to submit it, as well as that of the preceding meeting, for the signature of the representatives of Austria, England, and Portugal, to preserve the two original protocols in the archives of the Chancery of

the Court and State at Vienna; and to deliver legalized copies of it to the English ambassador, and the Portuguese plenipotentiaries.

(Signed)

METTERNICH.
LEBZELTERN.
NEUMANN.
H. DE BOMBELLES.
H. WELLESLEY.
CONDE DE VILLA-REAL.
BARAO DE VILLA-SECCA.

HIS ROYAL HIGHNESS THE INFANT DON MIGUEL *to* HIS MAJESTY THE EMPEROR OF BRAZIL.

Vienna, Oct. 19, 1827.

Sir—I have received the decree which your imperial, royal and most faithful majesty has deigned to address to me, dated the 3d of July, by which your majesty has been pleased to nominate me your lieutenant and regent of the kingdoms of Portugal, the Algarves, and their dependencies; and, conformably with the sovereign determinations of your majesty, I immediately occupied myself in making the necessary arrangements to proceed to Lisbon, in order to fulfil the wise and paternal views of your majesty, in governing and ruling the said kingdoms conformably to the Constitutional Charter which your majesty has granted to the Portuguese nation.

All my efforts shall tend to the maintenance of the institutions which govern Portugal, and to contribute, as much as lies in my power, to the preservation of the public tranquillity in that country, to prevent its being troubled by factions, whatever may be their origin,—factions which shall never have my support.

May Heaven preserve the precious days of your majesty.

(Signed)

THE INFANT DON MIGUEL.

His Majesty the Emperor of Brazil.

HIS ROYAL HIGHNESS THE INFANT DON MIGUEL *to* HER ROYAL HIGHNESS THE INFANTA REGENT OF PORTUGAL.

Vienna, Oct. 19, 1827.

My dear Sister,—Although I have every reason to suppose that you are already acquainted with the resolution taken by our august brother and king to nominate me his lieutenant and regent of the kingdoms of Portugal and the Algarves, and their dependencies, to govern them conformably to what is prescribed in the Constitutional Charter given by our august brother to the Portuguese nation, I cannot, nevertheless, forbear announcing to you that I have received the decree of the 3d of July of the present year, in virtue of which I find myself fully authorized to take possession of the regency of the above-mentioned kingdoms.

Determined to maintain inviolate the laws of the kingdom, and the institutions legally granted by our august brother, and which we have all sworn to maintain and to cause to be observed, and to rule by them the above-mentioned kingdoms, it is proper that I should so declare it, that you may have the goodness, my dear sister, to give to that solemn declaration the required publicity, and that you may make known, at the same time, the firm intention which I have to repress the factions which, under whatever pretext, tend to trouble the public tranquillity in Portugal; desiring that past errors and faults which may have been committed may be buried in an entire oblivion, and that concord, and a perfect spirit of conciliation may succeed to the de-

plorable agitations, which have divided a nation, celebrated in the annals of history for its virtues, valour, loyalty, and devotion to its princes.

In order to execute the royal intentions of our august brother, I am preparing to return to Portugal; and I request you, my dear sister, without any loss of time, to cause a frigate and a brig to be prepared, and to set out for the port of Falmouth, in order that they may serve to transport me to Lisbon.

May God, my dear sister, have you in his safe and holy keeping.

(Signed) MIGUEL.

The Infanta Regent of Portugal.

HIS ROYAL HIGHNESS THE INFANT DON MIGUEL *to* HIS BRITANNIC MAJESTY.

Vienna, Oct. 19, 1827.

Sire,—The decree by which the emperor and king, my brother, has nominated me his lieutenant and regent in the kingdoms of Portugal and the Algarves, and its dependencies, having reached me, one of my first cares must be to convey this noble resolution to the knowledge of your majesty. Convinced of the interest which you will take in it, on account of the ancient and intimate alliance which has always subsisted between Portugal and Great Britain, and which I sincerely desire to cultivate, I dare flatter myself that you will have the goodness to grant me your good-will and support; the end which I propose to myself being invariably to maintain tranquillity and good order in Portugal, by means of the institutions granted by the emperor and king, my brother,—institutions which I am firmly resolved to cause to be respected.

I address this request to your majesty, in the expectation of having the honour of making it to you personally, with the confidence inspired by your great wisdom and the interest which you have always taken in every thing which regards my family and the welfare of Portugal.

I pray your majesty to accept the homage of my sentiments of attachment and high consideration.

(Signed)

THE INFANT DON MIGUEL.

His Britannic Majesty.

PROTOCOL.

Vienna, Oct. 23, 1827.

PRESENT.

On the part of Austria.—M. le Prince de Metternich, M. le Comte de Lebzeltern, M. le Chevalier de Neumann, M. le Comte H. de Bombelles.

On the part of England.—The British Ambassador.

On the part of his royal highness the Infant Don Miguel.—M. le Baron de Villa-Secca, M. le Comte de Villa-Real.

The protocol of the conference of the 20th inst., was approved and signed, when the British ambassador announced that he had still a confidential communication to make to the members of the conference, and he read to them a letter which he had that day received from Paris, in which he was informed that some agents of the Portuguese refugees had been sent there to obtain access to the Infant. It appears, according to this letter, that these refugees are endeavouring to excite an insurrection in Portugal, and to destroy the constitution before the arrival of Don Miguel.

Prince Metternich observed, that this communication deserved the more serious attention, as the in-

telligence which he had received direct from Spain in the course of the last week, and which he had hastened to communicate to the British Government on the 18th of of this month, gave him reason to believe in the existence of this culpable project; that the Infant had himself been the first to speak to him of his fears with respect to this, and had expressed a wish that means should be thought of to prevent a movement, which, should it break out before his arrival at Lisbon, might place him in a very difficult and embarrassing situation. Prince Metternich added, that, as the Infant entertained views so favourable, the most effectual means to employ, would be a direct overture from this prince to the king of Spain. He proposed, therefore, to invite the Infant to write immediately to his Catholic majesty, to inform him of the determination which he had come to, in conformity with the decree of the emperor Don Pedro, his brother, of the 3d of July, and to ask of him, at the same time, with confidence, to take such measures as, in his wisdom, he should judge most effectual in preserving tranquillity in the Peninsula, and to make known to the aforesaid refugees that the Infant highly disapproved of such projects, and was determined to repress them.

This proposal of prince Metternich having been unanimously approved, the Portuguese plenipotentiaries having undertaken to submit it to the Infant, and that prince having received it favourably, the baron de Villa Secca, and the count de Villa-Real have announced to-day to the conference, that his royal highness had willingly consented to write to the king of Spain in the sense agreed upon; that they had it in command to deliver to prince Metternich the letter of the Infant to his Catholic majesty, with the request that it might be forwarded to its destination as soon as possible, and to annex a copy of it to the present protocol.

The prince Metternich declared that he took charge of it with the greater pleasure inasmuch as he did not doubt but that a step so frank and loyal on the part of the Infant would produce all the effect which it gave a right to expect. He then proposed to communicate the present protocol to the cabinets of London, Paris, Berlin, and Petersburg, with the request that they would transmit, without delay to their respective missions at Madrid, orders to support, with all their influence, the step which the Infant has just taken towards his Catholic majesty.

This proposition having been unanimously approved, it was agreed that the despatches for Paris and London should be in consequence made up immediately, and that they should be intrusted to M. de Neumann.

(Signed)
METTERNICH.
LEBZELTERN.
NEUMANN.
H. DE BOMBELLES.
H. WELLESLEY.
CONDE DE VILLA-REAL.
BARAO DE VILLA-SECCA.

HIS ROYAL HIGHNESS THE INFANT DON MIGUEL *to* HIS MAJESTY THE KING OF SPAIN.

Vienna, Oct. 21, 1827.

My very dear Uncle,—I have the honour to inform your majesty, that I have received a decree, dated from Rio de Janeiro, by which my

august brother, the emperor of Brazil, and king of Portugal and the Algarves, nominates me his lieutenant and regent in the last-mentioned kingdoms. Having accepted this regency, and proposing shortly to repair to Lisbon, it has come to my knowledge from sources worthy of credit, that some of the chiefs of the Portuguese refugees, who are now in the dominions of your majesty, intend in the mean time to excite movements, with the intention of disturbing public order in Portugal, which would necessarily produce calamities which will not escape the high penetration of your majesty.

In this state of things, I address myself directly to your majesty, with the confidence with which I am inspired by the sincere and well-known desire by which your majesty is animated of maintaining tranquillity in the Peninsula, in order that, weighing in your high wisdom a matter so weighty, your majesty would deign to take those measures which you shall judge the most fitting, in order to make known to the aforesaid refugees my most entire disapprobation of such projects, which I am firmly resolved to repress.—May God, &c.

(Signed)

THE INFANT DON MIGUEL.

His Majesty the King of Spain.

RESOLUTION OF THE THREE ESTATES OF PORTUGAL, PASSED ON THE 11th DAY OF JULY, 1828.

"Although each one of the Three Estates of the Realm, assembled in Cortes, in compliance with the trust confided to all of them in the opening speech, pronounced on the 23d of June, in the current year, presented to His Majesty an Act, containing the Resolution by which they established the strong reasons why they acknowledged that, by right, the crown of Portugal had reverted to his august person, it nevertheless appeared expedient, and even necessary, and it was on this account decreed by his majesty, that, besides the special acts, they should draw up a single resolution, comprising the whole of the several grounds thereof, thus obviating the doubts (certainly no other than specious ones) which on this subject may be raised, or such as interest or party-spirit may have already suggested; and in order that the same, being generally signed by the members of which the Three Estates are composed, might become the sole voice of the whole nation, by expounding and maintaining the fundamental law of the succession to the crown, with that unbiassed impartiality and firm resolution, suited to a people, seriously determined not to commit, and at the same time not to allow of injustice.

"Wherefore, the Three Estates, appointing a committee, composed of an equal number of the members of each, and members of acknowledged talent, proved gravity and love of their country; this committee, after meeting, and again conferring on a point of such great importance, at length made a report, on a view of which Three Estates unanimously agreed as follows:

"If the laws of the kingdom excluded Don Pedro from the succession to the crown, at least from the 15th of Nov. 1825, the Portuguese crown, on the 10th of March, 1826, incontestibly belonged to the most high and most powerful King and lord, Don Miguel the First, because, as the two princes were call-

ed thereto, one after the other, on the first-born being legally excluded, the crown, by that legal exclusion, necessarily devolved to the second brother. In vain would it be to endeavour to seek out among the claimants another prince, or princess, entitled to the succession, after the first-born had been legally excluded, because, as no other than a descendant of Don Pedro could be found, it would be necessary to argue, in a manner repugnant to reason, and even to the very notion of legal terms, that after being excluded, he still possessed rights to the succession; or else it must be admitted, which would equally be as great, if not a more evident absurdity, that on the 10th of March he could transmit rights which previously, according to the supposition above stated, he did not possess. That prince, or princess, so empowered, as long as a minor and in the hands of foreign parents, could not fail also to be reputed a foreigner in Portugal; but even if this were not supposed to be the case, on this account, he, or she, could not acquire rights, of which the only person who could transmit them, was already deprived by law.

"These are the great and incontestible grounds on which the Three Estates have acknowledged their legitimate king and lord in the august person of Miguel the First. The first-born was excluded; the descendants of the first-born, supposing the said exclusion legal, could not therefore derive from him, and much less from any other person, rights to the succession; when the laws, indisputably, in that case, call the second line to the throne.

"What person, in fact, acquainted with the fundamental laws of Portugal, could doubt their excluding from the throne every foreign prince, as well as every other prince who is politically disabled from residing in the kingdom? And who can doubt that Don Pedro, at least from the 15th of November, 1825, became a foreigner, by holding and considering himself as the sovereign of a foreign state; and that he disabled himself from residing in Portugal, not only by the act of constituting himself sovereign of that same foreign state, but also by his binding himself by oath to the laws thereof, which so expressly and peremptorily forbid the same?

"The recollection of the political alterations and changes of Brazil is very recent; the constitutional charter of Brazil is also very generally known throughout Europe, and any effort on the part of the Three Estates to prove the existence of laws and events so notorious, would be superfluous and even objectionable. How much more so must this be the case with true Portuguese, who seek to spare themselves the pain of touching these still bleeding wounds of their unhappy country, or of reviving the bitter recollection of their claims and rights, either regarded with indifference, or purposely ill-requited.

"However foreigners, unacquainted with the fundamental laws of Portugal, and even certain natives, who, perhaps, affect to forget them, think on the subject, the Three Estates do not hesitate to allege and call to mind, the literal and clear resolution of the Cortes Lamego, couched in these precise words:—'Let not the kingdom come to foreigners. We do not wish that the kingdom, at any time, should pass over to foreign-

ers.'—the sense of which is so clear and distinct, that any commentary thereon would be useless and misplaced. They also allege and call to mind, the petition (undoubtedly granted) of the Three Estates, in 1641, and particularly of the nobility, that most signal monument of their loyalty and zeal for the country's good, as well as of the political discretion of our ancestors. And it ought further to be observed, that it is not to be inferred from the aforesaid petition, that there was any doubt respecting the decision of the Cortes of Lamego, in this respect; previously, the same decision continually served as an argument to repel the pretensions of the Castilians, and as such is deduced in the fifth clause of the famous resolution passed in Cortes, in the said year. In that petition no innovation was sought regarding the exclusion of foreigners; it was rather endeavoured to repeat and strengthen the law; and remove all doubts, even the slightest, from interested parties, respecting the legislation known, and hitherto followed, even in the case of there being on the frontiers a formidable army, and, by terror, attempting to compel the arrest of pusillanimous judges.

"The same rule was most assuredly observed, as seen from the plain narrative of those memorable events, in the controversy that was raised through the death of king Ferdinand, when Donna Beatrix, who found herself in similar circumstances to Don Pedro, experienced, as regards the royal succession, the same repulse. Donna Beatrix was born in Portugal; she was the first-born and only daughter of the presiding monarch, and, nevertheless, excluded from the throne; and what motive excluded her? Was it her sex? But females succeed to the crown in Portugal. Was it the scruples respecting the marriage of Leonora? These scruples, as recorded in history, did not, however, gain any ground till the Cortes of Coimbra. Was it for entering Portugal with an armed force? But this entry with an armed force was already provoked by resistance. The cause, consequently, clearly rested on her being a foreigner; and this was the ground of objection. This was the case, notwithstanding the public records of those times do not dwell on this point. It was, in fact, the repugnancy and resistance of the people. They knew the Portuguese laws; and the meaning of 'natural king,' that is, one who was born and lives among those over whom he rules, had its just value in the opinion of those true lovers of their country. Their generosity rejected with horror the danger of foreign dominion, and the mechanics of Lisbon and Santarem, as described by the only chronicler of that age, evinced more honourable feeling and judgment in their resolutions, than some of the presumptive wise men of the nineteenth century.

"But, they tell us, that Count de Boulogne was estranged to Portugal, and yet reigned in Portugal. The Count de Boulogne, however, did not reign by right of succession; he reigned extraordinarily by election. The leaders of this kingdom purposely went to France to fetch him—the pope's authority strengthened the choice, and by immediately proceeding to Portugal he recovered his right of birth. He did not take the title of king until after, as it were by dispensation, he

had been specially empowered by the Estates. It was, besides, a very remarkable circumstance, that there was not at the time in the kingdom any other person belonging to the royal family, as the Infanta D. Fernando was married in Castile, and the Infanta D. Leonora married in a country still more remote, in such manner that the laws were not violated in the case of the Count de Boulogne; but in him an extraordinary remedy was rather sought for the most urgent wants of the kingdom; the spirit of the laws and the national usages being at the same time followed with all possible scrupulosity.

"So great and obvious are the objections to, or rather the injuries of a foreign king, whether he be such from birth or choice, that it could not escape the wisdom of our legislators, as well as the instinct, if the expression may be allowed, of the whole nation—whence arose the circumstance that discreet and express laws are not wanting to us, to guard against such contingencies; nor could the opinion and resolution of the people fail, in all cases, to correspond to these laws. In truth, the king being a foreigner by birth, even when by ascending the throne he should become a citizen, the ties of blood nevertheless would be wanting, and with them necessarily would be lost those of reciprocal confidence and love; a perfect knowledge of the inclinations, habits, and real interests of the people would also be wanting, and thereby one of the most important means of governing them, with justice and success, lost. If the king, notwithstanding his having been born within the kingdom, should have absented himself, or taken up his residence in a different state, the kingdom is thus delivered up to viceroys and lieutenants; its advantages overlooked, and those of the people, in a great measure, sacrificed to persons who may be appointed to reside among them; when, on the one hand, we should have discontent and its sad and ruinous effects, and on the other, suspicion, caution, and oppression, which soon would degenerate into tyranny.

"The laws, therefore, held the want of birth, as well as the impossibility of residing within the kingdom, as sufficient grounds for exclusion from the throne. Alonzo III. did not govern Portugal from Boulogne; nor did the Portuguese, his contemporaries, ever even dream that it would be possible to reconcile the government of Portugal with perpetual absence, a morally invincible difficulty. It is, indeed, true that this political monstrosity took place with the intrusion of the kings of Castile; but the absence of the kings of Castile does not prove more against the Portuguese laws of residence, than the want of birth against the laws for the exclusion of foreigners. It ought, however, to be observed, not only that as soon as the oppressive yoke was broken by the courage of our ancestors, the law was not only immediately repealed in the Cortes of 1641, which allowed of non-residents; but the nobles of the kingdom, even in their second act of the Cortes of Thomar, had also the courage to petition that the king should reside among us, the most he possibly could, to which Philip found himself compelled to answer in the following words—'I will endeavour to satisfy you.' And how much more must not the Portuguese be persuaded of the necessity of

the residence of the king, whether reigning *de facto* or *de jure*, within the kingdom, when neither negotiations nor terror stopped the mouths of the nobility, or prevented them in 1591 from presenting a petition of this kind; nor did the king, powerful and self-willed as he was, venture to return a less suitable answer.

"The law, thus clear and thus cautious against all dangers, whether of foreign dominion, or great inconvenience in the internal government; the national opinion, declared at various periods, and according to the various events in our history; as well as the due reasons for both provisions, consequently exclude from the right of succession to the crown of Portugal, the actual first-born of the distinguished house of Braganza, and in his person, as in law obviously acknowledged, necessarily all his descendants. A foreigner, through choice and preference of his own—a foreigner by treaties—the Cortes and laws of Lisbon exclude him, in accordance with those of Lamego. Deprived of present, future, and, morally speaking, all possible residence within the kingdom, he was in like manner excluded by the letters patent of 1642. And it was necessary that the exclusion should commence at the very point where its essential causes and grounds began to operate, if the plea of his being a foreigner, and the moral impossibility of his residence were anterior, as in fact they were, to the 10th of March, 1826, when death snatched from Portugal a revered monarch, the laws, together with all the Portuguese who respect and love them, award to the second son the succession to the crown, from which the said laws themselves had so justly excluded the first.

"It did not escape the Three Estates of the realm, that the exclusion of Dom Pedro had still another very important ground, viz.—that the letters patent, above-mentioned, granted the petition of the Cortes, and enacted, 'that the oldest of the male children, when the king possessed two distinct sovereignties, should succeed to the largest, and that the smaller should fall to the lot of the second.' It is undeniable that the last king, on Brazil being raised to the rank of a kingdom, possessed two distinct sovereignties, although not separate ones, and that, on being separated by the law of November, 1825, he possessed them precisely within the conditions which the said letters patent provide for and consider them. To pretend, that, in order to apply to the case in point, the last king ought to have possessed them separate, for some time, by right of inheritance, and in no other manner, is a manifest inconsistency, and straining the letter of the law to the evident deterioration of its spirit—unworthy of a cause which ought to be treated with candour and gravity. To pretend that the petition of the people, bearing the grant and sanction of the legitimate sovereign, does not constitute a true law, is either a tergiversation, to which the weak only recur, or it amounts to a total ignorance of what our laws, made in Cortes, substantially are. Hence is it, that the people at that time petitioned that the intrinsic form of the other laws should be given to this one, and with them that it should be incorporated in the National Code; but when they so petitioned they did not look to the essence of the law;

they looked, as they themselves declare, to its notoriety, and the high degree of respect and strength given to the laws by their external formality. The Estates, nevertheless, do not hesitate to lay this ground to one side, which, although extremely weighty, as it assuredly is, they do not consider necessary to the present purpose.

"Neither have the civil wars—the shameful violation of the country's laws—the unjustifiable, and even despotic seizure of power—escaped them; in a word, they do not neglect their venerable country, either attacked with hostile fury, or else neglected and insulted in its rights and dignity. But, as already stated, they feel a repugnance in touching only half-closed and delicate wounds, on which account they leave the vindication of an offended and outraged country to the justice of divine Providence; and besides this, to the confusion of the guilty themselves, as well as to the severe censure of a cotemporary world and posterity.

On a view of reasons of such great weight, the Three Estates justly confide, that their award and resolution respecting the exclusion of Dom Pedro, and the restoration of the crown of Portugal to his august brother, will not be liable to any other objections than such as are merely specious. As some one, however, might attribute to fear, that which could be no other than contempt, they have resolved to meet those same specious objections which might be raised, and make appear, even to the most profound men on the subject, that these same objections are no other than phantoms, which interest and party spirit have seized upon, in the absence of a better weapon.

"Dom Pedro is the first-born—and who denies this? Granted, and readily, that he possessed the rights of primogeniture, and if he had not lost them, previous to the 10th of March, they would still readily and constantly have been acknowledged. Notwithstanding the love which our august sovereign has merited from the people, and which they have long devoted to him, it is not the Portuguese nation alone that sacrifices its passions, and even its best ones, to justice. Our monarch would be the first to object to any attempts on the part of the people, if they, impossible as is the case, sought to attribute to him a right, robbed from another. The moderation of his royal mind is fully proved and well known. But, it may be asked, cannot the rights of primogeniture, like any others, be alienated, or lost? Most assuredly they can; and it has already been clearly shown, that Dom Pedro had actually lost them, previous to the 10th of March, 1826. It is a very different thing to violate and disregard a right still acknowledged, and acknowledge that a right has been lost. It is the last case that Portugal, without the shadow of injury, and from which she is far removed, has been called upon to judge as regards Dom Pedro.

"How then did it happen, it may be said, that Portugal had him for her King immediately in March, 1826? How was it that she accepted, swore to, and carried the charter of the 29th of April into execution? How was it that he was retained in possession, and that the kingdom continued to be governed in his name, and according to the law which he himself gave, till May or April, 1828?—

The answer is easy:—In exactly the same manner as we once had for our sovereigns the three Philips of Castile, when Portugal was held under their subjection for seventy years. We arrive at the same point, although by different ways.

"The Three Estates would have wished to spare themselves the necessity of referring to the low cunning, the criminal means, and the occult and wicked stratagems of which a faction availed itself, in order to destroy the kingdom, presuming, with very little judgment, that it would thus find its own elevation on the general ruin. But this is necessary, in order to defend the honour of our country, and all considerations ought to yield in the presence of so sacred a motive. Was there not a well-disciplined army, posted on the Portuguese frontiers, under the orders of a distinguished general? But, possibly, gold and promises were not wanting, when the insidious negotiation of D. Christovao de Moura was carried into effect, by lulling some and frightening others—by deceiving, with apparent reasons and equivocal expressions, and even by falsely alledging the notice and interference of the great powers.

"Good faith, ever inseparable from minds really loyal, was then thrown off its guard; the voice of a wise and zealous council was silenced; the contrary efforts of some honourable persons were undermined by machinations and disloyal expedients, and the sentence of Ayamonte was renewed. What, in this case, could the unhappy Portuguese nation do? The legitimate heir, in anticipation, placed at a distance of four hundred leagues from the kingdom, and consequently unable to direct us—the Three Estates, whose duty it was to contend for our liberties, not convened—the people, without a leader,—without any legal point of union, could not do otherwise than fluctuate, amidst anxiety and incertitude. The good Portuguese bewailed their condition in secret; whilst some of the most determined of them went beyond the frontiers, there to record their protests: but the work of scandal prevailed, and the kingdom was dragged on and forced to submit to the yoke thus imposed. And could all this prove the rights of Dom Pedro more than the events which occurred in 1580 proved those of the King of Castile?

"The Three Estates view the solemnity of an oath with the same profound respect that is due to the Sovereign Lord who is therein invoked, and acknowledge its extremely great importance in the government of human societies.—They most sincerely regret, in our times, to see it prostituted, and on this very account despised, by such sacrilegious irreverence shown towards the Divine Majesty, to the enormous injury of men and commonwealths. They cannot, however, grant that the oath does not fail to become null and void, when applied to an illegal act—when it has been extorted by violence, and when, from its observance, necessarily would result the violation of the rights of persons and of nations, and, above all, the complete ruin of the latter. Such, in fact, is the oath to which the present objection alludes. To keep such an oath, would not amount to less than the stripping our country of life; and no solemnity whatever of an oath can compel any one to become the paricide of his country.

"If, however, the Portuguese received through violence, and indured with repugnancy, a yoke which they abhorred, was not Dom Miguel also reduced and compelled, in foreign countries, to make declarations of his having no right to the crown of Portugal, as well as promises to come and govern the kingdom as regent, and in the name of his brother? Why and wherefore? It appears to the Three Estates that, by this interrogation alone, the vaunted objection itself is destroyed. They expect to find no answer; but if, contrary to their expectations, any should be given, Portugal will break that silence to which the respect due to illustrious nations, for the present, binds her representatives. They will, nevertheless, add, that even although Dom Miguel, for his own interest, should have wished to compromise, not to involve himself in disputes, which might, although unjustly, be charged with ambition—even although he were to prefer following the most exalted moderation, could such a line of conduct annihilate his rights? And even although these rights were held as annihilated, is not this a point that belongs to the Portuguese nation, and to the Portuguese nation alone, to decide?

"The law of the 15th of November, 1825, has been alleged, in which his majesty, King John IV. whom God keep in glory, treats Dom Pedro de Alcántara as Prince Royal of Portugal and Algarves, and as heir and successor to these realms, at the very same time that he decrees the separation between Portugal and Brazil. Although this were considered as a direct and positive declaration of the continuation of Dom Pedro's rights, it certainly cannot be admitted as such, this construction being evidently unwarranted; the essential object of the law being quite otherwise; and if, as the Three Estates judge most probable, the mention merely originated in the compliance with a usage totally indifferent, as regards the part of the narrative, or in an inadvertent repetition of ancient forms, which escaped the composer of the document, is the circumstance either against, or in favour of our question.

"If, however, it is wished to say that it is neither a positive declaration, an indifferent usage, nor a mere mistake of the composer, but rather a cautious insinuation with which the legislator sought to uphold the right of Dom Pedro, which, by the legal separation, he saw, in the opinion of the world, were unguarded, three answers then occur. The first is, that this very acknowledgment of the vacillation in which the rights of Dom Pedro were left, without being favourable to him, strengthens those of his brother: secondly, that it cannot be true that King John VI. wished to sacrifice the rights of one Prince to the aggrandizement of another; nor is it credible that he could have wished to resolve a point of such immense importance, without the concurrence of the Three Estates of the realm, which so judiciously and fully he had just before declared indispensable in matters relating to the fundamental laws, in the memorable laws of the 4th of July, 1824: thirdly, that if such had been the will of the legislator, which amounts to an impossibility, the Three Estates could not, and will not, agree thereto.

"Every thing which, without the Three Estates at least legally and

clearly, and readily inferred, is arranged and practised as regards the fundamental laws, and especially as regards the right of succession to the throne, is not only abusive and illegal, but also invalid and of no effect; an assertion which the Three Estates do not take from the the public writer, Vattel, but from universal law, or rather reason, and in which they agree with what our ancestors have already said, when equally assembled in Cortes, in the year 1641. 'And pre-supposing,' says the resolution passed in that year, 'as a certainty in law, that to the kingdom only does it belong to judge and declare the legitimate succession thereof,' &c.

"Persons impugn, or rather pretend to impugn, the rights of our sovereign King and those of the Portuguese nation, by reminding us that the acknowledgment, by the sovereigns of Europe, of Dom Pedro, as King of Portugal, was done so *de jure* and not *de facto*.

"The Three Estates ought, and wish here to abstain, from every answer that may not be perfectly circumspect, or that might be offensive to the respect due to the sovereigns, or the importance of their own characters; as, however, that same respect due to the sovereigns requires that some answer should be given to this plea, the Three Estates reply thus:

"They well know that the turbulent and rash faction, by the words, cautiously employed, of '*Ancient Laws—Primogeniture*,' &c., dazzled and deceived the European powers, who, discreetly adhering to their noble system of legitimacy, acknowledged him, and seemed, without perceiving it, to corroborate, by their acknowledgment, a most enormous deviation from the laws, as well as the most daring insult hitherto levelled against the great and respectable principles of legitimacy. But this is no other than a deception practised on the said powers, or, at most, a crime committed by factious men, who do not hesitate at such commission. And could a deception on the part of the said powers, or rather a crime committed by factious men, injure the rights of our sovereign, or ours? If the European powers were to condescend to answer this question, most assuredly they would say—No.

"What now remains, is to request the said powers, and to hope, as the Three Estates of the realm confidently do hope, from their well known wisdom and justice, that, on the internal affairs of Portugal, and, particularly, as regards the fundamental laws thereof, and the right of succession to the throne, they will listen to the solemn testimony of the Portuguese nation, in preference to the sophisms and treasonable insinuations of a faction; well assured that in this manner they will not hesitate, as regards the pretended rights of Dom Pedro to the crown of this realm, to correct their judgment as soon as possible.

"All which, being well considered and deliberately weighed, the Three Estates of the realm, finding that most clear and peremptory laws excluded from the crown of Portugal, previous to the 10th of March, 1826, Dom Pedro and his descendants, and for this same reason called, in the person of Dom Miguel, the second line thereto; and that every thing that is alleged, or may be alleged to the contrary, is of no moment, they unanimously acknowledged and declared in their

respective resolutions, and in this general one also do acknowledge and declare, that to the King our Lord, Senhor Dom Miguel, the first of that name, from the 10th day of March, 1826, the aforesaid crown of Portugal has belonged; wherefore, all that Senhor Dom Pedro, in his character of King of Portugal, which did not belong to him, has done and enacted, ought to be reputed, and declared null and void, and particularly what is called the Constitutional Charter of the Portuguese Monarchy, dated the 29th of April, in the said year, 1826. And in order that the same may appear, this present act and resolution has been drawn up and signed by all the persons assisting at the Cortes, on account of the Three Estates of the realm.

"Written and done in Lisbon, this 11th day of the month of July, 1828."

Protest of the Plenipotentiaries of his majesty the Emperor of Brazil, against the usurpation which has recently been made of his crown and kingdom of Portugal.

When we addressed our solemn protest to the Portuguese nation on the 24th of last May,—

1st. Against all violation of the hereditary rights of his imperial majesty and those of his august daughter;

2d. Against the abolition of institutions liberally granted by that monarch, and legally established in Portugal;

3d. Against the illegal and insidious convocation of the ancient states of that kingdom, which had been abolished by virtue of a long prescription, and by effect of the institutions above alluded to—

We then flattered ourselves that the horrible attempt, of which the acts referred to were the sad prelude, would not have been carried into effect.

We had indeed been led to believe, that the menacing attitude assumed by the ministers of foreign courts accredited at Lisbon, together with the efforts made by a part of the brave Portuguese troops, would have arrested the machinations of a perjured and rebellious faction, and prevented the accomplishment of an usurpation pregnant with mischief, and subversive of the principle of legitimacy, held sacred by all the powers of Europe.

Every noble spirit, to which treason and perjury are obnoxious, conceived the same hopes; but neither the remonstrances of the governments most deeply interested in the prosperity of Portugal, nor the praiseworthy resistance made by the friends of legitimacy, and by all those who reverence religion and respect the sanctity of an oath, could check the fury of that faction, which had resolved, at all hazards, to seal their iniquity by a completion of the usurpation which they had premeditated.

By means of popular tumult, of violent destitutions, of innumerable imprisonments, and of revolting proscriptions;—by the arts of seduction and undermining;—and, indeed, by the employment of every kind of means, however odious or reprehensible, they rendered access easy to the criminal object they had in view: and their progress was so rapid, the work of

usurpation was speedily effected, in despite of, and to the great injury of all the potentates of Europe, who had, in a formal manner, fulminated a general anathema against it.

On the 23d of June last, the assembling of the *soi-disant* "three estates of the kingdom" was witnessed at Lisbon; but which, in fact, was nothing more than a meeting of the accomplices of an execrable faction; and when, every thing for this scandalous proceeding was ready, having been for a long time previously arranged, it was opened, by the proposition of the following question, to ascertain,

"If the crown of Portugal ought, on the demise of Don John VI., to have descended to the eldest son, the emperor of Brazils and prince royal of Portugal, or to the youngest son, the infante Don Miguel?"

On this proposition being submitted, a miserable and insidious discourse was delivered in favour of his highness's rights to the succession, and against those of the emperor, our august sovereign, whom it was endeavoured to represent as a foreign prince, and deprived of his rights of primogeniture from the circumstance of his having ascended the throne of Brazils in the lifetime of his father.

In this tribunal of injustice and hall of usurpation, no one dared lift up his voice in favour of legitimacy, with which the cause of the emperor of Brazils and king of Portugal is identified.

The honourable duty of defending those rights belonged, as a matter of course, to the attorney-general of the crown; but he was not called upon to fulfil it, which proves that he ought not be included in the number of their accomplices.

Unanimity was consequently so complete amongst the conspirators, who assumed to themselves the unbecoming title of "the three estates," that they could have decided the question at once without any adjournment; but the better to impose on the Portuguese nation, and as well on the people of the two hemispheres, they deemed it expedient to defer it; and on the 28th of June, after a few days of mock deliberation, they presented to the head of the illegitimate government established at Lisbon, the result of their contemptible machinations, consisting of their unanimous and criminal votes in favour of that usurpation they had been called together for the purposes of sanctioning, and which was unfortunately consummated in that city on the 1st of July last,—a day, the memory of which will ever be execrated in the annals of Portugal, on account of the disastrous consequences which cannot fail to flow from such a deplorable event.

Disappointed in our expectations, we now find ourselves under the disagreeable, but imperious necessity, of unfolding to the eyes of the whole world, all the perfidy of the acts above mentioned, as well as the fallacies contained in the arguments brought forward against the incontestible and acknowledged rights of our august master the emperor of Brazil, and prince royal of Portugal, to the crown of that kingdom on the death of the king his father.

We very well know (and all publicists confirm it,) on the direct

nd legitimate line of any reigning amily becoming extinct, that in ase there should appear amongst he collateral branches several pretenders to the succession of the vacant throne, whose respective pretensions may be doubtful, it belongs to the superior tribunals or authorities of the state, to decide so important a national question; and the history of Portugal itself affords two examples: the one on the death of the king Don Ferdinand, and the other at the period when the Portuguese nation, on throwing off the intolerable yoke of Spain, exalted the august house of Braganza to the throne.

But as that question cannot be raised where the succession to a crown is regulated by the right of primogeniture (and such is the case with respect to that of Portugal, as it regards his majesty the emperor of Brazils, the eldest son of his majesty Don John VI., who has besides been recognised, as well by his own father as by all the powers of Europe, in his quality of prince royal of Portugal, both before and since the partition which was made of the crown of Portugal, by a solemn treaty executed between the two sovereigns,) the hereditary rights of our august master could not be rendered doubtful on the demise of the king, his father,—nor were they.

Before even this unfortunate event, which occasioned the important succession, was known at Rio de Janeiro, his imperial majesty had been proclaimed king in Portugal, and immediately recognised as such by all the sovereigns and governments of Europe.

Such proclamation, and such recognition, as spontaneous as precise, are of themselves proof so irrefragable and solemn of the legitimacy of the hereditary rights of his majesty the emperor of Brazils to the crown of Portugal, that we should be justified in limiting thereto our opposition to the usurping faction which has dared to impugn at the same time the unanimous opinion of all the courts of Europe, and that of the majority of the Portuguese nation itself.

But we will not confine ourselves to this allegation; we will go further, and combat the arguments with which this perfidious faction have attempted to attack rights so incontestible.

And 1st. That of an ancient law made by the Cortes of Lamego, of which we transcribe the precise words—viz. "Sit ita in sempiternum, quod prima filia Regis recipiat maritum de Portugale, ut non veniat regnum ad extraneos: et si cubaverit cum principe extraneo, non sit Regina, quia nunquam volumus nostrum Regnum ire fore Portugalibus, qui reges fecerunt sine adjutorio alieno, per suam fortitudinem."

By altering the sense of this law, (the existence of which, by the by, is very doubtful, but which we will not now dispute,) the usurping faction pretend, that by his accession to the throne of Brazils, his imperial majesty has foregone his quality of a prince of Portugal, and has become in consequence incapacitated from succeeding to the crown of his forefathers on the death of John VI.

The misapplication of this law is very evident. This law prohibits, it is true, queens of Portugal to marry foreigners by birth, but it does not prevent Portuguese princes from acquiring other crowns, nor from succeeding to

that of Portugal, after having acquired any other sovereignty, and the Portuguese history abounds with proofs thereof.

Don Alphonsus III. was a Portuguese prince, and although at the same time in possession of the county of Bologna, he succeeded his brother Sancho II., and preserved the sovereignty of Bologna; notwithstanding Alphonsus V. enjoyed the crown of Portugal together with that of Castile and Leon; and Don Emanuel united on his head the crowns of Portugal, of Castile, of Leon, and of Arragon.

Consequently, if that law did not exclude the count of Bologna, Don Alphonsus, from the succession to the throne of Portugal, it cannot now exclude his majesty the emperor of Brazils and prince royal of Portugal from the like succession.

2d. That of another law, made afterwards on the 12th of September, 1642, by king John IV., by desire of the three estates, and therefore a ratification of that of the Cortes of Lamego.

It is declared by this second law, "that the successor to the crown ought to be a prince born in Portugal, and that no foreign prince by birth, however nearly related to the king, could succeed him."

Now as this applies solely to princes born in a foreign country, it is clear that it cannot be made to apply to his imperial majesty Don Pedro IV., who was born in Portugal.

Moreover, as neither the one nor the other of these laws have provided against the possible partition of the Portuguese crown, by a solemn agreement between the reigning prince and his immediate heir and successor, (but which has taken place, for the first time, between his majesty king John VI., and his eldest son, the prince royal, Don Pedro,) these laws, we repeat, cannot be applicable to the case now under consideration.

On ratifying the treaty of the 29th August, 1825, by which the partition above alluded to was made, his majesty John VI. promulgated a law, or perpetual edict, dated the 15th of November, 1825, by which he recognises his eldest son the emperor of Brazils, in his capacity of prince royal of Portugal, and expressly revoked all the laws, customs, rules, and decrees of the Cortes, which might be contrary to the intent and meaning of such law.

For a new and unforseen case, it became necessary to enact a new law.

And as the authority of his majesty John VI. was as competent and unlimited as that of his august predecessor, John IV., the law of the 15th of November, 1825, (published in consequence of a treaty, which is a sacred and inviolable compact, and a supreme law amongst all civilized nations,) is become a fundamental law of Brazils and Portugal, and is in fact the only one that ought to regulate, as it actually did, the succession to the crown of Portugal, at the moment when it became vacant.

Having thus fully proved the illegality of the decision of the *soi-disant* "three estates of the realm," as well as the futility of the arguments advanced by them in favour of the usurpation, there only remains for us to fulfil a painful, but honourable duty, that of protesting, and we do

hereby protest most loudly, and before all the world, against the usurpation recently made of the crown of Portugal, on behalf of his majesty the emperor of Brazils and king of that kingdom, as also on behalf of his well-beloved daughter, Donna Maria da Gloria.

And we confide this our solemn protest to the almighty power of the Supreme Arbiter of empires, and to the justice of all the sovereign princes of Europe.

Dated, London, this 8th of August, 1828.

(Signed) Marquis de Resende.
Viscount de Itabayana.

Correspondence between the Earl of Aberdeen and the Marquis de Barbacena, relating to the interposition of Great Britain, on Don Miguel proclaming himself King.

The Marquis de Barbacena to the Earl of Aberdeen.

London, Nov. 25, 1828.

The undersigned, Plenipotentiary of his Majesty the Emperor of Brazil, discharges the sacred duty imposed upon him by his august master, by addressing to his Excellency, the Earl of Aberdeen, his Britannic Majesty's principal Secretary of State for Foreign Affairs, the official demand of his Britannic Majesty's support in favour of her Majesty the Queen of Portugal, and the claim of effectual assistance in placing her most faithful Majesty upon the throne belonging to her, as well as in securing to her the possession of her kingdom.

The intelligence of the usurpation effected at Lisbon on the 1st of July of this year, having excited in the mind of his Majesty, the Emperor Don Pedro, a just indignation, and the most lively pain, it may be easily conceived that these feelings of his Imperial Majesty are heightened by the paternal uneasiness necessarily occasioned by the lot of a beloved daughter, from whom he could not separate but with regret, to comply with the repeated instances of the sovereigns, his allies; and in the full conviction that she would keep possession of the crown guarantied to her, no less by her legitimate rights, than by the solemn arrangements to which the courts of England and Austria were parties, and by the oaths of the prince upon whom he had conferred the regency of Portugal, and for whom he had destined the hand of his daughter.

His imperial Majesty, though cruelly disappointed in this hope, can entertain no doubt of the same powers sharing his just indignation; and he has gratefully received the first proof which they afforded of it, by withdrawing their ministers from Lisbon. He has looked upon it as a sure pledge, that the ancient and intimate ally of Portugal would not be satisfied with testifying by that act, in common with all the other Courts of Europe, his disapprobation of the perfidious insurrection excited in Portugal, but that his powerful co-operation would be still more effectually displayed in favour of the Queen, when formally called upon for that purpose by the head of the house of Braganza; and this hope happily accords with the words spoken from the throne at the closing of the last session of the British Parliament. Determined never to come to any terms with the usurper of the Portuguese crown, and to assert the rights of her Majesty, the Queen Donna

Maria II. the first thought of his Majesty, the Emperor of Brazil, could be no other than that of claiming for this purpose the aid of his Britannic Majesty, in virtue of the treaties subsisting between Portugal and Great Britain.

These treaties, as his Excellency, Lord Aberdeen, is aware, commence with the earliest periods of the Portuguese monarchy. In the reign of Edward First of England, stipulations of friendship and commerce were entered into between the two crowns; and in 1373, a formal treaty of alliance was concluded between Ferdinand First of Portugal, and Edward Third of England. Such is the ancient alliance still subsisting, it may be affirmed, in full vigour and intact, by means of the series of treaties which have succeeded each other, and which, most of them, set out with confirming all the former treaties.

This series ends with the treaty of the 21st January, 1815, the third article of which runs thus: "The ancient treaties of alliance, amity, and guaranty, which have so long and so happily subsisted between the two crowns, are by the present article renewed by the two high contracting parties, and acknowledged to be in full force and vigour."

No war has, during this long period, interrupted between the two governments a connexion, of which diplomatic history exhibits no similar instance; and the only rupture which has occurred, took place during Cromwell's protectorate, occasioned, it is worthy of remark, by the assistance given by the King of Portugal to the partizans of King Charles First, to whom he had granted an asylum at Lisbon.

The undersigned, after proving the existence and the validity of the whole of this series of treaties, would exceed the limits which he must prescribe to himself in this note, if he were to enter into a minute examination of each of them. He will, therefore, only extract some of the stipulations, by which their spirit and tendency may be demonstrated, as the true import of them is not to be sought only in the letter of the treaties, but in their aggregate, and in the intimate relations which they have created and kept up between the two countries and the two crowns.

By article I. of the treaty of 1373, of which the undersigned encloses a copy, (No. 1,) it seems to have been intended to apply the stipulations of the alliance to the case of rebellion; and this supposition is confirmed by the subsequent act, (No. 2,) by which the King of England permits the raising in his dominions of a body of volunteers, to serve in the war which the King of Portugal was at that period carrying on against his rebellious brother, the conveyance of that body having been effected by means of two ships of the line, which the British government provided for that purpose.

The treaty of alliance of 1571, between Queen Elizabeth and King Sebastian, (No. 3,) makes express mention of rebellion; at least, it states that the two sovereigns take a mutual interest in maintaining their respective governments.

In the act of ratification of the treaty of 1642 (No. 4,) the express intention of renewing the preceding treaties is observable.

The first article of the treaty of 1654, (No. 5,) contains the stipu-

lation of neither receiving nor harbouring, reciprocally, the rebellious subjects of either of the two countries; and in virtue of this article, her Majesty, Queen Donna Maria Second, has, undoubtedly the right to demand, that her august ally should not suffer an avowed agent of the usurper's government of Portugal to reside in England.

The seventeenth article of the treaty of 1661, (No. 6,) deserves to be read with attention, since in it is recognised, under preceding treaties, the power of levying troops in England. That treaty contains the strongest and the most positive expressions to be found in any act of this kind, as the King of England goes the length of declaring, that he will watch over the interests of Portugal with as much care as over those of his own dominions.

The first article of the treaty of alliance of 1703, (No. 7,) explicitly confirms all the preceding treaties.

In article six of the convention signed at London the 22d October, 1807, (No. 8,) occur the following expressions: "His Britannic Majesty engages in his name, and in that of his successors, never to acknowledge, as King of Portugal, any Prince other than the heir and the legitimate representative of the royal family of Braganza."

This stipulation evidently applies to the present case, for the heir and legitimate representative, whom his Britannic Majesty has recognised as such, is at the present moment dispossessed of her crown, by a Prince of the same family, indeed, but who is not less an usurper.

Neither can it be alleged that the convention just mentioned was only temporary; for not only is this condition nowhere stated, but it is formally contradicted by the general confirmation of all the preceding treaties of alliance and guaranty, contained in Article III. of the treaty concluded at Vienna the 21st January, 1815.

The undersigned deems it his duty to dwell upon the quotations just made, and to which he might add many more; but he flatters himself to have sufficiently demonstrated—1st. That all the treaties of alliance and guaranty concluded between Portugal and Great Britain, are still subsisting in full vigour; 2dly. That the nature of these treaties, their number, and the connexion which they have established between the two crowns for so many ages, give them a peculiar character, which distinguishes them from ordinary treaties, and that it is necessary to interpret them as a whole, rather that to analyse them separately; 3dly. That in several instances, express mention is therein made of cases of revolt, or of rebellion, either with the view to stipulate the affording of assistance, or for the purpose of permitting the levy of troops, or in order reciprocally to exclude rebels from the two states; 4thly, and finally, That this alliance, at the moment when it was entered into, was applied to the case of revolt of the Infant Don Henry against his brother, the King Don Ferdinand, which is a similar case to that which now presents itself between his Majesty the King Don Pedro Fourth, and his brother, the Infant Don Miguel. The application, therefore, of the ancient treaties of alliance to the case under consideration, has all the force of a precedent.

In addition to these treaties, alike valid and obligatory, the undersigned has yet to adduce other acts, equally valid and diplomatic, although not possessing the form and denomination of treaties.

His Excellency, the Earl of Aberdeen, will be aware that the undersigned alludes to the protocols of the conferences held at Vienna, and at London, in October, 1827, and in January and February, 1828, to which conferences the plenipotentiaries of his Britannic Majesty, and of his Imperial and Royal Apostolic Majesty, became principal parties, and which invest those sovereigns with the right of insisting upon the execution of all the engagements there contracted. These engagements are not binding solely upon the Emperor Don Pedro, and his Royal Highness the Infant Don Miguel. The courts of England and Austria did not, on that occasion, act the part of mere witnesses, an assertion, the truth of which, it is imagined by the undersigned, will evidently be proved by the following passages, taken from the protocol of the second conference of Vienna, and from that of the conference of January 12th, of London. It was stated in the second conference of Vienna, that the two powers, "England and Austria, were impressed with the importance of not suffering any longer to be undecided questions of so high an interest, (the confirmation of the act of his Majesty the Emperor Don Pedro's abdication, the sending of the young Queen to Europe, and the total and definite separation of the two crowns,) and that those two powers were determined to unite their attention and their efforts in pressing for, and obtaining the decision upon these points at Rio de Janeiro."

In the conference of London, the plenipotentiaries of Great Britain and of Austria, explain themselves thus:—"Lord Dudley, Prince Esterhazy, and Count de Bombelles, cannot, in accordance with what has already been set forth in the Vienna conferences, but again express the wishes of their respective governments for the abdication of the crown of Portugal being, as soon as possible, and without restriction, effected by his Majesty Don Pedro Fourth; and as soon as such abdication shall have been completed, and the separation confirmed, the two courts engage to employ their good offices, in order to induce the governments of Portugal and Brazil, conjointly, to announce this arrangement to all the powers, and to procure their recognition of it. The two courts bind themselves, likewise, to use their good offices for definitively regulating, by means of a treaty, the order of succession in the branches of the house of Braganza, and that when this transaction shall have been concluded, it shall be brought to the knowledge of the foreign powers, with the view of its being recognised by them."

On reading these two protocols, it would certainly be difficult to maintain, that England and Austria were but as mere witnesses, present at the conferences of Vienna and London, through the medium of their plenipotentiaries.

Had such been the case, how could those two courts have imagined themselves called upon, not only to express their wishes in the above conferences, but to contract the positive engagement of uniting

their attention and their efforts for obtaining, at Rio de Janeiro, agreeably to those wishes, the decision of several questions of the highest interest to the future destinies of Portugal and of Brazil? Is it not evident, that if (contrary to all probability) his Majesty the Emperor of Brazil had chosen to recall his promises, the two courts would have found themselves authorized, according to the tenor of the protocols, to demand the performance of them? And, on a stronger ground, is it not also incontestible, that they would find themselves authorized more forcibly to exert this right, which they had exercised in respect to his Imperial Majesty, with regard to a Prince whose oath they, on that occasion, had in a manner put on record?

The undersigned, therefore, takes leave to repeat, that the above protocols ought to be considered exactly in the light of a formal treaty, because they contain reciprocal promises and engagements, to which the plenipotentiaries of Portugal, appointed by the Regent, in the King's name, as well as the plenipotentiaries of Great Britain and Austria, were parties.

Finally, his Excellency the Earl of Aberdeen knows, that the name of treaty or convention is not requisite to constitute the validity of political engagements, and that the signed memorandum of a conference, or an exchange of notes, have frequently answered the same purpose.

And can the British monarch, if the undersigned may presume to make such an appeal, ever forget the written assurances which his Majesty received, and the words which his Majesty himself heard the Infant Don Miguel utter? Will the King of England forget, that that Prince, after having been received in England in the most distinguished and most friendly manner, and after having been accompanied as far as the Tagus by an English squadron, did immediately violate every oath, while under the protection, it may be asserted, of the British troops, whose presence at Lisbon, though without any such intention, produced the effect of repressing every attempt at resistance to measures, by which, under the legal mask of the Regency, the Infant was preparing to accomplish the usurpation?

Can his Britannic Majesty, on the other hand, forget the generosity, the good faith, and the implicit confidence with which his Majesty, the Emperor of Brazil, has complied with all the wishes, and conformed to all the counsels, of his august ally, by completing his abdication of the crown of Portugal, and by sending the young Queen to Europe?

And can it be possible that the august Monarch who so earnestly advised both those measures, should patiently bear the usurpation, and refuse to lend the Queen, his ally, that succour which the undersigned, in the name of that Sovereign, and supported by her presence, claims in her favour? No one can suppose it.

To conclude, the undersigned therefore claims, in the name of his august master, and in favour of Queen Donna Maria Second, such assistance as the circumstances call for, and as her Most Faithful Majesty is justified in expecting, on the part of his Britannic Majesty, in virtue of the intimate alliance subsisting between the two crowns, and of the engagements resulting

from the formal conferences held at Vienna and London. The undersigned cannot doubt of the resolution which the sentiments of justice and of honour will dictate to the cabinet of his Britannic Majesty, the more particularly when he calls to mind the counsels and the promises which he was charged himself to convey to the Emperor, his master, from the eminent personage who now presides, and was already presiding in March last, over his Britannic Majesty's councils; he has only to add, that in case the stipulations of the treaty of 1661 should not be judged sufficient for the present circumstances, he is provided with necessary instructions, and full powers, for concluding a convention, in which the succours to be furnished by his Majesty the Emperor of Brazil, and by his Britannic Majesty, to her Majesty the Most Faithful Queen, may be formally specified.

The undersigned avails himself of this opportunity, &c.

THE MARQUIS DE BARBACENA.

His Excellency the Earl of Aberdeen, &c.

THE EARL OF ABERDEEN TO THE MARQUIS DE BARBACENA.

Foreign Office, January 13, 1829.

The undersigned, in reply to the note which he had the honour of receiving from the Marquis de Barbacena, on the 30th of November, cannot help noticing the extraordinary circumstance, that, while the ambassador of his Majesty, at the court of Rio de Janeiro, is charged with a special commission, having for its object the reconciliation of the Emperor Don Pedro with his brother the Infant Don Miguel, the plenipotentiary of his Brazilian Majesty in this country should claim officially from his Majesty effectual succours, in order to place her Most Faithful Majesty Donna Maria Second upon the throne of Portugal; and this, at the same time that Lord Strangford, and the minister of his Imperial Majesty the Emperor of Austria, were receiving, from the mouth of the Emperor of Brazil, professions of his intention to defer to the counsels and judgment of his august father-in-law, and of the King of Great Britain, in the settlement of the unhappy differences subsisting in the house of Braganza.

Under these circumstances, the undersigned would have felt himself compelled to wait until further advices had enabled him to ascertain the real sentiments of the court of Rio de Janeiro; but the demand of the Marquis de Barbacena being founded upon the alledged obligations of treaties, it is more consistent with his sense of duty towards his sovereign, to explain at once the real nature of these obligations, and in doing so, to remove all doubt from the honour and good faith of the king his master.

The Marquis de Barbacena has presented a summary of various treaties contracted between the two countries, commencing with that of the earliest date, in the year 1373, and concluding with the engagements entered into at the Congress of Vienna, in the year 1815. It would not be difficult to add to this list, and to prove that the obligations of Great Britain, throughout this long period, have been discharged by a continued succession of services rendered to the kingdom of Portugal. It is not

the purpose of the undersigned to deny the validity of these ancient treaties of alliance, friendship, and guaranty. On the contrary, he is desirous of admitting the existence, in full force and vigour, of all such treaties as have not been cancelled or varied by subsequent diplomatic transactions. Neither does he object to the mode of construction adopted by the Marquis de Barbacena. He will admit that the treaties may be explanatory of each other, and that their spirit may be gathered rather from the tenor of the whole, than from the particular enactments of each. But the Marquis de Barbacena is aware that the specific object for which a treaty may have been framed, ought not to be lost sight of in this consideration; nor will he deny that the continued practice of the contracting parties forms the safest commentary upon the nature of their engagements; and that the true relation of the two countries towards each other is best established by the acts, during a long course of years, of their respective governments.

But the undersigned is prepared to maintain, that the existing treaties, whether taken together, according to the cumulative method of interpretation proposed by the Marquis de Barbacena, or separately, cannot furnish any real support to the claim which has been advanced.

It is assumed, that the usurpation of the throne of Portugal by the Infant Don Miguel has given to her Most Faithful Majesty the right of demanding from this country effectual succours, for the recovery of her crown and kingdom. But it is not easy to see upon what foundation such a claim is supposed to rest. In the whole series of treaties, there is no express stipulation which can warrant the pretension put forward in the note of the Marquis de Barbacena. Neither is any such obligation implied by their general tenor and spirit.

It is, then, either for the purpose of resisting successful rebellion, or for that of deciding, by force, a question of doubtful succession, that Great Britain has now been called upon to act. But it is impossible to imagine that any independent state could ever intend thus to commit the direction and control of its internal affairs to the hands of another power; for, doubtless, if his Majesty be under the necessity of furnishing effectual succour in the event of any internal revolt or dissention in Portugal, it would become a duty, and indeed it would be essential, to take care that no such cause should exist, if it could possibly be prevented. Hence a constant and minute interference in the affairs of Portugal would be indispensable; for his Majesty could never consent to hold his fleets and armies at the disposal of a king of Portugal, without exercising those due precautions, and that superintendence, which should assure him that his forces would not be liable to be employed in averting the effects of mis-government, folly, or caprice. Is this a condition in which any state, professing to be independent, could endure to exist? And yet, if it were possible to admit the validity of the engagements contended for by the Marquis de Barbacena, such must necessarily be the relation in which Great Britain and Portugal would stand towards each other.

But the truth is, that the whole spirit of the treaties, and their history, show that the principle of the guaranty given by England, is the protection of Portugal from foreign invasion.

When, upon the restoration of the Portuguese monarchy in 1640, a treaty was shortly after concluded between the two crowns, (which forms the real basis of their actual alliance,) the English government could have entertained no other object than that of extending an efficient protection to King John Fourth, struggling to maintain his newly acquired independence against the overwhelming power of Spain. Again, in 1661, when Charles II., in the treaty upon which the Marquis de Barbacena appears greatly to rely, declares "that he will take the interest of Portugal, and all its dominions, to heart, defending the same with his utmost power by sea and land, even as England itself;" it is clear that these engagements have reference to protection against foreign danger; and the manner in which this is to be afforded is expressly stated to be, by giving timely assistance against the "power of Castile, or any other enemy."

In the course of the last century, Great Britain has repeatedly answered the call for this protection, and the Marquis de Barbacena need not be reminded, has done so with alacrity, and with effect. Never, until the unfortunate events of the year 1820, has she been called upon to interfere in the internal affairs of Portugal. This interference, although frequently demanded since that period, has been steadily refused by the British government. It has been equally refused to all parties, as for all purposes; and certainly these have been the most opposite and contradictory. Even in 1826, when his Majesty, in compliance with the requisition of the ambassador of his Most Faithful Majesty, sent a body of his troops to Portugal, the justification of that measure was expressly placed upon the ground that the Portuguese refugees had acquired a foreign character, by having been embodied, armed, and equipped, in Spain; and the commander of the British troops was strictly enjoined to take no part whatever in the contest between the factions in Portugal; but to oppose him to the foreign invaders, and to such as he might find united under their banners.

In 1822, the King of Portugal regarded the declaration of independence by Brazil, and the assumption of the sovereign authority in that country by his son, the Emperor Don Pedro, as acts of successful rebellion. The Portuguese government frequently appealed to the treaties with this country, and to the obligations of a guaranty, by which the integrity of Portugal and her colonies was secured. But the British government, while admitting in their full extent the obligations of the guaranty, maintained that they only existed against dismemberment by a foreign power; and that to the effects of internal dissention they had no application. By the *note verbale* presented to the Portuguese government by the British Chargé d'Affaires at Lisbon, in the month of December, 1822, his Majesty declared, that, in the events which at that time divided the house of Braganza against itself, he was determined to observe "the most exact and scrupulous neutrality." By a happy agree-

ment with his Most Faithful Majesty, concluded under the mediation of Great Britain, the independence of Brazil was finally acknowledged and secured; but this has been so far from weakening the effect of the guaranty given by Great Britain for the preservation of Portugal and her remaining colonies, that his Majesty would feel himself bound to protect them equally against the unjust agression of Brazil, as of any other foreign power.

It is not pretended by the Marquis de Barbacena, that the usurpation of the Infant Don Miguel has had any foreign origin, or has been encouraged by any foreign state. On the contrary, every sovereign in Europe has withdrawn his minister, and suspended all diplomatic intercourse with the court of Lisbon. Whether the act be right or wrong, it was that of the nation. If proof were wanting, it would be found in the conduct of those who, having raised the standard of the Emperor Don Pedro, or of the Queen Donna Maria, at Oporto, having collected there the greatest part of the army, together with a large body of men in arms, not belonging to the military profession, superior in numbers, equipment, discipline, and means, to their opponents, still thought it necessary to abandon Oporto, and many of them to seek refuge in England, because, as they declared, they found the whole country against them.

But if a case of successful usurpation and rebellion cannot justify the interference of Great Britain, still less can she be called upon to take part in the decision of a disputed succession. It is attempted, however, to interpret the guaranty established in the treaties with Portugal, as imposing upon Great Britain the obligation of securing the succession of the Queen Donna Maria, and of placing her Most Faithful Majesty by force upon the throne of her ancestors.

If Great Britain had yielded to the solicitation of the ambassador of his Most Faithful Majesty, in December, 1825, and had guarantied the succession of Portugal to the Emperor Don Pedro, in spite of his declared reluctance to accept it, confirmed by his subsequent abdication, we should have contracted an engagement utterly beyond our power to fulfil; and which, from its very nature, must have been known to be so, at the moment at which it was formed. The British government, therefore, did wisely in declining to accede to the proposition of the Marquis de Palmella. It is true that his Majesty, respecting the rights of primogeniture, and the order of nature, has acknowledged the Emperor Don Pedro as king of Portugal; and, upon his abdication, has also recognised the Infanta Donna Maria as his successor, and the lawful sovereign of that country. But his Majesty would contradict the principles which he has publicly professed, were he to employ force as the means of obtaining the acquiescence of an independent people in this recognition.

The only semblance of foundation for the assertion advanced by the Marquis de Barbacena, that this country is bound, under the treaties of alliance and guaranty, to co-operate by such means in placing her Most Faithful Majesty upon the throne of Portugal, is to be found in the stipulation of the sixth article of the secret convention, concluded on the 22d of October, 1807, by

which Great Britain engages never to recognise as King of Portugal any other Prince than "the heir and legitimate representative of the royal family of Braganza."

It is to be recollected, that this convention was signed in anticipation of the invasion of Portugal by a French force, and of the determination of the Prince Regent to embark with his whole family for Rio de Janeiro, rather than sacrifice his alliance with England. It was known, too, to be the intention of Buonaparte to parcel out the kingdom of Portugal in petty sovereignties, among the most favoured of his generals. This pledge, therefore, was the return made by the King of England for the devotion of his ally to the common cause. It was an assurance which that ally might naturally expect to receive against the danger then imminent. Were this convention still in force, his Majesty might be bound to acknowledge, as king of Portugal, the legitimate heir only of the house of Braganza. But, obviously temporary in its character, it has ceased to exist with the necessity which gave it birth. The secret convention of 1807, was engrafted into the treaty of friendship and alliance signed at Rio de Janeiro in 1810; and in this treaty, the 6th article of the secret convention, containing the express guaranty of Portugal to the house of Braganza, was inserted, word for word; the convention, therefore, merged in the treaty of 1810. But in 1815, at the termination of the struggle in which both countries had been so long and so gloriously engaged, when the sceptre of Portugal was replaced unimpaired in the hands of "the heir and legitimate representative of the royal family of Braganza," the main object of these treaties was accomplished. On the 22d of January of that year, the two powers entered into another treaty at Vienna, by the third article of which, the treaty of 1810, "being founded on circumstances of a temporary nature, which have happily ceased to exist, the said treaty is hereby declared to be void in all its parts, and of no effect." That the provisions of the convention of 1807 are included in this revocation, is confirmed by the latter part of the same article, which declares that the revocation shall be without prejudice to "the ancient treaties of alliance, friendship, and guaranty, subsisting between the two countries," which are renewed and acknowledged to be in full force and effect, while it is entirely silent upon the convention of 1807; thus evidently showing, that in the opinion of both contracting parties, the latter convention partook of the same temporary character which is ascribed to the treaty of 1810; the stipulations of which, in consequence of the changes rendered necessary by the course of events, had previously been substituted for those of 1807.

The undersigned trusts, therefore, that the religious fidelity with which this country is desirous of fulfilling all its engagements, will not be exposed to imputation or doubt, if he finds himself compelled, in the name of the King, his master, to reject the appeal which has been made by the Marquis de Barbacena to the fancied obligations imposed upon Great Britain by the treaties existing between the two kingdoms.

In addition to the supposed obligation arising from former engage-

ments, the Marquis de Barbacena has adduced certain diplomatic acts, which his Excellency maintains are to be regarded as possessing the character and validity of treaties, and, as such, giving to the Emperor Don Pedro an indisputable right to call for his Majesty's assistance in conquering the kingdom of Portugal for his daughter. These acts are the result of the conferences at Vienna and in London, in the month of October, 1827, and in the month of January, 1828, before the departure of the Infant Don Miguel for Lisbon. In these conferences, the Marquis de Barbacena contends that both his Majesty, and his Imperial Majesty the Emperor of Austria, virtually entered into some solemn engagement, by which they bound themselves to exact the fulfilment of the promises then made by the Infant.

In proportion as this country is scrupulous in the performance of its engagements, care has been taken to render these engagements definite and precise; it has, moreover, long been the practice to abstain from giving any guaranty, the execution of which is not within our own power, but which may depend upon the good faith, or upon the inclination of others. The undersigned, therefore, cannot think it necessary to occupy much time in the refutation of an assumption so gratuitous, and so entirely unsupported by the real state of the facts, as that which has been thus put forward by the Marquis de Barbacena. His Majesty's ambassador at the Court of Vienna attended the conferences, by the invitation of the Austrian Chancellor of State, and in consequence of the letter addressed to his Majesty, by the Emperor Don Pedro, on the third of July, 1827, in which his Imperial Majesty declared, that he had appointed the Infant Don Miguel to be his Lieutenant and Regent of the kingdom of Portugal. Had his Majesty, indeed, overcome the reluctance of the Emperor Don Pedro, and prevailed upon his Imperial Majesty to confer upon his brother the appointment of Regent; and had his Majesty given his guaranty for the conduct of his Royal Highness, and for the performance of his promises, there might have been a claim upon his Majesty to see that the engagements then contracted were carried into execution; but, in truth, the ambassador of his Majesty entered into no engagement of this description, neither did he take part in any negotiation leading to such a pledge; and although the King had reason to complain of the Infant Don Miguel, for having failed to perform engagements made in the presence of his ambassador, this cause of complaint was founded upon the indignity thus offered to his Majesty himself, and not upon the injury done to the Emperor Don Pedro.

It is true, that in the conferences of Vienna, and, subsequently, in London, his Majesty's ambassador, and the plenipotentiary of his Imperial Majesty the Emperor of Austria, did give an assurance that their respective sovereigns would jointly exert their good offices to prevail upon the Emperor Don Pedro to complete his act of abdication of the throne of Portugal, as well as to send his daughter to Europe, and by a definitive treaty, to regulate the order of succession in the two branches of the house of Braganza. The Marquis de Bar-

bacena complains that the Emperor, his master, was urged to act in this manner; and more than insinuates that he did so contrary to his own interests, and in compliance with the solicitations of England and Austria. But what is the fact? Undoubtedly the King did advise his Imperial Majesty to complete the act of abdication of the kingdom of Portugal, and thus to perform an obligation which his Imperial Majesty himself, as far back as the month of May, 1826, had solemnly contracted before the world. His Majesty further advised the Emperor to send his daughter to Europe, in accordance with the declaration of his Imperial Majesty made at the same period. These measures were well calculated to conciliate and to tranquillize the Portuguese nation, by removing the just suspicions of the people, and convincing them that it was not intended to govern them as a colony of Brazil. It is unfortunate that the measures thus advised were not carried into execution previous to the arrival of the Infant at Lisbon. Had this been the case, much of what has since happened, and which is most to be deplored, would probably have been prevented. But the assurance given to Don Miguel, and entered upon the protocol of the conference, to offer to the Emperor Don Pedro this advice, does not render his Majesty the guaranty of the performance of those promises contained in the letters of Don Miguel, which were laid before the conference, and annexed to the protocol. Neither does the advice tendered to the Emperor upon the propriety of the execution of these important acts, respecting which his Imperial Majesty had long before spontaneously pledged his royal word, confer any right whatever of claiming from his Majesty those succours which are necessary for the conquest of Portugal.

The tone of expostulation and complaint which pervades the note of the Marquis de Barbacena, and the impression which it is intended to convey, that the present state of Portugal is in great measure to be attributed to the deference paid by the Emperor Don Pedro to the counsels of his allies, render it necessary to take a short review of some events connected with this subject, to the end that Great Britain may be as effectually relieved from the moral responsibility which it is attempted to impose upon her, as from the weight of more formal obligations.

The late King, John VI., died on the 10th of March, 1826; the intelligence of his death arrived in England on the 23d of March, and in Brazil on the 26th of April. The Emperor Don Pedro immediately assumed to himself the government of Portugal, as King, in virtue of his right of succession as the eldest son of his father. He published a general amnesty, and framed the Constitution, in the preamble to which the three orders of the state were called upon to swear fidelity to it forthwith, and in which it was declared, that the kingdom of Portugal should thenceforward be governed according to the conditions laid down in that instrument. The Emperor, at the same time, made over the succession of the crown to his daughter, as Queen; appointed his sister, Donna Isabella Maria, regent of the kingdom; and, in order that no doubt whatever might remain of his intentions, his Imperial Majesty explicitly de-

clared, in his speech to the Legislative Assembly of Brazil, on the sixth of May, that "he had abdicated and ceded all the indisputable and irrefragible rights which he had possessed to the crown of the Portuguese monarchy to his daughter the Princess Donna Maria de Gloria, Queen of Portugal." His Imperial Majesty despatched Sir Charles Stuart from Rio de Janeiro to Lisbon, as the bearer of these instruments on the 11th of May,—thus concluding the whole of this important transaction in fourteen days. It is obvious, from the observation of these dates, that no person possessing any authority from his Majesty, with the exception of Sir Charles Stuart, could have interfered, even by advice, in the adoption of these measures; and it is not pretended that such advice was ever received from his Excellency. The avowed object of the measures of April and May, 1826, was to separate, finally, the kingdoms of Portugal and Brazil,—an event equally desired by both parts of the monarchy. This object was accomplished by the promulgation of the charter, as effectually and as solemnly as it could be by an instrument executed by the sovereign himself. In the proclamation addressed to the Portuguese nation, and dated the 2d of May, 1826, his Imperial Majesty declared that his abdication should become complete as soon as the constitution had been sworn to, and the marriage concluded between the Infant Don Miguel and the Queen Donna Maria. The constitution was sworn to, as his Imperial Majesty had directed, upon its reception in Portugal, and the affiance of marriage was completed at Vienna, on the 29th of October, 1826.

The undersigned may now be permitted to ask, whether the promises of the abdication, and of the transmission of the Infant Queen to Portugal, were fulfilled. Did not his Imperial Majesty continue to interfere in all the measures of detail of the Portuguese government? Did he not create peers? promote officers in the army and navy? interfere in the selection and nomination of ministers, and in all the interior arrangements of the kingdom? The Portuguese nation was disappointed in its hope and expectation of a final separation from Brazil; and the disappointment of this hope and expectation was still further confirmed by the detention of their young Queen at Rio de Janeiro. In the mean time, the dissatisfaction and discontent produced by the constitution transmitted from Brazil were daily increasing, and at last broke out into acts of violence, and of open rebellion. In this state of things, his Imperial Majesty, having first ordered his brother, the Infant Don Miguel, to repair from Vienna to Rio de Janeiro, and having sent a ship of the line to Brest, for the purpose of conveying him thither, suddenly countermanded these orders, and, unsolicited by his Majesty, appointed his Royal Highness to be his Lieutenant in Portugal, and Regent of the kingdom. This decision, the undersigned is ready to admit, may have been justly demanded by the distracted condition of the country, and, in point of fact, was subsequently recommended by his Majesty. But he must, at the same time, beg to observe to the Marquis de Barbacena, that from

what he has now had the honour to state, it clearly appears that the abdication of the crown—the composition and grant of the constitutional charter—the promise to send the Queen Donna Maria to Portugal—the unfortunate delay in the execution of that promise, as well as the little respect paid to the pledge virtually given by the abdication, not to interfere from Brazil in the internal government of Portugal; and, finally, that the nomination of the Infant Don Miguel as Regent, were all acts spontaneously emanating from the Emperor Don Pedro himself, which did not originate with the King, his master, and for the effects of which his Majesty cannot be held responsible.

The undersigned will not conclude without further expressing his regret, that the counsels of Great Britain, when offered, should have been received with so little confidence and alacrity. These counsels have never been adopted by his Imperial Majesty, until the course of events had rendered the choice of any alternative impracticable; nor until, from this reluctance and delay, they had, in a great measure, been deprived of their beneficial influence. In truth, it may be affirmed, that so far from Great Britain having been instrumental in the production of the evils which have recently afflicted Portugal, they are mainly to be attributed to the want of a frank, consistent, and direct course of policy on the part of the Brazilian government itself.

The undersigned, &c.

(Signed) ABERDEEN.

The Marquis de Barbacena, &c.

SPAIN.

OFFICIAL ARTICLE.

The King, our sovereign, has been pleased to direct to the Secretary of State and despatch the following decree:—

The promulgation of a representative system of government in Portugal might have been expected to disturb public tranquillity in its neighbouring country, which, scarcely liberated from revolution, was not, perhaps, generally animated by the most perfect loyalty. But, though a few persons in Spain have, indeed, dared secretly to encourage the hope of seeing the ancient form of government changed, the general opinion has been so loudly declared against alteration, that no one has ventured to disregard it. This new proof of the fidelity of my vassals calls on me to disclose to them my sentiments and declare my wish to preserve their religion and laws, which have always rendered the Spanish name glorious; and the subversion of which always leads, as experience has taught, to demoralization and anarchy.

Let the circumstances of other countries be what they may, we will govern ourselves by our own; and I, as the father of my people, will give more attention to the humble voice of the immense majority of my vassals, who are faithful and useful to their country, than to the

vociferations of an insignificant and turbulent band, whose only desire is to renew scenes, the memory of which I do not now wish to recall.

Having published a royal decree on the 19th April, 1825, in which, being convinced that our ancient legislation was the most proper to maintain in force our sacred religion, and our mutual rights of paternal sovereignty and filial vassalage, so well suited to our habits and education, I was pleased to assure my subjects, *that no change should ever take place in the legal form of my government, nor any Chambers, or similar institutions, under whatever denomination, be permitted to be established;* it now only remains for me to inform all the vassals of my dominions, that I will act towards them according to their deserts, putting in execution the laws against those who break them, and protecting those who observe them. Desirous of seeing all Spaniards united in opinion and will, I am determined to dispense protection to all who obey the laws, and to be inflexible to all who audaciously attempt to dictate new laws to the country.

Wherefore, I have resolved that the said decree shall again be transmitted to all the authorities of the kingdom; charging, at the same time, the magistrates with rightful administration of justice, which is the surest guarantee of the happiness of the people, and the best recompense of their fidelity.

"You are to hold this as intended, and to take the necessary steps for publishing and carrying the same into effect."

Signed at the Palace, the 15th of August, 1826.—Directed to the Duke del Infantado.

TARIFF OF AMERICAN COMMERCE.

The King, our Lord, considering that the encouragement afforded to the commerce of America, by the admission of foreign flags, granted by the Royal Order of the 9th of February, 1827, has not been sufficient to promote this trade in the various branches of industry and navigation concerned in it, and that it is still necessary to remove the inconveniences to which, in their present state, the commercial relations of that country are subject, from the existing duties and restrictions, was pleased to assign the execution of this important task to the Board of duties; and after the propositions, presented by them, had been examined by trusty and intelligent persons, his majesty has thought proper to approve and order the observance, for the present, of the following tariff, instructions, and regulations.

Provisional Tariff of Duties, to be levied on goods imported from, or exported to, America:

	Quantity, Weight, or Measure.	Value in *Rs. Vn.*	Nat. Flag *Rs. Ms.*	For. Flag *Rs. Ms.*
Indigo, - - -	quintal	3500	17 17	175
Sugar,* - - -	arroba	40	4	8
Cocoa, (Guayaquil,) -	pound	2	10	20
" Caracas and Maracaibo,	"	5	25½	1 17
Coffee, - - -	quintal	200	8	20

* Sugar proceeding from, or purchased in a foreign market, although the produce of Spanish America, to be considered as a foreign production, and inadmissible.

			Rs. Vn.	*Rs. Ms.*	*Rs. Ms.*
Tortoise Shell, (unwrought)		arroba	1250	12 17	50
Copper, in pigs,		quintal	400	20	60
Hides, raw,		arroba	50	8½	1
Tin in bars,		quintal	300	9	36
Cochineal, fine,		pound	60	1 27	6
Granilla,		"	20	20½	2
Horns, unwrought,		quintal	20	5	20
Wool, vichona,		"	2000	10	100
" other kinds,		"	200	1	10
Woods, for cabinet and instrument makers,			120	1 6	12
" dying and medicinal, not enumerated,		"	60	1 27	6
" hing aloe,		pound	60	1 6	9
Precious stones, ½ pr ct. in their value, under all flags,					
Pita-Ran,		quintal	16	3	5
" manufactured,		"	250	2 17	4 17
Vanilla, per bundle of fifty,		"	50	2 17½	5
Sarsaparilla,		pound	8	5	27

OBSERVATIONS.

1st. All other goods, wares, and merchandise, not enumerated in this tariff, and proceeding directly from Spanish America, under a Spanish flag, will pay three per cent. on their value, as estimated in the tariff of free trade, of the 12th of October, 1778, and 7 per cent., under a foreign flag.

2d. Goods, wares, and merchandise, of Spanish America, will pay no other royal duties than those already specified, according to their classes, upon their importation into the ports of Spain, excepting that of Consulado, and others of a merely local character, mentioned in the royal order of the 12th January, 1827, as also that of Balanza.

3d. The duty of Reemplazo will be, henceforward, 1 per cent. upon goods, wares, and merchandise, proceeding from Spanish America, but will be considered as included in the above-mentioned general duty.

4th. All goods, wares, or merchandise, of the growth or manufacture of this kingdom, exported under Spanish or foreign flag, will pay, for the present, the duties designated by the export tariff of the 14th of April, 1802, as modified by laws of subsequent date.

5th. All foreign merchandise, conveyed in national or foreign vessels from the depots or stores of the custom houses in the habilitated ports of Spain, with the corresponding register, will pay no other outward duty than that of deposits, agreeably to the regulations established for the ports of depo-site.

6th. Foreign vessels arriving with the produce of Spanish America, direct from the foreign parts of America, to the habilitated ports of

Spain, will pay a duty of 2 per cent. besides those stated in this tariff.

Regulations for the understanding and execution of the preceding Tariff.

Art. 1. The ports habilitated for the trade to Spanish America, are those of which are such at present, in virtue of a royal order.

Art. 2. The ports of Bilboa and St. Sebastians are also provisionally habilitated for the same purpose, and the administrative and controlling functions will be exercised by the judge of contraband, agreeably to the rules to be drawn up immediately, and presented by the director general of the revenue for his majesty's approbation.

Art. 3. The produce, goods, and effects of the Spanish American possessions, may be transported in Spanish or foreign vessels, upon payment of the royal and other duties fixed in this tariff, with the difference that an extra duty of two per cent. will be charged in cases when foreign vessels, laden with Spanish colonial produce, shall arrive at the habilitated ports in America.

Art. 4. All vessels, Spanish or foreign, proceeding from the Havana, Puerto Rico, or other places, at peace with Spain, are to accompany the produce, goods, or effects, which they may have shipped there, with a register from the custom houses of those places, according to the present existing practice.

Art. 5. When the same vessels, proceeding from other foreign ports in America, shall touch at the above-mentioned ports of the Havana and Puerto Rico, with cargoes of Spanish colonial produce, on their way to the habilitated ports of Spain, they shall be required to make a declaration of their cargoes, and to renew their registers before continuing their voyage.

Art. 6. Spanish vessels, or those of neutral powers, which, having received their cargoes in the foreign ports of America, shall arrive direct at the habilitated ports of Spain, are to present their manifests with the formalities prescribed by the general instruction of the 16th of April, 1816.

Art. 7. Extensive and capacious stores of deposit will be established in Puerto Rico and the Havana, for the reception and safe keeping of the merchandise and produce of Spain, which merchants may wish to send to foreign neutral ports; as also to receive the American colonial produce which may be destined for the Peninsula.

Art. 8. In making such deposits, the same rules will be observed there, as in the other ports of deposit in Spain; the object proposed, being no other than the preservation of the property; in order to which, an account will be kept of the reception and delivery of all goods, and of their change of owners. Half per cent. will be charged on the reception of such property, and half per cent. more on their delivery, to defray the expenses of rent, salaries, and other unavoidable charges.

Art. 9. All national or foreign produce, goods, or effects, shipped in the ports of the Peninsula, for those of America at peace with Spain, and furnished with proper registers, will pay, in the latter, the duties established by the tariffs observed there.

Art. 10. Silver, and other articles, arriving from friendly ports,

duly registered, and declared to be on transit for foreign ports, will be allowed to proceed to their place of destination in the same vessel. The transfer of cargoes to Spanish vessels, and their conveyance in the same, will also be allowed; but a duty of one per cent. will be charged whenever the vessel, to which the cargo may be transferred, shall be a foreign one. If the landing and reception of the goods be solicited, the ordinary rules observed in such cases, will be put in force, as if no transit had been declared.

Art. 11. Article 91, chapter 7, of the royal instruction of the 16th of April, 1816, relating to the deduction to be made in the duties on cocoa, when this article shall be declared to be intended for a foreign market, is hereby annulled.

14. Finally, articles 117, 118, 120, 129, 130, 134, 145, and 137, of chapter 7, of said instruction, are also cancelled for the present, in all things relating to the exportation to America.

Instruction to the Custom House, for the clearance of American produce, goods and effects.

Article 1. The provisions of the tariff, and the regulations approved by his majesty, are to be kept in view.

Art. 2. The formalities to be observed, for the exact collection of the duties upon the admission of goods from America, and in other cases relating to the inward and outward trade, are to be the same as those established in chapter 7, of the instruction of the 16th April, 1816, excepting where any modifications shall have been made in the regulations of the same, or may be made in the present instruction.

Art. 3. In the custom house of habilitated ports, silver, when not in very large quantities, may be included for all the purposes of landing, deposit, and payment of duties, in the permit granted by the collector for the landing of other goods; but in cases when silver is to be imported in considerable quantities, whether belonging to the King or to private persons, the provisions established by the instructions of 1816 are to be carried into effect.

Art. 4. The register of every vessel, arriving from friendly ports, with her invoices and custom house certificates, are to form together a collection of documents, closed, numbered, and inscribed with the name of the ship, and that of the master, the port of departure, the day of her arrival, and date of clearance.

Art 5. As no interference of the authorities are necessary to the habilitation of vessels trading to America, registers will be granted to all such as are to be employed in navigating to the friendly ports of that continent; but when the intention shall be to trade to the foreign neutral ports of America, custom house certificates will be given, with the usual formalities observed for the exportation of goods to the foreign ports of Europe.

Art. 6. The collectors and accountants of the customs will be particularly careful to furnish merchants, trading to America, with the certificates defined by art. 90, chapter 7, of the instruction of 1816, at the time of admitting the produce and effects of that country; and to require their presentation before granting permits for the circulation of the same; as also to cancel said certificates when their time shall have expired, and to keep an ac-

count of the increase or diminution that may take place in such goods, by reason of new importations, acquisitions, sales, or shipments, or other operations, in order to prevent the fraudulent entry and circulation through the country of the colonial produce of America.

Art. 7. No change is made in the established mode of admitting such of the goods, proceeding from America, as are classed as bulky, but Cocoa and Indigo; and other articles of this description are to be carried regularly to the custom house, in order to their being inspected, weighed, and charged, notwithstanding the practice existing in some custom houses of despatching such goods on the landing places.

Art. 8. Should the interests of merchants require the adoption of any new measures, or any alteration of the provisions established by this tariff, regulation, and instruction, the same will be announced in due time to them, for their information.

I communicate the above to Y. E. by order of his majesty, for your information, and other necessary purposes; and also in order that you may direct it to be published in the Gazette, without delay.

God preserve your excellency many years.

Luis Lopez Ballesteros.

To His Excellency,
The Secretary of State.
Madrid, February 21, 1828.

Proclamation of the King of Spain, on arriving ot Tarragona.

Catalonians,—Behold me in the midst of you, as I promised that I would be, in my decree of the 18th of this month; but learn that, as a father, I am going to speak, for the last time, to the seditious, the language of mercy, being still inclined to listen to the petitions which they may address to me from their homes, if they are obedient to my voice; and that, as King, I am come to re-establish order, to give tranquillity to the province, and to afford protection to the persons and properties of my peaceable subjects, who have been maltreated in an atrocious manner, and to chastise, with all the severity of the law, those who shall disturb the public quiet.

Shut your ears to the perfidious insinuations of those who, hired by the enemies of your prosperity, and making a parade of zeal for the religion which they profane, and for the throne which they insult, propose to themselves nothing else but the ruin of this industrious province. You already behold the vain and absurd pretexts by which they have attempted, till now, to colour their rebellion, belied by my arrival. I am not oppressed: the persons who deserve my confidence do not conspire against our holy religion: the country is not in danger: the honour of my crown is not compromised, and my sovereign authority is not coerced by any party. Why, then, are arms taken up by those who style themselves faithful subjects, pure royalists, and zealous Catholics? Against whom is it their intention to employ them? Against their King and Lord.

Yes, Catalonians, to take up arms on such pretences, to fight against my troops, to drive the magistrates from their homes, is to revolt openly against my person, to contemn my authority, and to despise the ordinances of religion, which enjoins obedience to the le-

gitimate authorities; it is an imitation of the conduct, and even of the language of the revolutionists of 1820; it is, in fine, an attempt to destroy the very foundation of monarchical institutions; for if the absurd privileges which the revolters demand could be admitted, no throne in the universe could be considered secure.

I cannot but believe that my royal presence will dissipate all prejudices and mistrusts; and I will not cease to hope, that, at my voice, the machinations of those who would seduce you into conspiracy and rebellion will be defeated.—But if, contrary to my hopes, the last warnings are not listened to,—if the bands of the revolted do not give up their arms, to the nearest military authority, within twenty-four hours after they shall have been made acquainted with my sovereign will, leaving the chiefs of all classes at my disposal, that they may undergo the fate which I may please to inflict upon them, and do not return to their respective homes, with the obligation to present themselves in the bailiages, to be again immatriculated,—and lastly, if the changes made in the administration and government of my people are not annulled in the same space of time, the dispositions of my royal decree of the 10th of this month, shall be immediately carried into execution, and the remembrance of the exemplary punishment which awaits those who shall persist, will be long perpetuated.

Given at the Archiepiscopal Palace of Tarragona, the 28th of Sept. 1827. I, THE KING.

The Secretary of State of Grace and Justice,

FRANCESCO TADEO DE CALOMARDE.

Note from Mr. Alex. H. Everett, Envoy Extraordinary, and Minister Plenipotentiary of the U. S. to Spain, to the Duke del Infantado, principal Secretary of State for Foreign Affairs, respecting the independence of the ancient colonies of Spain.

SIR: The government of the United States of America have looked with deep interest at the war now existing between Spain and her ancient colonies, ever since its commencement. Situated in the immediate neighbourhood of the regions where it has been carried on, they could not feel the same indifference upon the subject which has been shown by some other nations inhabiting a distant quarter of the globe. Their position, and the relations naturally resulting from it, were circumstances over which they had no control; and it was not in their power, had they wished it, to shrink from the responsibility that devolved upon them. It only remained to meet the delicacy of the situation by a corresponding circumspection in their conduct; to proceed upon acknowledged principles, and in conformity with the best information they could procure. Such has been, in fact, the course of their policy. They have spared no pains in endeavouring to obtain the most accurate accounts of the state of the war at its several periods; and they have adopted no important measure without great consideration, and a careful inquiry into the laws and usages of civilized countries. In pursuance of this system, they have considered it their duty to observe a fair and just neutrality between the two parties, and to entertain pacific and friendly relations with both alike; and they have, with good faith, and to

the best of their ability, acted accordingly. They have lent no military or naval assistance to either, but have freely granted to both the hospitality of their ports and territory, and have allowed the agents of both to procure within their jurisdiction, in the way of lawful trade, any supplies which suited their convenience. When the independence of the colonies appeared to them to be well established, it became a duty to regard and treat them as sovereign powers; and their increasing intercourse with the United States made it convenient and suitable to organize the relations between the countries in the usual form, by exchanging diplomatic and commercial agents invested with the usual powers and characters.—But while the government of the United States felt themselves not only justified in these measures, but bound in duty to adopt them, they have continued to observe, in word and in deed, their former course of strict and honest neutrality. They have never taken upon themselves to express an opinion upon the merits of the quarrel, or upon the validity of the arguments advanced by either party in support of its pretensions, still less to interfere actively in favour of one or the other. The people of the United States, including, as private persons, the individuals composing the government, have generally felt and manifested a strong sympathy with the inhabitants of the colonies, in consequence of the similarity of their position with that of the United States half a century ago; but this natural feeling has not been allowed to influence the public measures. The President and Congress, in acting upon this subject, have uniformly proceeded upon strict principles and known facts. Their decisions on important points were adopted with almost unexampled unanimity; and have been, it is believed, very generally approved throughout the civilized world. They have since been closely followed by the two enlightened and powerful governments whose position naturally called upon them to take the lead, in this respect, among the nations of Europe.

While pursuing this line of conduct, the government of the United States have also considered it their duty and their policy to employ their good offices, from time to time, with both parties, for the purpose of reconciling them to each other, and bringing the war to a close. This tedious contest, carried on in their immediate neighbourhood, has been, and still is, a source of no little actual inconvenience to them, in various ways. It has been, in particular, the ultimate cause of the prevalence of piracy, to a fearful extent, upon the waters that surround their coasts; an evil which compels them to keep a strong naval force in active service, at a very unhealthy and dangerous post, and which nothing but the establishment of peace will ever completely eradicate.—They have, therefore, the most powerful motives for wishing, in their own interest, to effect this great object. But, independently of any such considerations, the common sentiments of humanity, and the sympathy which all civilized and Christian nations naturally feel in each other's welfare, lead them to desire the close of this long and cruel struggle. Entertaining, and wishing to entertain, the most

friendly relations with both parties, they cannot but feel the deepest interest in the restoration of harmony and good understanding between them, and in the consequent general pacification of the American continent. They have accordingly given to both, on many occasions, such counsels as appeared most likely to promote this object. As the independence of the colonies has appeared to them, for some years past, to be well established, they can imagine no other means of effecting the great purpose in question, except by the consent of his majesty to treat with his ancient provinces on the footing of sovereign and independent states; and they have, from time to time, with all the delicacy required by the importance and peculiar character of the subject, and with all the respect which they sincerely cherish for the Spanish government and nation, advised this measure. These counsels, although his Majesty has not yet thought proper to act upon them, have been received and listened to in the friendly spirit in which they were given; and the government of the United States have been induced, in consequence, and by the generally friendly character of their relations with Spain, to continue the same course, as occasion may appear to render it expedient. I was accordingly instructed, upon leaving my country, to express to his Catholic Majesty, and his ministers, the firm conviction and earnest wishes of the government which I have the honour to represent, in regard to this question. I have already communicated them in conversation to your excellency's predecessor, and to yourself. In order to state them with more distinctness, and to enable your excellency to lay them before his Majesty in the precise form in which they are conveyed to you, I now take the liberty of troubling you with a few suggestions in writing upon this great and interesting subject.

The present moment seems to be a favourable one for reviewing the decisions that were taken at an earlier period of the war, and for considering whether events have not since occurred which make it expedient to change them. A course of proceeding which was apparently wise and politic ten or fifteen years ago, may have been rendered, by the subsequent progress of affairs, impolitic and ruinous. It may have been natural for the King to make war upon his colonies at the time when they first declared their independence; when there was a probability of reducing them again to their allegiance, and when it was yet uncertain whether the efforts they were making were the work of a few factious spirits or of the whole community; and it may, nevertheless, be in the highest degree inexpedient to continue the attempt to subjugate these colonies, now that they have grown up into six or eight populous and powerful nations, situated in a distant quarter of the globe, in the full exercise of all the prerogatives of sovereignty, and respected and acknowledged as sovereign by several of the greatest powers of the world. It is the usage of prudent governments not to adhere with too much constancy to any system, merely because it has once been adopted, but to mark the course of affairs, and to regulate their conduct by the present situation of things, rather than the past. A statesman who attempts to counter-

act the force of circumstances, or, in more religious and juster language, to defy the will of God, will find his efforts ineffectual and generally injurious to himself. The epochs of a critical and important character that present themselves, from time to time, in the progress of political affairs, appear more especially to invite the governments interested in them to reconsider the principles upon which they are acting, in order either to assure themselves that they are in the right, or to shift their course if they find themselves in error. One of these great epochs is just now occurring in the history of the Spanish American colonies. After declaring their independence of the mother country, surmounting the obstacles that first presented themselves, consolidating, to a good degree, their political institutions, and maintaining their national existence for seventeen years, without any organized concert among themselves, they are, at this moment, meeting, for the first time, by their plenipotentiaries, in a general congress, for the purpose of regulating their mutual interests, and entering into an alliance, offensive and defensive, against their common enemies. This change in their position is evidently one of vast consequence. It calls imperiously upon the Spanish government to consider well the system upon which it is now proceeding, and to examine anew the whole subject of its relations with these states. It has also been thought, by the government of the United States, that the occurrence of this remarkable event furnishes an occasion upon which neutral and friendly powers might, with propriety, renew their good offices in attempts to bring about a reconciliation between the parties to the war. They have been induced by this motive to communicate their opinions and their wishes to his Majesty's ministers, in a more formal manner, at this time, than they have hitherto employed, and to invite the leading powers of Europe to concur with them, as far as they might think it expedient, in the same great and benevolent purpose. France and Portugal have lately led the way in a course of proceeding similar to that which is now recommended to his Catholic Majesty. It only remains for the King to give one signal proof of magnanimity and wisdom, in order to complete the pacification of the whole American continent. The President is well assured that the suggestions now presented by his order will be received as evidences of the friendly disposition of the government of the United States; and he ventures to hope that they will be listened to with attention, and will not be without effect.

It has been thought a proper mark of respect to the government of his Catholic Majesty, to accompany the communication of the opinion entertained upon this subject by that of the United States, with a statement of the reasons upon which they have been founded, that they might not appear to have been taken up capriciously and hastily, or to have been affected, in any degree, by a natural sympathy with the fortunes of the colonies. They have been adopted, in general, upon a deliberate view of all the information that could be procured; and a full recapitulation of the particulars from which they have been deduced, would embrace a mass of details much too large to be brought within the compass of an official

note. There might also be a difference, as respects some of these details, between the information that has been conveyed to the government of the United States and to that of his Catholic Majesty. There are, however, certain great and leading facts in the history and present state of the war, notorious to the world at large, and of course, familiarly known to his Majesty's government, which are considered by that of the United States as sufficient of themselves to demonstrate the impossibility of recovering the colonies. In the following remarks I shall confine myself as much as possible to these points, and shall endeavour to avoid any allusions to doubtful matters, either of fact or of right.

It is now about seventeen years since the occurrence of the first movements in the colonies. They were not occasioned by a rebellious or discontented spirit, but were the effect of the invasion of the mother country, and of the usurpation of his Majesty's throne by a foreigner. They were equally legitimate with the movements which were made at the same time in Spain, for the purpose of shaking off the French yoke, and were, indeed, precisely similar to them in character. Five or six years elapsed before this great object was obtained, and before the King returned from his captivity in a foreign country. During this time, the peninsula was the theatre of constant war; occupied and wasted by contending armies, foreign and domestic; distracted by political divisions; and, upon the whole, in a state approaching very nearly to entire anarchy. It is not singular that the colonies, having been compelled for a time to govern themselves, should have so continued to do, until the King's return, without regard to the authority which the successive ephemeral governments at home might pretend to exercise over them. The King's return introduced another order of events; but the colonies were now, and had been, for several years past, in possession of the privileges of self-government, and a new state of things had, in consequence, grown up among them. They had formed new relations with each other, and with foreign powers. Their whole political situation was completely altered. Were they bound, under these circumstances, to return at once to their ancient allegiance, or had the new position into which they had been thrown by events beyond their control, brought with it new rights and new duties incompatible with their former relations to the Spanish crown? On this, which is the great question of right between the parties, the government of the United States have never ventured to express an opinion. It is only on points of fact and expediency that they have felt themselves at liberty to offer their counsels.

Whatever may be thought of the merits of the case, a war, under all the circumstances, was, in a manner, unavoidable. It was accordingly undertaken by his Majesty's government, and carried on with all the vigour and perseverance which the situation of the kingdom would admit. Soon after the king's return, a powerful expedition was fitted out for America, under the command of one of the first generals of the age, and directed against a very well chosen point in the territory of the colonies. Had it been possible to subjugate them with

the means at the disposal of Spain, this expedition must have been attended with complete success. But the effort of general Morillo and his army to subdue the Americans, produced no other effect than that of teaching them the military arts which they wanted, and of forming among them, in the school of experience, a great commander, whose name alone is now a tower of strength to his countrymen. General Morillo, after seeing almost the whole of his army perish by his side; after performing miracles of courage, skill, and perseverance; after meriting all praise, excepting that of humanity, finally returned to Spain. The few troops that remained of his army were soon compelled to shut themselves up in a fortress, and not long after to surrender. The attemps made at home to fit out another considerable expedition, terminated in a revolution. The troops which had been stationed in Peru and Chili, after carrying on the war for several years, with various success, were finally reduced to capitulate, by the decisive victory of Ayacucho, which exhibited a second great commander, in a young man of only eight and twenty years of age. For some time before that event, there had been no royal forces in Buenos Ayres, and none in Mexico, excepting the garrison of a single fortress. This battle terminated the active military operations of Spain upon the American continent; and the war has been, in fact, for nearly two years past, at an end.

Will it be said that it is the intention of the Spanish government to renew it, and that other expeditions may be more successful than the former ones? Is it possible to suppose, for a moment, that Spain, in her present situation—her own territory partly occupied by foreign troops—enfeebled and convulsed by the effects of seventeen years of almost uninterrupted revolution, invasion, and war—without funds, and without credit—can fit out armies equal to the conquest of six or eight powerful nations a thousand leagues off? Were it even possible, as it evidently is not, that another expedition should be despatched immediately, as strong and as well appointed as that of general Morillo, would such a one be more likely to succeed now, than his did, in fact, several years ago? Would it be less difficult to contend with accomplished and veteran commanders, at the head of disciplined armies, than it was with the fresh recruits and unexperienced officers, out of which these armies and their generals have been formed? Or would the organized and acknowledged governments that now exist, offer a less formidable resistance than was made by the same communities when almost in a state of anarchy? These are evidently suppositions of things not merely improbable, or, in the common course of nature, impossible, but chimerical. They involve impossibility upon impossibility. It is impossible that new expeditions should be equipped—if they could be equipped, it is impossible that they should succeed. Since, then, the war is at an end, and cannot be renewed, it would seem that a peace, concluded on the best terms possible under such circumstances, would immediately follow.

It is understood, however, that his majesty's government, without intending to make any further attempts to subjugate the colonies by

actual force, nevertheless entertain the expectation that they may, perhaps, be brought back to their allegiance by the effect of internal dissentions; and that it is principally upon that account, that they consider it impolitic to treat with them as sovereign powers. This expectation is no better founded, according to the views of the government of the United States, than would be that of conquering them by actual war. It is believed that there is no greater probability of the occurrence of intestine troubles in these states, than in other established and organized bodies politic; and that, should they occur, they could not, by any possibility, be turned in future to the profit of Spain.

Every community which changes its form of government violently and suddenly, is visited almost of necessity by a period of anarchy and civil war. This was an evil which the Spanish colonies, in separating from the mother country, had reason to expect that they should be obliged to encounter; and from which the have, in fact, suffered, in a greater or less degree. Serious divisions occurred in most, if not all, of them, soon after the declaration of their independence, and for a time threatened their existence as sovereign powers. In Mexico, an adventurer usurped the government by military force, and assumed the title of emperor. In Colombia, the state of affairs was long unsettled, and there seems to have been, at one moment, considerable danger of insurbordination among the blacks. In Peru and Chili, the leading public characters were frequently at variance; and Buenos Ayres was, for awhile, the theatre of actual civil war. It was necessary that these troubles should terminate in one of two ways, either by bringing back the colonies to their allegiance, or by subsiding and disappearing under the influence of the new independent governments. The latter part of the alternative has in fact been realized. The difficulties to which I have alluded, and which accompanied so naturally the first attempts of the colonies to establish their national existence, are now at an end, and the fate of those persons who were engaged in them has not been such as to hold out much encouragement to future imitators. The disturbers of the established order have met, in almost every remarkable instance, with signal defeat and exemplary punishment. Iturbide, in Mexico, general Piar, in Columbia, the Carreras, in Chili, were publicly executed as common traitors. Saint Martin, who deserted his post at the head of the government of Peru, at a critical period, lost his influence, sunk into insignificance, and is said to be now living unknown at Brussels. Pueyrredon, who appears to have been gained by the agents of his majesty, while occupying the post of supreme director of the republic of the United Provinces of La Plata, could not carry with him a single man, was obliged to quit his post and his country, and has since, it is understood, died somewhere, in obscurity, of a broken heart. Such have been the fortunes of the principal authors of internal dissentions in America; and they are evidently not of a kind to encourage new attempts. In fact, since the disappearance of these first troubles, the reign of good order and of consolidated political institutions seems to have taken place every where, and is apparently established. Five of the six principal states that have

been formed out of his majesty's colonial dominions, not including Paraguay, of which the internal condition is but little known to foreigners, present as tranquil an appearance as any part of Europe or the world. Peru is, in some degree, unsettled, but the tranquillity of that country is secured by the battle of Ayacucho; and the final arrangement of its political institutions will not probably be long delayed. Having thus organized their respective governments at home, these states are already beginning to extend their views abroad, and are, at this moment, assembled by their ministers in a congress at Panama, for the purpose of forming among themselves some concerted schemes of action. This great event may be considered as indicating distinctly the consolidation of their several political institutions, and the disappearance of all pre-existing internal dissentions.

The troubles which naturally accompanied the first establishment of these new states having thus subsided, they cannot, in the natural course of events, be expected to return. They were incident to a particular period in the history of the colonies; and this period having passed away, the dangers incident to it have naturally passed away with it. The various epochs in the progress of communities, like the different ages in the life of man, are subject to particular disorders; but, in both cases, those that belong to one period can never be encountered at another. Troubles may doubtless occur in the nations that have been formed out of the Spanish colonies, as in all others; but they will not be hereafter of the same kind with those which were occasioned by the separation from the mother country, and the attempt to establish an independent national existence. Let it be supposed, however, for argument's sake, that internal dissentions should again arise, equally serious with those which have already arisen and subsided; let it be supposed that a second Iturbide shall appear in Mexico, another general Piar in Colombia; that Buenos Ayres or Chili shall again be the theatre of civil war; that a new Pueyrredon should be gained by his majesty's agents; or, finally, in order to exhaust every supposition, however improbable, let it be imagined that Bolivar and Sucre shall belie their noble characters, disappoint the hopes of the world, and turn out Bonapartes and Cromwells, instead of Washingtons; of what advantage would the occurrence of these or similar events be to the royalist cause? Or what additional probability would they furnish of a return of the colonies to their allegiance? If his majesty's government found it impossible to turn to any account the troubles that actually broke out at a time when the state of the colonies was yet unsettled, and they had a large military force in the country, would they be able to do it now, when they have not a soldier not under close siege from California to Cape Horn, and when the new governments have acquired consistency and vigour? If Iturbide, when he overthrew the Mexican government, while the royalist party was still imposing, and the prospect of success in the establishment of independence uncertain, did not think of proclaiming the king, would another Iturbide do it now? If the insurbordination of Piar, under the eyes of general Morillo, could not be made the means of reducing Venezuela, would another black insurgent be likely to prove

a better instrument, with no body present to direct and employ him? If Bolivar or Sucre should attempt to establish a military despotism, would it be in the name of the legitimate king, and under the royal Spanish flag? These suppositions, like that of an actual military conquest of the country, are obviously not merely improbable, but chimerical, and full of inherent contradictions. The time to take advantage of internal dissentions, if ever, was the time when they might have been expected to occur; when they did in fact occur; and when the king had his armies in the country, ready to back a discontented leader. If nothing could be done under all these favourable circumstances, it is vain to expect a better result at present, when every circumstance is of an adverse character.

Finally, such is the strength of public opinion prevailing throughout the colonies in favour of independence, that nothing would be really effected, even by successful attempts to create internal divisions, and to gain over the popular leaders. This is evidently shown by the fate of Pueyrredon, to which I have already alluded. Here was a person holding the supreme executive power in one of the new states, enjoying a high reputation, and apparently possessing great influence, who consented to employ it in endeavouring to bring about a union of the colony, under his government, with the mother country, in the most plausible way in which it could be done. This colony was precisely the one in which political dissentions had prevailed to the greatest extent, having assumed, for a long period, the shape of actual civil war. The negotiation presented an additional probability of success, from being carried on under the auspices of one of the most powerful monarchs of Europe in alliance with his Catholic majesty. The king had, at that time, one or two considerable armies in America, ready to lend their aid in promoting the intended object.—Here was a case, if ever there was or will be one, in which something might be expected from the effect of internal divisions, and from the adhesion of leading characters. What happened? Did Pueyrredon, under all these favourable circumstances, succeed in bringing back to its allegiance the colony under his government? I have already stated that he did not carry with him a single man. He could not stay in his country. He was crushed at once to the earth by the execration and contempt of the whole American continent; and, in order to escape an ignominious death, was compelled to hide himself in some obscure corner, where he has since died of chagrin and shame. Such is the history of the only considerable apostate that has yet been gained from the cause of independence in America. It proves that whatever may be the merits of the contest, there is a force of public sentiment arrayed in support of this cause, too strong to be resisted by any individual, however eminent; that nothing can be hoped by Spain from the effect of internal dissentions in the colonies; and that no means, excepting that of actual physical force, will ever bring them, or any part of them, again under the dominion of his Catholic majesty. The impossibility of employing this means with success has already been shown, and is understood to be felt by his majesty's government.

It has sometimes been said, however, that Spain might reasonably

be encouraged in the hope of recovering her ancient colonies, by the great and sudden revolutions that have occurred in Europe in our own time. The late king of France, after being deprived of his hereditary rights and dominions for twenty-five years, finally succeeded in obtaining possession of them. Why may not the king of Spain, in like manner, recover his American possessions, although he should have lost them for an equal length of time? It is understood that this argument from analogy is considered by some persons of great respectability as the principal one that can be urged in favour of the continuance of the war, and it may therefore be proper to give it some attention.

The conquest of the colonies must be effected, if at all, by the aid of means; and the example of the king of France is applicable, in the present instance, only as far as the same means which were employed to place him on the throne, are now at the disposal of the king of Spain for the purpose of recovering his lost possessions in America. What were these means, and how far can they probably be employed, at present, by the Spanish government?

The revolution in the government of France, of which the return of Lewis XVIII. was the natural consequence, was accomplished by the military force of other European powers, at a time when the king had not a soldier in the field in his own immediate service. Is it probable that there will be now or ever a similar alliance of these powers, for the purpose of restoring to the king his ancient dominions in America? What was the motive which induced all the sovereigns of Europe to unite in a joint attack upon the government of Bonaparte? It was no other than the direct interest they had in overthrowing that government, on account of the inconvenience, more or less oppressive, which they all suffered from its continuance. Have they all or any of them any such motive for opposing, at present, the independence of the Spanish colonies? It is evident that their direct interest, as far as they have any in the affair, is on the other side; and that the independence of America, instead of being an inconvenience to them, is rather advantageous than otherwise, as it affords them a greater freedom of intercourse with these vast and wealthy regions than they would enjoy under any colonial system, however liberal. Their interest, therefore, would naturally lead them, considered merely as neutral powers, to take part with the Americans, rather than with the Spanish government. Such of them as possessed extensive and valuable colonies might be supposed, perhaps, to sympathize with Spain in this contest, either because these colonies had actually thrown off their allegiance, or might be expected to do so; and these, if any, are the powers which would have an interest in assisting his Catholic Majesty, or in wishing, at least, for his success. What then has been the policy of the powers thus situated? France and Portugal have just acknowledged the independence of their ancient transatlantic dominions. England and Holland, the only nations now possessing colonies of consequence, have acknowledged the independence of South America. It so happens, therefore, that the four powers, which have or had colonies, are precisely those which have given the most unequivocal proof, that it is

not their intention to deviate from the line of neutrality, by engaging in the war on the side of Spain. If such be the policy of these nations, which alone had some little indirect interest in common with that of his Catholic Majesty, what can be expected from the rest, which have all a pretty strong interest on the other side? There is evidently no probability that they will enter into a great European alliance for the reduction of America, like that which was employed for the overthrow of Bonaparte; nor is it believed that his majesty's government expect any such co-operation or assistance. It is, therefore, not in their power to take advantage of the same means which were used by the king of France, to obtain possession of his hereditary dominions; and his example has, of course, no application to the present circumstances of his Catholic Majesty.

I fear that I may have taxed somewhat too severely the attention of your excellency, by the length to which these considerations have been already drawn out; but it is difficult to touch, however concisely, upon the several leading points of so great a question, without entering into a pretty extensive course of remarks. If the above statement of the grounds upon which the government of the United States have formed their opinion in regard to this question, be at all correct, it follows conclusively, that there is no chance of recovering the colonies, either by actual military force, by the effect of internal dissentions, or by the aid of foreign powers. The object of the war is, therefore, unattainable. What remains, then, but to escape, as soon as possible, from its inconveniences, and to conclude peace at once? Peace is, of itself, and in all cases, the greatest of blessings, and an almost indispensable condition of all public and private prosperity. The advantages, direct and indirect, that would accrue to Spain from making peace at present with the colonies, are, in the opinion of the government which I have the honour to represent, of even more than ordinary value. I fear that I shall exhaust your excellency's patience; but being charged by my government with the expression of their convictions and wishes upon a subject of such vast magnitude, I should have reason to reproach myself if the effect of their intercession were diminished, and the war protracted, by the omission of any topic that would be likely to have weight with his Catholic Majesty. Allow me, then, my lord duke, to request your attention a little longer, and to state to you, very concisely, as they appear to the government of the United States, the important benefits which would result to Spain from the restoration of peace, and the establishment of friendly relations with her ancient colonies.

The immediate inconveniences suffered by Spain from the continuance of the war are far from being inconsiderable, and the cessation of them would constitute, of itself, a very serious advantage. These inconveniences are principally the heavy expense necessary to keep up military and naval establishments adequate to the defence of the West India islands, and the almost entire destruction of the commerce of Spain, by the armed vessels and privateers of the new American states. It is understood that the whole revenue which would accrue from the islands is,

at present, absorbed by the charges of securing them against the danger of an attack. When to this great expense is added that of fitting out, occasionally, at home, expeditions intended for their defence, it is clear that the burthen must be considerable, especially in the present embarrassed state of the finances. The restoration of peace would remove this evil at once, and would, also, give new life to the Spanish commerce, which is now almost destroyed by the American privateers. These enterprising navigators not only cover the waters of the Gulf of Mexico, and of the passage thence to Spain, but have lately ventured across the Atlantic, and almost blockade, at the present moment, the ports of the Peninsula and the entrance of the Mediterranean. The coasting trade is nearly at an end, and, as far as it is continued, must be carried on under convoy. It is true that the commerce of Spain, under the national flag, has not been, for some years past, very considerable, but the loss of the whole, or the greater part of it, such as it is, is still a serious inconvenience. The desolation of the sea ports, and the falling off in the amount of the customs, show but too clearly the extent of the evil. The duties paid at Cadiz, which, as your excellency did me the honour to inform me the other day, were a hundred millions of reals before the commencement of the present troubles, are now, I understand, something less than four. When the inconveniences of this war are thus brought home to the resources of the government, and to the daily life of his majesty's subjects, is it not time to consider whether it affords any advantages or hopes to constitute an adequate compensation for sacrifices of such vast importance?

In addition to these great mischiefs, which are actually suffered, and which would be removed by the termination of the war, there is another, perhaps still more serious, impending in immediate prospect, which, in the opinion of the government of the United States, nothing but a speedy restoration of peace can avert—I mean the loss of the islands of Cuba and Porto Rico. These possessions are, for all purposes of revenue, already in a great measure lost; the whole amount of receipts drawn from them, being, as is understood, exhausted by the charges of their defence. The continuance of the war for two or three years longer, perhaps for one, must, in all human probability, occasion their complete alienation, in one form or another. Hostilities being now at an end on the continent, and the new states being compelled, by the refusal of Spain, to make peace, to keep up their military and naval establishments, they must, of course, employ them upon some active service. The Spanish islands present the most natural and advantageous point for attack, and will, of course, be attempted. Without intending to disparage the valour of his majesty's armies on this station, still less the talent and efficiency of the governor general, an officer of whom the government of the United States have reason to speak in the highest terms of respect and estimation, I may add, that it can hardly be doubted, considering the nature of the population of the islands, and their vicinity to the continent, that an attack would result either in their immediate conquest by the new states, or

in a protracted civil war, which would put an end, at once, to their present prosperous condition, and would occasion, in like manner, their ultimate loss. It is believed, on the other hand, by the government of the United States, that, by making peace now, his majesty might insure the possession of these valuable colonies for a long and indefinite period of time to come. Under the system of free trade, upon which they are now fortunately governed, they have flourished almost beyond precedent. The inhabitants are prosperous and wealthy, and must, of course, be satisfied with their condition. Relieved from the burthen incident to the defence of the islands, they would find their situation still farther improved. There is no reason to suppose that, under these circumstances, any foreign power would attempt to molest them, or to infringe upon the rights of his majesty to their government; and, without pretending to prophecy what may happen in the course of centuries, it is every way probable that, for as long a period, at least, as any political combinations, formed at the present day, can be expected to produce effects, these islands would continue to acknowledge, quietly and cheerfully, the supremacy of Spain, and to constitute, at once, a rich appendage to the Peninsula, and a convenient entrepot for the immense trade which, in time of peace, must necessarily grow up between the mother country and the colonies.

Such would be the consequences resulting from the mere termination of the war; the removal of the immediate evils occasioned by it, such as the decline of commerce, and the burthen of defending the islands, would be a real benefit. The assurance of preserving Porto Rico and Cuba would be another; but these negative advantages, however considerable, are of small importance, when compared with those of a positive kind, which this kingdom would derive from the conclusion of peace, and the establishment of friendly relations with the colonies. Permit me, then, sir, to enlarge a little upon this topic, and after touching very briefly upon the present unfortunate position of Spain, to present to you the more agreeable picture of her situation, as, in the opinion of the government of the United States, it might, and would be, under a system of free intercourse with the ancient colonies, on a footing of equality and mutual independence.

The present distressed condition of Spain is a fact too notorious to require proof, and too painful to be dwelt upon without necessity. In alluding to it, I shall quote the language of a report made last year by the Treasurer General to the Minister of Finance.

"Spain," says this officer, "has been the victim of political convulsions. It is extremely unpleasant to me to be obliged to relate disagreeable things, and to present unfavourable pictures; but in the alternative of perhaps putting public tranquillity to hazard, I should consider myself criminal, if any fears or private views made me conceal evils which require an immediate remedy, especially when, with all my efforts, I am unable to stifle the evils which are bursting forth in every quarter. The resources have diminished, and are daily diminishing. The great sums which used to be received from America, and which, in tranquil times, amount-

ed, annually, to more than a hundred and sixty millions of reals, have fallen off. The customs, the tobacco duties, the salt duties, and other branches of the revenue, have sustained a defalcation, amounting, by estimate, to another hundred millions, so that the revenue is scarcely sufficient to cover half the expenditure. Public credit is ruined by the enormous weight of the debt, and the measures that have been resorted to, in this department, have failed to produce the expected results. So great a deficit, and so general a want of confidence, create uneasiness in all classes of society. Men neglect their private contracts, and the country is constantly exposed to the terrible effects of the general discontent which is the necessary consequence of such a state of things."

Such is the alarming picture of the present state of Spain, presented in a public report by one of his majesty's distinguished servants. The case, as the Treasurer observes, is one that demands an immediate remedy. Fortunately, the great measure of making peace with the colonies, so desirable and necessary on other accounts, holds out, in addition, to the kingdom, the prospect of speedy and complete relief from its present distresses. The American states would, doubtless, consent to furnish, in return for the acknowledgment of their independence, such pecuniary supplies as would be sufficient to remove all financial embarrassments, and to re-establish the public credit on a solid basis. This great object being accomplished, the commercial relations that would naturally grow up between the mother country and the ancient colonies, would open new, copious, and permanent sources of wealth, amply sufficient to complete the work of restoration, and even, in all probability, to elevate this kingdom from its present state of depression, to a height of greatness and glory which it never reached before. Thus the king would not only, in consequence of taking this measure, be crowned with the gratitude and love of sixteen millions of Americans, but would merit and obtain, by a single act, through all succeeding ages, the glorious title of the Restorer of the Spanish Monarchy.

In regard to the first of these points, viz. the supplies that would probably be furnished by the colonies, in return for the acknowledgment of their independence, I wish to be understood as speaking entirely without authority from them, and without having the intention or the right to commit them in the smallest degree. I presume, however, that there can be no question upon this subject. The late example of Hayti, shows to what an extent a community, in the situation of the Spanish settlements in America, is willing to make immediate sacrifices, in order to obtain complete and permanent security. It may be added, nevertheless, that the sooner the recognition is decided on, the greater will be the probability of obtaining from it considerable advantages of this description.

The manner in which the establishment of commercial relations with the colonies would operate in restoring the prosperity and promoting the wealth and greatness of Spain, is sufficiently obvious; but as this is the most agreeable part of the subject, I shall make no apology for dwelling upon it a little longer.

The decline of industry, occasioned by long and frequent political convulsions, has been the immediate cause of the decay of the wealth and greatness of Spain; and the revival of industry is the only possible means by which this decay can be checked, and a contrary course of recovery commenced. The return of peace, especially after long intestine wars, has a natural tendency to produce such a revival, as well by restoring to productive labour the hands that were employed in the armies, as by affording to the whole community that security for their persons and property which they cannot enjoy in the midst of convulsions, and without which nobody can labour with spirit or effect. But, in order to bring about so complete and extensive a revival of industry as is wanted in this country, something more than this would be requisite; and it would also be necessary that some important change in the political or economical situation of the kingdom should create a considerable increase of the ordinary demand for the products of labour. This would produce, immediately, an increased demand for labourers, a rise of wages, an augmentation of profits in all the branches of industry, and of the rents and value of land, and, in its more remote consequences, the extension of industry in all its branches, attended with an increase of population, and of the comforts and well being of all classes of society. Now, such an increase in the demand for the products of Spanish labour would be the direct consequence of the renewal of friendly relations with the colonies. New settlements, possessing the tastes imparted by civilization, and situated, at the same time, like the European colonies in America, in the mids of an extensive country not yet brought under cultivation, naturally turn their attention, in the first instance, to agriculture, as the most agreeable and profitable of all occupations, and depend, for manufactures, on the labour of older nations. Among these, the mother country, in consequence of the community of language, tastes, and manners, must, of course, enjoy the preference. In this case, therefore, sixteen millions of Americans would immediately resort to Spain, for all the supplies which they wanted from abroad, and which Spain could furnish. It is true that, in the present state of industry in this country, Spain would probably not be able to satisfy entirely this immense demand, and that the Americans would be obliged to seek, in other countries, many articles which they could not find in this. But the encouragement to labour afforded by this or by any other cause, must, of course, operate at first only upon such branches of industry as are already established. If the new demand from America, for the products of Spanish labour, did not produce a revival of industry, the fact would prove that such a revival is impossible, under the most favourable circumstances. But there is no reason to suppose that this is the case. Skill and labour enough still remain in this country to afford an ample basis for improvement and future progress. The demand from the colonies would operate, in the first instance, upon such products as now present themselves, and which, though chiefly agricultural, are not of the growth of America. The wines and fruits of the southern

provinces of the kingdom, and the manufactures of the eastern, would be sought, with avidity, by communities whose tastes have been formed to them by long and hereditary usage. The transportation of these and other articles would employ the navigation of Biscay and Galicia, diffuse life through the sea ports, and give, at once, a wholesome spring to the circulation of the body politic. Such would be the first effects of this new situation; but its benefits would not end here. The profits resulting from the fresh impulse thus given to labour would augment the capital in the hands of the enterprising classes of the community, and would lead to the extension of all the existing branches of industry, to the establishment of new ones, and, in general, to the full developement of the resources of this naturally rich and favoured kingdom. Foreign capital, if wanted, would take this direction. For every branch of industry thus established or extended, besides the large and increasing home demand, would be opened the vast market of the colonies, where the population, already so extensive, will probably increase with great rapidity, and require fresh and still augmented supplies, faster even than the augmented labour and enterprise of the mother country would be able to furnish them. Under these circumstances, every thing at home must necessarily flourish. The agricultural products, which now constitute the chief wealth of Spain, would be obtained in larger quantities, and in higher degrees of perfection. Manufactories would be founded, or enlarged and improved. The cotton fabrics would no longer be driven out of the home market by contraband foreign articles; but, after supplying the demand of Spain, would enter into competition, through all the American states, with those of other countries, and probably be preferred. The excellent wool of Castile, and the silk of Valencia, would no longer be exported and wrought up abroad, but would give employment and profit to millions of industrious hands at home. The mines, that have been so long neglected, would be explored, to furnish materials for constructing the machinery necessary for these productive labours. New branches of industry, now entirely unknown in the country, would spring up under the operation of this prodigious stimulus.—Population would increase with rapidity, and all classes would, nevertheless, enjoy a full share of the comforts of life. New communications, by roads and canals, would be opened. Navigation and commerce would wear an entirely different appearance. The value of land and labour would rise in proportion. The ancient cities, that are now deserted and decaying, would again swarm with crowds of busy inhabitants. The waste lands would be brought into cultivation, and a new life would animate the whole body politic.

Such would be the economical effect upon the mother country of the establishment of friendly relations with the colonies. It is hardly necessary to add, that corresponding advantages would result, as respects the facility of administering the government and the general political situation of the kingdom. The secret causes of the power and influence of states must be looked for in the industry and happiness of the individuals that

compose them, as these in turn are the effects of wise laws and a just administration. When the people are idle, and of course poor and wretched, the government, by a necessary consequence, is unprovided with resources, and its state politically weak. When the people are industrious, wealthy, and contented, the government is also rich and powerful, and the state politically strong. Under the change of circumstances which I have supposed, Spain, instead of finding it difficult to collect a revenue large enough to cover half the annual expenses, reduced to the lowest possible scale, would be one of the wealthiest governments in Europe. It is intimated by the the treasurer general, in the above extract from his report, that the supplies anciently received from the colonies amounted annually to more than a hundred and sixty millions of reals. If this sum was then the measure of their value to the crown, computed in money, it is certain that they would be worth much more in a state of independence. The immense revenue that might be derived from a free trade with the colonies, may be conjectured by observing what has actually occurred in England. The duties collected at the custom house in Liverpool, in the year 1780, amounted to about £80,000. In the year 1823, they had risen to £1,801,402, and had thus increased more than twenty fold. It is well known that the augmentation in the trade of Liverpool has been occasioned almost entirely by the separation of the United States from England. If the receipts at the custom house at Cadiz, before the present troubles, were a hundred million reals, and we suppose them to increase only as fast as those of Liverpool, under the influence of a much more powerful stimulating cause, (since the population of the Spanish colonies is now about five times as large as was that of the United States at the close of the revolutionary war,) even on this very moderate supposition they would amount, forty years hence, to about two milliards of reals, and would present a proportionate increase during the intervening years. A single port would thus furnish a sum equal to four times the amount of the whole annual receipts of the kingdom, and twice the amount of the whole annual expenses, according to the present estimates. Such would be the effect upon one branch of the revenue, of this powerful cause, which would operate, at the same time, with corresponding vigour upon all the others. Nor would the failure of the supplies formerly received in money from the colonies be felt as a loss, since the islands, which would still remain to the crown, under a system of free trade, and liberated from the charge of defence, would furnish, of themselves, probably, a larger sum. The duties collected at the port of the Havana alone are said to amount, at present, to a hundred million reals, and would be greatly augmented by the opening of commerce with the Main.

The effect of such vast additional resources as these would soon be perceived in every branch of the government. It would show itself in the augmented majesty and splendour of the throne, in a more vigorous and steady administration of justice, in larger and more efficient military and naval establishments, and in an undoubted public

credit. The internal dissentions by which the country has been long distracted, and which have their final origin in its unfortunate economical situation, would soon disappear. Spain, under these new circumstances, would be quiet at home and respected abroad. Instead of being attacked by foreigners every ten or twenty years, she would be in a situation to exhibit her own flag, when occasion should require, on the territory of neighbouring and of distant nations. She would become, in short, what she was destined to be, by her geographical position and great natural advantages, the leading power in the south of Europe.

Such, according to the surest principles strictly applied, would be the effects resulting to Spain, in the natural progress of events, from a single wise and generous measure. The probability of their occurrence is confirmed in every point by the splendid example of England and the United States, to which I have already alluded, and which, being parallel in every important circumstance, must be regarded as decisive, and deserves, of course, to be considered with great attention. It is now just half a century since the declaration of the independence of the United States, and about forty-three years since the conclusion of the peace with England. Previously to that event, the respective positions of the two parties were the same with those of Spain and her ancient colonies at present. There was the same feeling of bitterness between them, occasioned by a long period of mutual exasperation which preceded the war, and by the accidents of the war itself. England felt the same reluctance to treat with her colonies as sovereign states that is now felt by Spain. Their loss was generally viewed as a national misfortune, and many statesmen of the day predicted, as its consequence, the immediate decline and fall of the mother country. Fifty years have since elapsed, and where is England now? Instead of being ruined by the loss of her colonies, she has exhibited, since that event, a developement of power and wealth wholly unparalleled in the history of any other country in Europe, and which seems, at first view, almost miraculous. Nay, this very loss of the colonies, from which so much mischief was anticipated, has proved to be a great blessing, and has been, in fact, as is now generally admitted, the principal cause of this prodigious prosperity. The rapid progress of the United States, which would never have flourished as they have done while dependent, has exercised a favourable reaction on the mother country, and has brought with it the wonders of improvements in England, which the world has seen. This, as I have observed, is a thing generally acknowledged, and is also susceptible of proof. If we look in detail at the recent augmentation of the resources of England, we shall find that it has taken place chiefly in branches of industry unknown before the separation of the colonies, and growing directly out of that event. The principal of them is the manufacture of cotton. The exports of England, in the year 1787, were valued at about fifteen millions sterling, and included no cotton fabrics whatever. In 1822, they were valued at about forty-five millions sterling, including cotton fabrics to the value of more than twenty-two. The exports of a country may be considered as an

approximative, though not direct, indication of its economical state; and, considering the increase of the exports of England, during the interval between these two periods, amounting to thirty millions, as a measure of her increase of wealth, it will appear that three fourths of it have proceeded from the establishment of this single branch of industry. Thus far, the improvement has been owing entirely to the independence of the United States. Before the revolution, no cotton was produced in the colonies, and very little was manufactured in England. In the year 1784, the one following the peace, the first exportation of this article took place from the United States, and consisted of eight bales, which were seized on their arrival at Liverpool, on suspicion that they were not of the growth of the country, as it was not known previously that cotton was cultivated there. The necessity of finding some agricultural product with which to furnish the parent kingdom in exchange for her manufactures, soon extended the cultivation of this plant, and in the year 1823 the number of bales of cotton imported at Liverpool from the United States amounted to 406,670. The cheapness and abundance with which, this valuable article was supplied, naturally extended the manufacture of it in England; until, after satisfying an immense demand for home consumption, it furnished, in 1823, the prodigious quantity for exportation specified above. Upon every bale of cotton, thus produced in the United States, and wrought up in England, it is calculated that the profits of the labour of England are to those of the labour of the United States in the proportion of twenty to one. Such are the respective advantages resulting to the two parties from the intercourse that naturally grows up between a parent state and its colonies, and yet the latter have no reason to complain. The cotton planters of the United States are among the most prosperous and wealthiest classes of the community, and this branch of industry is regarded by all as of the highest national importance.

Such has been to England the value of the increased market for her products, produced by the independence of her colonies, in this single department of labour. In others, such as the woollen and iron manufactures, the encouragement afforded, if not so extensive, has been still of great consequence; and, as it is generally acknowledged, so it appears to be true on a close inspection, that the vast accession of wealth she has exhibited since the American revolution, is immediately attributable to that cause, and could not have taken place without it. With the increase of wealth, the population has been doubled, and the comforts of life have been diffused throughout all classes; cultivation has been extended; roads and canals constructed or improved; and the face of the country in a manner entirely changed. The government has found its resources augmented in the same proportion; has risen from the rank of a secondary to that of a leading European power; has sustained a war of thirty years against a most formidable combination of the continental states, attended with expenses before unheard of, to the amount, in one year, of thirteen milliards of reals; and, notwithstanding this astonishing destruction of productive capital, has still maintained its credit, and remains one of the wealthiest,

most powerful, and most prosperous nations on the globe.

Such, or similar to these, would be the advantages derived by Spain from the independence of her colonies. The two cases are parallel; nor can any good reason be given why the results should not be the same. It may be said, indeed, that, because Spain is at present inferior in the perfection of her fabrics to some other countries, the new demand from the colonies would direct itself towards the latter, especially as commercial relations are already established with England, France, and the United States. But those who draw this conclusion have not sufficiently considered the influence of a community of origin, language, religion, and manners, in determining the intercourse among men Similar predictions were made at the time, in regard to the direction which would be taken by the commerce of the United States, after their separation from England. They had received from France the most important aid in the revolutionary war; and France was at that time a nation much richer than England, not only in natural products, as she is now, but even in those of art. A close commercial relation had been established by the political alliance that existed during the war; and it was anticipated that after the peace, the trade of the United States with France would be much more considerable than that with England. No sooner, however, were the restrictions on the intercourse with the mother country removed by the conclusion of peace, than the commerce of the United States returned into the old channels from which it had been diverted for several years, and has continued ever since to take this direction. The trade with France, notwithstanding the superior advantages of it in an economical point of view, never flourished to any great extent, and the exports to that country have never been more than a fourth or fifth of those to England. In like manner, the trade of the Spanish colonies would immediately take the direction of Spain, as far as the agricultural and manufacturing industry of the kingdom is now capable of supplying their wants; and in proportion as the resources of the peninsula were developed under the operation of this beneficial intercourse, the trade would continue more and more to increase, bringing with it the favourable effects that I have already described.

Such, my lord duke, are the grounds upon which the government of the United States have formed their opinion upon this subject, and the reasons by which they have been induced to recommend to his majesty's government the policy of a general pacification. If the facts I have stated are in any way correct, it results, from the whole, that the recovery of the colonies is impossible, either by actual force, by the effect of internal dissentions, or by the aid of foreign powers; that the continuance of the war is attended with great inconveniences, among which must be reckoned, at no distant period, the loss of the islands; and that peace, besides the ordinary blessings which it always carries with it, would, in this case, administer immediate relief to the financial embarrassments of the government, and, by its ultimate consequences, restore the prosperity and greatness of the kingdom.

Deeply impressed with this view of the subject, the government of the United States have considered it an act of real friendship and duty, to communicate their sentiments to his Catholic Majesty; and they cannot but hope that the communication will not be without effect. I have only to add, that the efficacy of the measure recommended, both in removing evil and in producing positive good, depends very much upon its being adopted immediately. Should the peace be delayed a single year, it will, in all probability, be too late to save the islands. Should the acknowledgment of the independence of the colonies be deferred until it becomes a mere matter of form, it can hardly be presumed that they will be willing to purchase it by any great sacrifices, and it will not, in that case, bring relief to the finances. Finally, if the trade of America is permitted to flow for too long a time in foreign channels, it is, at least, uncertain whether it will ever return to the mother country. What is to be done should, on every account, be done quickly. If it should be thought by his majesty's government that the good offices of that of the United States would be of use in bringing about an accommodation on the basis indicated in the present note, they will be employed with great readiness and pleasure; and I should be truly happy to contribute, in any way, by my personal services, in effecting so great and benevolent an object.

Of the glorious actions achieved under the patronage of the sovereigns of Spain, predecessors of his majesty, the greatest, beyond a doubt, was the enterprise of Christopher Columbus. The discovery and settlement of an unknown world, the foundation of a brotherhood of new nations, the diffusion of the noble Castilian language and with it, of the lights of civilization and Christianity, over a whole quarter of the globe; these were the results of the enlightened policy of Ferdinand the Catholic, and his celebrated queen. It has been reserved for his present majesty to put the last finish to this great work, by a measure that shall at once confirm the prosperity of Spanish America, and restore the splendour and greatness of Spain. Seldom has it been in the power of any monarch or any government to effect, by a single act, so much good as would result from this. May God, in his providence, incline the king's heart to perform it.

I pray your excellency to submit this communication to the consideration of his majesty, and avail myself of this occasion to offer your excellency the renewed assurance of my sincere respect and esteem.

A. H. Everett.

Madrid, January 20, 1826.

ACTS

PASSED AT THE FIRST SESSION OF THE TWENTIETH CONGRESS OF THE UNITED STATES.

[*N.B. The titles only of private acts and appropriation bills, are given; and the dates of approval refer back to the last preceding dates.*]

John Quincy Adams, President; J. C. Calhoun, Vice President, and President of the Senate; Nathaniel Macon, President of the Senate pro tempore; Andrew Stevenson, Speaker of the House of Representatives.

CHAP. 1. An Act making partial Appropriations for the support of Government during the year one thousand eight hundred and twenty-eight. Approved 3d January, 1828.

CHAP. 2. An Act to prevent defalcations on the part of disbursing Agents of the Government, and for other purposes.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That no money hereafter appropriated shall be paid to any person for his compensation, who is in arrears to the United States, until such person shall have accounted for and paid into the treasury all sums for which he may be liable. *Provided*, that nothing herein contained shall be construed to extend to balances arising solely from the depreciation of treasury notes, received by such person to be expended in the public service; but in all cases where the pay or salary of any person is withheld, in pursuance of this act, it shall be the duty of the accounting officers, if demanded by the party, his agent or attorney, to report forthwith to the agent of the treasury department the balance due; and it shall be the duty of the said agent, within sixty days thereafter, to order suit to be commenced against such delinquent and his sureties.

CHAP. 3. An Act for the Relief of Simeon Broadmeadow. Approved 25th January, 1828.

CHAP. 4. An Act making appropriations for the payment of the revolutionary and other Pensioners of the United States.

CHAP. 5. An Act for the relief of General Thomas Flourney, of Georgia.

CHAP. 6. An Act for making appropriations for the support of Government in the year one thousand eight hundred and twenty-eight. Approved 12th February, 1828.

CHAP. 7. An Act authorizing the Secretary of State to issue a Patent to Elizabeth H. Bulkley, widow of Chauncey Bulkley, deceased.

CHAP. 8. An Act for the relief of Hampton L. Boone, of Missouri. Approved 21st February, 1828.

CHAP. 9. An Act authorizing a Register to be issued for the brig Liberator, of Bath.

CHAP. 10. An Act for the relief of William Thompson.

CHAP. 11. An Act for the relief of Joshua T. Chase and others.

CHAP. 12. An Act for the relief of Henry G. Rice.

CHAP. 13. An Act for the relief of the legal representatives of the late General William Hull.

CHAP. 14. An Act for the relief of William Cloyd.

CHAP. 15. An Act to revive and continue in force "An Act declaring the assent of Congress to a certain Act of Maryland."

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the act passed the seventeenth day of March, in the year one thousand eight hundred, entitled "An Act declaring the assent of Congress to certain acts of the states of Maryland and Georgia," and which, by subsequent acts, has been revived and continued in force until the the third day of March, one thousand eight hundred and twenty-eight, be, and the same, so far as relates to the act of Maryland, hereby is revived and continued in force until the third day of March, one thousand eight hundred and thirty-eight. *Provided*, that nothing herein contained shall authorize the demand of a duty on tonnage of vessels propelled by steam, employed in the transportation of passengers.

CHAP. 16. An Act to alter the time of holding the District Courts of the United States in the district of North Carolina.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the district Courts of the United States for the district of North Carolina

shall, after the passing of this act, commence and be holden on the following days: that is to say, at Edenton, in and for the district of Albemarle, on the third Monday of April and October; at Newbern, in and for the district of Pamlico, on the fourth Monday of April and October; and at Wilmington, in and for the district of Cape Fear, or Clarendon, on the first Monday after the fourth Monday of April and October, in each and every year.

SECT. 2. *And be it further enacted*, That all suits, actions, writs, process, and other proceedings, commenced or to commence, or which shall now be pending, in any of the said district courts, shall be returnable to, heard, tried, and proceeded with, in the said district courts, in the same manner as if the time for the holding thereof had not been changed.

Approved 10th March, 1828.

CHAP. 17. An Act making appropriations for the support of the Navy of the United States, for the year eighteen hundred and twenty-eight.

CHAP. 18. An Act making appropriations for certain Fortifications of the United States, for the year one thousand eight hundred and twenty-eight.

CHAP. 19. An Act granting the right of preference in the purchase of public Lands, to certain settlers in the St. Helena land district, in the state of Louisiana.

CHAP. 20. An Act for the relief of the Columbian College, in the district of Columbia.

Approved 19th March, 1828.

CHAP. 21. An Act making appropriations for the Military Service of the United States, for the year one thousand eight hundred and twenty-eight.

CHAP. 22. An Act to revive and continue in force the several acts making provision for the extinguishment of the Debt due the United States, by the purchasers of the public lands.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, The the act, entitled "An act to provide for the extinguishment of the debt due to the United States by the purchasers of public lands," approved May the eighteenth, one thousand eight hundred and twenty-four, and the act entitled "An act explanatory of an act to provide for the extinguishment of the debt due the United States by the purchasers of public lands," approved May the twenty-sixth, one thousand eight hundred and twenty-four; and also the act, entitled "An act making further provision for the extinguishment of the debt due to the United States by the purchasers of public lands," approved May the fourth, one thousand eight hundred and twenty-six; be, and the same are hereby, revived and continued in force until the fourth day of July, one thousand eight hundred and twenty-nine.

SECT. 2. *And be it further enacted*, That the provisions of this act be, and the same are, hereby extended to all lands on which a further credit has not been taken, and which, having become forfeited to the United States since the first of July, one thousand eight hundred and twenty, remain unsold.

Approved 21st March, 1828.

CHAP. 23. An Act authorizing a subscription for the Statistical Tables prepared by George Watterston and Nicholas B. Van Zandt.

CHAP. 24. An Act for the relief of William Augustus Archbald.

CHAP. 25. An Act for the relief of George Johnston, Jonathan W. Ford, Josiah Mason, and John English.

CHAP. 26. An Act for the relief of Catharine Stearns.

CHAP. 27. An Act for the relief of Mrs. Brown, widow of the late Major General Brown.

Approved 3d April, 1828.

CHAP. 28. An Act to confirm certain claims to Lands in the territory of Michigan.

CHAP. 29. An Act providing for the appointment of an additional Judge of the Superior Court for the territory of Arkansas, and for other purposes.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That it shall be lawful for the President of the United States of America, by and with the advice and consent of the Senate, to appoint and commission an additional Judge of the Superior Court for the territory of Arkansas, who shall reside in said territory, and hold his commission for the term of four years.

SECT. 2. *And be it further enacted*, That when said judge shall have been commissioned, the legislature of the territory of Arkansas shall be authorized to organize the counties of said territory into four judicial districts, and to assign to each of the four judges of the superior court of the territory of Arkansas one of the said circuits or districts, and to require said judges to hold circuit or district courts in each county of their respective districts, at such place and time as the legislature aforesaid may appoint and designate.

SECT. 3. *And be it further enacted*, That in addition to holding district or circuit courts as aforesaid, the judges aforesaid shall hold two terms annually of the su-

perior court, at the seat of government in said territory; and the legislature aforesaid shall be authorized, in all cases except when the United States is a party, to fix the respective jurisdictions of the district and superior court. The United States' cases shall be tried in the superior court, in the manner that said cases are now tried.

SECT. 4. *And be it further enacted*, That the judges aforesaid shall be authorized to nominate and appoint, and the governor to commission, a clerk in each county of their respective districts, in such manner, with such powers, and for such term of time, as the legislature aforesaid may designate. But in no county shall the clerk of the superior court be appointed the clerk of the circuit court; and the compensation of said clerks, except in United States' cases, shall be fixed by the legislature aforesaid.

SECT. 5. *And be it further enacted*, That when any party to a suit is aggrieved by a decision of a judge holding a district court, except in criminal cases, the party aggrieved shall be at liberty, by appeal, writ of error, or certiorari, to remove said suit to the superior court of said territory, for further trial; and the case thus brought up shall be tried by the judges, or any two of them, other than the judge who made the decision in the district court.

SECT. 6. *And be it further enacted*, That the additional judge hereby authorized to be appointed, shall receive the same salary now allowed by law to the judges of the superior court for the territory of Arkansas.

SECT. 7. *And be it further enacted*, That writs of error and appeal from the final decision of the superior court for the territory of Arkansas, shall be made to the supreme court of the United States, in the manner, and under the same regulations, as from the circuit courts of the United States, when the amount in controversy, to be ascertained by oath or affirmation of either party, shall exceed one thousand dollars.

SECT. 8. *And be it further enacted*, That the act of the legislature of the territory of Arkansas, passed at the last session of the legislature of said territory, in relation to the courts of said territory, so far as the provisions of said act are not inconsistent with and repugnant to this act, be, and the same is hereby affirmed, until said legislature may alter or modify the same.

SECT. 9. *And be it further enacted*, That all acts coming within the purview of this act be, and the same are hereby, repealed. And that this act shall take effect, and be in force, from and after its passage.

CHAP. 30. An Act authorizing the President of the United States to appoint certain agents therein mentioned.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be, and he is hereby, authorized, by and with the advice and consent of the Senate, to appoint such agent or agents as may be usefully employed in prosecuting the designation and settlement of the line forming the north eastern boundary of the United States, and bringing the existing controversy with Great Britain relating thereto, to a speedy termination.

CHAP. 31. An Act explanatory of "An Act to grant a certain quantity of land to the state of Ohio, for the purpose of making a road from Columbus to Sandusky."

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That in lieu of the lands appropriated by the act approved on the third of March, one thousand eight hundred and twenty-seven, there shall be granted to the state of Ohio, for the purposes designated in the said act, forty-nine sections of land, to be located in the Delaware land district, in the following manner, to wit: every alternate section through which the road may run, and the section next adjoining thereto on the west, so far as the said sections remain unsold; and if any part of the said sections shall have been disposed of, then a quantity equal thereto shall be selected, under the direction of the commissioner of the general land office, from the vacant lands in the sections adjoining on the west of those appropriated.

CHAP. 32. An Act for the relief of Thomas Flowers, and the legal representatives of John Kingsbury.

CHAP. 33. An Act for the benefit of Mary Ann Bond and Mar Loveless.

CHAP. 34. An Act for the relief of John Shirkey. Approved 17th April, 1828.

CHAP. 35. An Act for the relief of Anthony Hermange.

CHAP. 36. An Act for the relief of Wm. Benning.

CHAP. 37. An Act for the relief of Richard Taylor.

CHAP. 38. An Act for the relief of Asa Herring.

CHAP. 39. An act to extend the time allowed for the redemption of land sold for direct taxes, in certain cases.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the time allowed for the redemption of lands which have been, or may be, sold for the non-payment of taxes under the several acts passed on the second of August, one thousand eight hundred and thirteen; the ninth day of January, one thousand eight hundred and fifteen; and the fifth day of March, one thousand eight hundred and sixteen, for laying and collecting a direct tax within the United States, so far as the same have been purchased for, or on behalf of, the United States, be revived, and be extended for the further term of three years, from and after the expiration of the present session of Congress. *Provided*, also, that on such redemption, interest shall be paid at the rate of twenty per centum on the taxes aforesaid, and on the additions of twenty per centum chargeable thereon; and the right of redemption shall enure, as well to the heirs and assignees of the land so purchased, on behalf of the United States, as to the originals thereof.

CHAP. 40. An Act extending the limits of certain Land Offices in Indiana, and for other purposes.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That all the lands in the State of Indiana, to which the Indian title is extinguished, which lies east of the line dividing the first and second ranges east of the second principal meridian, and north of the southern boundary of the Fort Wayne District, shall be attached to the land district, the land office of which is established at Fort Wayne; and that all the lands to which the Indian title is extinguished in said state, and which may lie west of the line dividing the first and second ranges east of the second principal meridian, shall be attached to the land district, the land office of which is established at Crawfordsville.

SECT. 2. *And be it further enacted*, That the Surveyor General shall cause the second principal meridian to be extended to the northern boundary of the state of Indiana. *Provided*, the assent of the Indians be obtained to the running and marking that portion of the meridian line which may lie within the lands not ceded to the United States.

CHAP. 41. An Act, in addition to the act, entitled "An act to provide for the sale of lands conveyed to the United States, in certain cases, and for other purposes," passed the twenty-sixth day of May, eighteen hundred and twenty-four.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That in all cases where lands have been, or shall hereafter be, conveyed to, or for, the United States, for forts, arsenals, dock-yards, light-houses, or any like purpose, or in payment of debts due the United States, which shall not be used, or necessary, for the purposes for which they were purchased, or other authorized purpose, it shall be lawful for the President of the United States to cause the same to be sold, for the best price to be obtained, and to convey the same to the purchaser, by grant or otherwise.

SECT. 2. *And be it further enacted*, That the President of the United States be authorized to procure the assent of the legislature of any state, within which any purchase of land has been made, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings, without such consent having been obtained; and also to obtain exclusive legislation over any such tract, as is provided for in the sixteenth clause of the eighth section of the first article of the constitution; and that he be authorized to procure the like consent and exclusive legislation, as to all future purchases of land for either of those purposes.

SECT. 3. *And be it further enacted*, That the President of the United States, in all cases where lands have been conveyed for the United States to individuals or officers, be authorized to obtain from the person or persons to whom the conveyance has been made, a release of their interest to the United States.

CHAP. 42. An Act authorizing the Legislative Council of Florida to meet in October, instead of December; and repealing the proviso in the sixth section of the act, entitled "An act to amend an act, for the establishment of a Territorial Government in Florida, and for other purposes," approved March the third, one thousand eight hundred and twenty-three.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the Legislative Council of the territory of Florida shall begin its next ses-

sion on the second Monday in October, instead of December, and annually thereafter on the same day in the said month of October.

SECT. 2. *And be it further enacted*, That the proviso in the sixth section of the act, entitled, "An act to amend an act for the establishment of a territorial government in Florida, and for other purposes," approved March the third, one thousand eight hundred and twenty-three, be, and the same is hereby repealed. *Provided*, that nothing herein contained shall be construed as approving any act or acts heretofore passed by the Legislative Council of the territory of Florida.

SECT. 3. *And be it further enacted*, That it shall be the duty of the Governor and Legislative Council, at the next session of said Council, to divide said territory into thirteen election districts, in such manner as to give to each the same number of qualified electors, as nearly as conveniently may be, and to secure to each district an equal representation; and the said Governor and Council shall have power, from time to time, to alter and regulate the several districts in such manner as the increasing population of the territory may require.

SECT. 4. *And be it further enacted*, That the Judges of the Superior Courts in said territory shall have power to order extra terms of said courts, or to adjourn them to any other time and place when the public interest may require it, and when, from sickness or other cause, the Judges cannot hold the regular terms, giving due notice of the same; and it shall also be lawful for the said Judges to hold courts in either of the districts, when the Judge of the district is absent, or prevented from attending by sickness or other cause.

Approved 28th April, 1828.

CHAP. 43. An Act to authorize the cancelling of a Bond therein mentioned.

CHAP. 44. An Act making a supplementary appropriation for the military service of the year one thousand eight hundred and twenty eight.

CHAP. 45. An Act making appropriations for the Public Buildings, and for other purposes.

SECT. 3. *And be it further enacted*, That from and after the fourth day of March, one thousand eight hundred and twenty-nine, the office of Architect of the Capitol shall cease and determine; and that the said Architect shall, on said day, deliver up to the Commissioner of the Public Buildings, all the books, plans, accounts, vouchers, and all other papers and things belonging to his office, and the said Commissioner shall take charge of, and superintend, the public buildings, and perform such other duties as may be required of him by law; and that the said Commissioner be required to reside near the Capitol.

SECT. 4. *And be it further enacted*, That the regulations of the city of Washington, for the preservation of the public peace and order, be extended to the Capitol and Capitol Square, whenever the application of the same shall be requested by the presiding officer of either House of Congress, or the Commissioner of the public buildings; and that it shall be the duty of the Commissioner of the public buildings to obey such rules and regulations as may, from time to time, be prescribed, jointly, by the presiding officers of the two Houses of Congress, for the care, preservation, orderly keeping, and police, of all such portions of the Capitol, its appurtenances, and the enclosures about it, and the public buildings and property in its immediate vicinity, as are not in the exclusive use and occupation of either House of Congress; that it shall also be his duty to obey such rules and regulations as may be, from time to time, prescribed by the presiding officer of either House of Congress, for the care, preservation, orderly keeping, and police of those portions of the Capitol, and its appurtenances, which are in the exclusive use and occupation of either House of Congress, respectively; and that it shall also be his duty to obey such rules and regulations as may, from time to time, be prescribed by the President of the United States, for the care, preservation, orderly keeping, and police of the other public buildings and public property in the city of Washington; and the Commissioner, and his assistants, are hereby authorized and empowered to use all necessary and proper means for the discharge of the aforesaid duties; and the necessary assistants of the Commissioner shall receive a reasonable compensation for their services, to be allowed by the presiding officers of the two Houses of Congress; one moiety of the said sums to be paid out of the contingent fund of the Senate, and the other moiety of the same

to be paid out of the contingent fund of the House of Representatives.

Approved 2d May, 1828.

CHAP 46. An act to authorize the purchase and distribution of the seventh volume of the Laws of the United States.

CHAP. 47. An Act making appropriations for the Indian Department, for the year one thousand eight hundred and twenty-eight.

CHAP. 48 An Act to authorize a Rail Road within the District of Columbia.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the assent of Congress to the constructing a Rail Road by a company incorporated by the Legislature of Maryland, from Baltimore to the city of Washington, be, and the same is hereby given, to the extent that Congress has jurisdiction of the soil over which it may pass; conceding to said Company to exact such tolls, and to enjoy such benefits and privileges, as the act of incorporation of the state of Maryland gives to said Corporation, within the limits of the state of Maryland. *Provided*, in the location of the road, it shall not be lawful for said Company to pass through any of the reserved squares or open spaces of the city, without the consent of Congress.

CHAP 49. An Act regulating commercial intercourse with the Islands of Martinique and Guadaloupe.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That all French vessels, coming directly from the Islands of Martinique and Guadaloupe, and laden with articles, the growth or manufacture of either of said islands, and which are permitted to be exported therefrom in American vessels, may be admitted into the ports of the United States, on payment of no higher duties on tonnage, or on their cargoes, as aforesaid, than are imposed on American vessels, and on like cargoes imported in American vessels. *Provided*, that if the President of the United States shall, at any time, receive satisfactory information, that the privileges allowed to American vessels and their cargoes, at said Islands, by the French ordinance of February fifth, one thousand eight hundred and twenty-six, have been revoked or annulled, he is hereby authorized, by proclamation, to suspend the operation of this act, and withhold all privileges allowed under it.

CHAP. 50. An Act for the relief of William Gentry, of Missouri.

CHAP. 51. An Act for the relief of Elvington Roberts, of Mississippi.

Approved May 9, 1828.

CHAP. 52. An Act supplementary to "An act to provide for the adjustment of claims of persons entitled to indemnification, under the first article of the treaty of Ghent, and for the distribution among such claimants of the sum paid, and to be paid, by the government of Great Britain under a convention between the United States and his Britannic Majesty, concluded at London, on the thirteenth of November, one thousand eight hundred and twenty-six," passed on the second day of March, one thousand eight hundred and twenty-seven.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the eighth section of the aforesaid act shall be, and the same is hereby repealed.

SECT. 2. *And be it further enacted*, That the Commission created by the said act, shall not continue after the first day of September next.

CHAP. 53. An Act for the relief of certain surviving officers and soldiers of the Army of the Revolution.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That each of the surviving officers of the army of the Revolution, in the Continental Line, who was entitled to half pay by the resolve of October twenty-first, seventeen hundred and eighty, be authorized to receive, out of any money in the Treasury not otherwise appropriated, the amount of his full pay in said line, according to his rank in the line, to begin on the third day of March, one thousand eight hundred and twenty-six, and to continue during his natural life. *Provided*, that, under this act, no officer shall be entitled to receive a larger sum than the full pay of a captain in said line.

SECT. 2. *And be it further enacted*, That whenever any of said officers has received money of the United States, as a pensioner, since the third day of March, one thousand eight hundred and twenty-six, aforesaid, the sum so received shall be deducted from what said officer would, otherwise, be entitled to, under the first section of this act; and every pension to which said officer is now entitled, shall cease after the passage of this act.

SECT. 3. *And be it further enacted*, That every surviving non-commissioned officer, musician, or private, in said army,

who enlisted therein for and during the war, and continued in service until its termination, and thereby became entitled to receive a reward of eighty dollars, under a resolve of Congress, passed May fifteenth, seventeen hundred and seventy eight, shall be entitled to receive his full monthly pay in said service, out of any money in the Treasury not otherwise appropriated; to begin on the third day of March, one thousand eight hundred and twenty-six, and to continue during his natural life. *Provided*, that no non-commissioned officer, musician, or private, in said army, who is now on the pension list of the United States, shall be entitled to the benefits of this act.

SECT. 4. *And be it further enacted*, That the pay allowed by this act shall, under the direction of the Secretary of the Treasury, be paid to the officer or soldier entitled thereto, or to their authorized attorney, at such places and days as said Secretary may direct; and that no foreign officer shall be entitled to said pay, nor shall any officer or soldier receive the same, until he furnish to said Secretary satisfactory evidence that he is entitled to the same, in conformity to the provisions of this act; and the pay allowed by this act shall not, in any way, be transferable, or liable to attachment, levy, or seizure, by any legal process whatever, but shall inure wholly to the personal benefit of the officer or soldier entitled to the same by this act.

SECT. 5. *And be it further enacted*, That so much of said pay as accrued by the provisions of this act, before the third day of March, eighteen hundred and twenty-eight, shall be paid to the officers and soldiers entitled to the same, as soon as may be, in the manner and under the provisions before mentioned; and the pay which shall accrue after said day, shall be paid semi-annually, in like manner, and under the same provisions.

CHAP. 54. An Act for the relief of Willoughby Barton.

Approved 15th May, 1828.

CHAP 55. An Act in alteration of the several acts imposing duties on Imports.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That, from and after the first day of September, one thousand eight hundred and twenty-eight, in lieu of the duties now imposed by law on the importation of the articles hereinafter mentioned, there shall be levied, collected, and paid, the following duties, that is to say:

First. On iron, in bars or bolts, not manufactured in whole or in part by rolling, one cent per pound.

Second. On bar and bolt iron, made wholly or in part by rolling, thirty-seven dollars per ton. *Provided*, that all iron in slabs, blooms, loops, or other form, less finished than iron in bars or bolts, except pigs or cast iron, shall be rated as rolled, iron in bars or bolts, and pay a duty accordingly.

Third. On iron, in pigs, sixty-two and one half cents per one hundred and twelve pounds.

Fourth. On iron or steel wire, not exceeding number fourteen, six cents per pound, and over number fourteen, ten cents per pound.

Fifth. On round iron, or brazier's rods of three sixteenths to eight sixteenths of an inch diameter, inclusive; and on iron in nail or spike rods, slit or rolled; and on iron in sheets, and hoop iron; and on iron slit or rolled for band iron, scroll iron, or casement rods, three and one half cents per pound.

Sixth. On axes, adzes, drawing knives, cutting knives, sickles, or reaping hooks, sithes, spades, shovels, squares, of iron or steel, bridle bits of all descriptions, stellyards and scale beams, socket chisels, vices, and screws of iron for wood, called wood screws, ten per cent. ad valorem, in addition to the present rates of duty.

Seventh. On steel, one dollar and fifty cents per one hundred and twelve pounds.

Eighth. On lead, in pigs, bars, or sheets, three cents per pound; on leaden shot, four cents per pound; on red or white lead, dry or ground in oil, five cents per pound; on litharge, orange mineral, lead manufactured into pipes, and sugar of lead, five cents per pound.

SECT. 2. *And be it further enacted*, That from and after the thirtieth day of June, one thousand eight hundred and twenty-eight, there shall be levied, collected, and paid, on the importation of the articles hereinafter mentioned, the following duties, in lieu of those now imposed by law.

First. On wool unmanufactured, four cents per pound; and also, in addition thereto, forty per cent. ad valorem, until the thirtieth day of June, one thousand eight hundred and twenty-nine, from which time an additional ad valorem duty of five per cent. shall be imposed annually, until the whole of said ad valorem

duty shall amount to fifty per cent. And all wool imported on the skin, shall be estimated as to weight and value, and shall pay the same rate of duty as other imported wool.

Second. On manufactures of wool, or of which wool shall be a component part, except carpetings, blankets, worsted stuff goods, bombazines, hosiery, mits, gloves, caps, and bindings,) the actual value of which, at the place whence imported, shall not exceed fifty cents the square yard, shall be deemed to have cost fifty cents the square yard, and be charged thereon with a duty of forty per centum ad valorem, until the thirtieth day of June, eighteen hundred and twenty-nine, and from that time a duty of forty-five per centum ad valorem. *Provided*, that on all manufactures of wool, except flannels and baizes, the actual value of which, at the place when imported, shall not exceed thirty-three and one third cents per square yard, shall pay fourteen cents. per square yard.

Third. On all manufactures of wool, or of which wool shall be a component part, except as aforesaid, the actual value of which, at the place whence imported, shall exceed fifty cents the square yard, and shall not exceed one dollar the square yard, shall be deemed to have cost one dollar the square yard, and be charged thereon with a duty of forty per centum ad valorem, until the thirtieth day of June, eighteen hundred and twenty-nine, and from that time a duty of forty-five per centum ad valorem.

Fourth. On all manufactures of wool, or of which wool shall be a component part, except as aforesaid, the actual value of which, at the place whence imported, shall exceed one dollar the square yard, and shall not exceed two dollars and fifty cents the square yard, shall be deemed to have cost two dollars and fifty cents the square yard, and be charged with a duty thereon of forty per centum ad valorem, until the thirtieth day of June, eighteen hundred and twenty-nine, and from that time a duty of forty-five per centum ad valorem.

Fifth. All manufactures of wool, or of which wool shall be a component part, except as aforesaid, the actual value of which, at the place whence imported, shall exceed two dollars and fifty cents the square yard, and shall not exceed four dollars the square yard, shall be deemed to have cost, at the place whence imported, four dollars the square yard, and a duty of forty per cent. ad valorem shall be levied, collected, and paid, on such valuation, until the thirtieth day of June, one thousand eight hundred and twenty-nine, and from that time a duty of forty-five per centum ad valorem.

Sixth. On all manufactures of wool, or of which wool shall be a component part, except as aforesaid, the actual value of which, at the place whence imported, shall exceed four dollars the square yard, there shall be levied, collected, and paid, a duty of forty-five per cent. ad valorem, until the thirtieth day of June, one thousand eight hundred and twenty-nine, and from that time a duty of fifty per centum ad valorem.

Seventh. On woollen blankets, hosiery, mits, gloves, and bindings, thirty-five per cent. ad valorem. On clothing ready made, fifty per centum ad valorem.

Eighth. On Brussels, Turkey, and Wilton carpets or carpeting, seventy cents per square yard. On all Venetian and ingrain carpets or carpeting, forty cents per square yard. On all other kinds of carpets and carpetings, of wool, flax, hemp, or cotton, or parts of either, thirty-two cents per square yard. On all patent printed or painted floor cloths, fifty cents per square yard. On oil cloth, other than that usually denominated patent floor cloth, twenty-five cents per square yard. On furniture oil cloth, fifteen cents per square yard. On floor matting, made of flags or other materials, fifteen cents per square yard.

Sect. 3. *And be it further enacted*, That from and after the thirtieth day of June, one thousand eight hundred and twenty-eight, there shall be levied, collected, and paid, on the importation of the following articles, in lieu of the duty now imposed by law—

First. On unmanufactured hemp, forty-five dollars per ton, until the thirtieth day of June, one thousand eight hundred and twenty-nine, from which time, five dollars per ton in addition per annum, until the duty shall amount to sixty dollars per ton. On cotton bagging, four and a half cents per square yard, until the thirtieth day of June, one thousand eight hundred and twenty-nine, and afterwards a duty of five cents per square yard.

Second. On unmanufactured flax, thirty-five dollars per ton, until the thirtieth day of June, one thousand eight hundred and twenty-nine, from which time an

additional duty of five dollars per ton per annum, until the duty shall amount to sixty dollars per ton.

Third. On sail duck, nine cents per square yard, and in addition thereto, one half cent yearly, until the same shall amount to twelve and a half cents per square yard.

Fourth. On molasses, ten cents per gallon.

Fifth. On all imported distilled spirits, fifteen cents per gallon, in addition to the duty now imposed by law.

Sixth. On all manufactures of silk, or of which silk shall be a component material, coming from beyond the Cape of Good Hope, a duty of thirty per centum ad valorem; the additional duty of five per centum to take effect from and after the thirtieth day of June, one thousand eight hundred and twenty-nine; and on all other manufactures of silk, or of which silk shall be a component material, twenty per centum ad valorem.

On indigo, an additional duty of five cents the pound, from the thirtieth day of June, one thousand eight hundred and twenty-nine, until the thirtieth day of June, one thousand eight hundred and thirty, and from that time an additional duty of ten cents each year, until the whole duty shall amount to fifty cents per pound.

SECT. 4. *And be it further enacted*, That from and after the thirtieth day of June, one thousand eight hundred and twenty-eight, no drawback of duty shall be allowed on the exportation of any spirit, distilled in the United States, from molasses; no drawback shall be allowed on any quantity of sail duck less than fifty bolts, exported in one ship or vessel at any one time.

SECT. 5. *And be it further enacted*, That from and after the thirtieth day of June, one thousand eight hundred and twenty-eight, there shall be levied, collected, and paid, in lieu of the duties now imposed by law on window glass, of the sizes above ten inches by fifteen inches, five dollars for one hundred square feet. *Provided*, that all window glass imported in plates or sheets, uncut, shall be chargeable with the same rate of duty. On vials and bottles, not exceeding the capacity of six ounces each, one dollar and seventy-five cents per gross.

SECT. 6. *And be it further enacted*, That from and after the thirtieth day of June, one thousand eight hundred and twenty-eight, there shall be levied, collected, and paid, in lieu of the duties now imposed by law, on all imported roofing slates, not exceeding twelve inches in length by six inches in width, four dollars per ton; on all such slates, exceeding twelve and not exceeding fourteen inches in length, five dollars per ton; on all slates, exceeding fourteen and not exceeding sixteen inches in length, six dollars per ton; on all slates, exceeding sixteen inches and not exceeding eighteen inches in length, seven dollars per ton; on all slates, exceeding eighteen and not exceeding twenty inches in length, eight dollars per ton; on slates, exceeding twenty inches and not exceeding twenty-four inches in length, nine dollars per ton; and on all slates exceeding twenty-four inches in length, ten dollars per ton. And that, in lieu of the present duties, there be levied, collected, and paid, a duty of thirty-three and a third per centum, ad valorem, on all imported ciphering slates.

SECT. 7. *And be it further enacted*, That all cotton cloths whatsoever, or cloths of which cotton shall be a component material, excepting nankeens imported direct from China, the original cost of which, at the place whence imported, with the addition of twenty per cent. if imported from the Cape of Good Hope, or from any other place beyond it, and of ten per cent. if imported from any other place, shall be less than thirty-five cents the square yard, shall, with such addition, be taken and deemed to have cost thirty-five cents the square yard, and charged with duty accordingly.

SECT. 8. *And be it further enacted*, That in all cases where the duty which now is, or hereafter may be, imposed on any goods, wares, or merchandises, imported into the United States, shall, by law, be regulated by, or be directed to be estimated or levied upon the value of the square yard, or of any other quantity or parcel thereof; and in all cases where there is or shall be imposed, any ad valorem rate of duty on any goods, wares, or merchandises, imported into the United States, it shall be the duty of the collector within whose district the same shall be imported or entered, to cause the actual value thereof, at the time purchased, and place from which the same shall have been imported into the United States, to be appraised, estimated, and ascertained, and the number of such yards, parcels, or quantities, and such actual value of every

of them, as the case may require. And it shall, in every such case, be the duty of the appraisers of the United States, and of every of them, and of every other person who shall act as such appraiser, by all the reasonable ways and means in his or their power, to ascertain, estimate, and appraise the true and actual value, any invoice or affidavit thereto to the contrary notwithstanding, of the said goods, wares, and merchandise, at the time purchased, and place from whence the same shall have been imported into the United States, and the number of such yards, parcels, or quantities, and such actual value of every of them, as the case may require. And all such goods, wares, and merchandises, being manufactures of wool, or whereof wool shall be a component part, which shall be imported into the United States in an unfinished condition, shall in every such appraisal be taken, deemed, and estimated by the said appraisers, and every of them, and every person who shall act as such appraiser, to have been, at the time purchased, and place from whence the same were imported into the United States, of as great actual value as if the same had been entirely finished. And to the value of the said goods, wares, and merchandise, so ascertained, there shall, in all cases where the same are or shall be charged with an ad valorem duty, be added all charges, except insurance, and also twenty per centum on the said actual value and charges, if imported from the Cape of Good Hope, or any place beyond the same, or from beyond Cape Horn, or ten per centum if from any other place or country; and the said ad valorem rates of duty shall be estimated on such aggregate amount, any thing in any act to the contrary notwithstanding. *Provided*, that in all cases where any goods, wares, or merchandise, subject to ad valorem duty, or whereon the duty is or shall be by law regulated by, or be directed to be estimated or levied upon the value of the square yard, or any other quantity or parcel thereof, shall have been imported into the United States from a country other than that in which the same were manufactured or produced, the appraisers shall value the same at the current value thereof, at the time of purchase before such last exportation to the United States, in the country where the same may have been originally manufactured or produced.

Sect. 9. *And be it further enacted*, That in all cases where the actual value to be appraised, estimated, and ascertained, as herein before stated, of any goods, wares, or merchandise, imported into the United States, and subject to any ad valorem duty, or whereon the duty is regulated by, or directed to be imposed or levied on, the value of the square yard, or other parcel or quantity thereof, shall, by ten per centum, exceed the invoice value thereof, in addition to the duty imposed by law on the same, if they had been invoiced at their real value, as aforesaid, there shall be levied and collected on the same goods, wares, and merchandise, fifty per centum of the duty so imposed on the same goods, wares, and merchandise, when fairly invoiced. *Provided, always*, that nothing in this section contained shall be construed to impose the said last mentioned duty of fifty per centum, for a variance between the bona fide invoice of goods produced in the manner specified in the proviso to the eighth section of this act, and the current value of the said merchandise in the country where the same may have been originally manufactured or produced. *And, further*, that the penalty of fifty per centum, imposed by the thirteenth section of the act, entitled "An act supplementary to, and to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage, passed the second day of March, one thousand seven hundred and ninety-nine, and for other purposes,'" approved March first, one thousand eight hundred and twenty-three, shall not be deemed to apply or attach to any goods, wares, or merchandise, which shall be subject to the additional duty of fifty per centum, as aforesaid, imposed by this section of this act.

Sect. 10. *And be it further enacted*, That it shall be the duty of the secretary of the treasury, under the direction of the President of the United States, from time to time to establish such rules and regulations, not inconsistent with the laws of the United States, as the President of the United States shall think proper, to secure a just, faithful, and impartial appraisal of all goods, wares, and merchandise, as aforesaid, imported into the United States, and just and proper entries of such actual value thereof, and of the square yards, parcels, or other quantities thereof, as the case may require, and of such actual value of every of them. And it shall be

the duty of the secretary of the treasury to report all such rules and regulations, with the reasons therefor, to the then next session of Congress.

CHAP. 56. An Act making appropriations for the improvement of certain Harbours, the completion of the Cumberland Road to Zanesville, the securing the Light House on the Brandywine shoal, and the making of surveys.

CHAP. 57. An Act for the punishment of contraventions of the fifth article of the treaty between the United States and Russia.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That if any one, being a citizen of the United States, or trading under their authority, shall, in contravention of the stipulations entered into by the United States with the Emperor of all the Russias, by the fifth article of the treaty, signed at St. Petersburg, on the seventeenth day of April, in the year of our Lord one thousand eight hundred and twenty-four, sell, or cause to be sold, to the natives of the country on the north west coast of America, or any of the islands adjacent thereto, any spirituous liquors, fire arms, or other arms, powder, or munitions of war of any kind, the person so offending shall be fined in a sum not less than fifty nor more than two hundred dollars, or imprisoned not less than thirty days, nor more than six months.

SECT. 2. *And be it further enacted*, That the superior courts in each of the territorial districts, and the circuit courts and other courts of the United States, of similar jurisdiction in criminal causes, in each district of the United States, in which any offender against this act shall be first apprehended or brought for trial, shall have, and are hereby invested with, full power and authority to hear, try, and punish, all crimes, offences, and misdemeanors against this act; such courts proceeding therein in the same manner as if such crimes, offences, and misdemeanors, had been committed within the bounds of their respective districts.

CHAP. 58. An Act to authorize the President of the United States to run and mark a line, dividing the territory of Arkansas from the state of Louisiana.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the President of the United States of America be, and he is hereby authorized, in conjunction with the constituted authorities of the state of Louisiana, to cause to be run, and distinctly marked, the line dividing the territory of Arkansas from the state of Louisiana; commencing on the right bank of the Mississippi river, at latitude thirty-three degrees north, and running due west on that parallel of latitude, to where a line running due north from latitude thirty-two degrees north, on the Sabine river, will intersect the same. And, for that purpose, he is hereby authorized to appoint a commissioner, or surveyor, or both, as in his opinion may be necessary. *Provided*, the compensation to be allowed to the person or persons so to be appointed by the President of the United States, shall not exceed in amount the compensation allowed by the government of Louisiana to the person or persons appointed on its part, for the same object.

SECT. 2. *And be it further enacted*, That the person or persons, so to be appointed by the President of the United States, with such as have been or shall be appointed for the same purpose on the part of the state of Louisiana, after they, in conjunction, shall have run and distinctly marked said line, shall make two fair drafts, or maps thereof, both of which shall be certified by them, and one of which shall be deposited in the office of the secretary of state for the United States, and the other delivered to the governor of Louisiana.

SECT. 3. *And be it further enacted*, That for the purpose of carrying this act into execution, the sum of one thousand dollars be, and the same is hereby, appropriated, to be paid out of any money in the treasury not otherwise appropriated.

CHAP. 59. An Act concerning the Orphan's Court, of Alexandria county, in the district of Columbia.

CHAP. 60. An Act to reduce the duty on Greek and Latin Books, printed previous to the year one thousand seven hundred and seventy-five.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the act, entitled "An act to amend the several acts imposing duties on imports," passed twenty-second of May, one thousand eight hundred and twenty-four, shall not be construed to impose upon books printed in Greek and Latin, which the importer shall make it satisfactorily appear to the collector of the port at which the same shall be entered, were printed previous to the year one thousand seven hundred and seventy-five, a higher duty than four cents per volume.

CHAP. 61. An Act for the benefit of John B. Dupuis.

CHAP. 62. An Act granting compensation to Rebecca Blodget, for her right of dower in the property therein mentioned.

CHAP. 63. An Act for the relief of the representatives of Patience Gordon, widow, deceased.

CHAP. 64. An Act for the relief of William Bell.

CHAP. 65. An Act for the relief of Thomas Brown and Aaron Stanton, of the state of Indiana.

CHAP. 66. An Act for the relief of William M'Clure.

CHAP. 67. An Act to continue the Mint at the city of Philadelphia, and for other purposes.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the act, entitled "An act concerning the Mint," approved March the third, one thousand eight hundred and one, be, and the same hereby is, revived, and continued in force and operation, until otherwise provided by law.

SECT. 2. *And be it further enacted*, That for the purpose of securing a due conformity in weight of the coins of the United States, to the provisions of the ninth section of the act, passed the second of April, one thousand seven hundred and ninety-two, entitled "An act establishing a mint, and regulating the coins of the United States," the brass troy pound weight, procured by the minister of the United States at London, in the year one thousand eight hundred and twenty-seven, for the use of the Mint, and now in the custody of the director thereof, shall be the standard troy pound of the Mint of the United States, conformably to which the coinage thereof shall be regulated.

SECT. 3. *And be it further enacted*, That it shall be the duty of the director of the Mint to procure and safely to keep a series of standard weights, corresponding to the aforesaid troy pound, consisting of an one pound weight, and the requisite subdivisions and multiples thereof, from the hundredth part of a grain to twenty-five pounds; and that the troy weights ordinarily employed in the transactions of the Mint, shall be regulated according to the above standards, at least once in every year, under his inspection; and their accuracy tested annually in the presence of the Assay commissioners, on the day of the annual assay.

SECT. 4. *And be it further enacted*, That when silver bullion, brought to the Mint for coinage, is found to require the operation of the test, the expense of the materials employed in the process, together with a reasonable allowance for the wastage necessarily arising therefrom, to be determined by the melter and refiner of the Mint, with the approbation of the director, shall be retained from such deposit, and accounted for by the treasurer of the Mint to the treasury of the United States.

SECT. 5. *And be it further enacted*, That when silver bullion, brought to the Mint for coinage, shall be found to contain a proportion of gold, the separation thereof shall be effected at the expense of the party interested therein. *Provided, nevertheless*, that when the proportion of gold is such that it cannot be separated advantageously, it shall be lawful, with the consent of the owner, or, in his absence, at the discretion of the director, to coin the same as an ordinary deposit of silver.

SECT. 6. *And be it further enacted*, That the director of the Mint may employ the requisite number of clerks, at a compensation not exceeding in the whole the sum of seventeen hundred dollars, and such number of workmen and assistants as the business of the Mint shall from time to time require.

SECT. 7. *And be it further enacted*, That it shall be lawful for the director of the Mint to receive, and cause to be assayed, bullion not intended for coinage, and to cause certificates to be given of the fineness thereof, by such officer as he shall designate for that purpose, at such rates of charge, to be paid by the owner of said bullion, and under such regulations, as the said director may from time to time establish.

CHAP. 68. An Act further to regulate processes in the Courts of the United States.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the forms of mesne process, except the style, and the forms and modes of proceeding in suits in the courts of the United States, held in those states admitted into the Union since the twenty-ninth day of September, in the year seventeen hundred and eighty-nine, in those of common law, shall be the same in each of the said states respectively, as are now used in the highest court of original and general jurisdiction of the same, in proceedings in equity, according to the principles, rules, and usages, which belong to courts of equity, and in those of admi-

ralty and maritime jurisdiction, according to the principles, rules, and usages, which belong to courts of admiralty, as contradistinguished from courts of common law, except so far as may have been otherwise provided for by acts of Congress; subject, however, to such alterations and additions as the said courts of the United States respectively shall, in their discretion, deem expedient, or to such regulations as the supreme court of the United States shall think proper, from time to time, by rules, to prescribe to any circuit or district court concerning the same.

SECT. 2. *And be it further enacted*, That in any one of the United States, where judgments are a lien upon the property of the defendant, and where, by the laws of such state, defendants are entitled in the courts thereof to an imparlance of one term or more, defendants, in actions in the courts of the United States, holden in such state, shall be entitled to an imparlance of one term.

SECT. 3. *And be it further enacted*, That writs of execution and other final process, issued on judgments and decrees, rendered in any of the courts of the United States, and the proceedings thereupon, shall be the same, except their style, in each state respectively, as are now used in the courts of such state, saving to the courts of the United States in those states in which there are not courts of equity, with the ordinary equity jurisdiction, the power of prescribing the mode of executing their decrees in equity by rules of court. *Provided, however*, that it shall be in the power of the courts, if they see fit in their discretion, by rules of court, so far to alter final process in said courts, as to conform the same to any change which may be adopted by the legislatures of the respective states for the state courts.

SECT. 4. *And be it further enacted*, That nothing in this act contained shall be construed to extend to any court of the United States now established, or which may hereafter be established, in the state of Louisiana.

Approved 19th May, 1828.

CHAP. 69. An Act to authorize the building of Light Houses, and for other purposes.

CHAP. 70. An Act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the three claims to land in the district of West Florida, contained in the reports of the commissioners, and numbered four [4,] eight [8,] and ten [10,] excluding from the latter the land contained in certificate, and in the plats A and C, and the claims contained in the reports of the commissioners of East Florida, and in the reports of the receiver and register acting as such, made in pursuance of the several acts of Congress providing for the settlement of private land claims in Florida, and recommended for confirmation by said commissioners, and by the register and receiver, be, and the same are hereby, confirmed to the extent of the quantity contained in one league square, to be located by the claimants, or their agents, within the limits of such claims or surveys filed, as aforesaid, before the said commissioners, or receiver and register, which location shall be made within the bounds of the original grant, in quantities of not less than one section, and to be bounded by sectional lines.

SECT. 2. *And be it further enacted*, That no more than the quantity of acres contained in a league square, shall be confirmed within the bounds of any one grant; and no confirmation shall be effectual, until all the parties in interest, under the original grant, shall file with the register and receiver of the district where the grant may be situated, a full and final release of all claim to the residue contained in the grant; and where there shall be any minors incapable of acting within said territory of Florida, a relinquishment by the legal guardian shall be sufficient; and thereafter the excess in said grants, respectively, shall be liable to be sold, as other public lands of the United States.

SECT. 3. *And be it further enacted*, That all the decisions made by the register and receiver of the district of East Florida, acting, ex officio, as commissioners, in pursuance of an act of Congress, approved the eighth of February, one thousand eight hundred and twenty-seven, authorizing them to ascertain and decide claims and titles to lands in the district aforesaid, and those recommended for confirmation under the quantity of three thousand five hundred acres, contained in the reports, abstracts, and opinions of the said register and receiver, transmitted to the secretary of the treasury according to law, and referred by him to Congress on the twenty-ninth January, one thousand eight

hundred and twenty-eight, be, and the same are hereby, confirmed. The confirmations authorized by this act shall operate only as a release of any claim had by the United States, and not to affect the interest of third persons.

SECT. 4. *And be it further enacted*, That the said register and receiver shall continue to examine and decide the remaining claims in East Florida, subject to the same limitations, and in conformity with the provisions of the several acts of Congress, for the adjustment of private land claims in Florida, until the first Monday in December next, when they shall make a final report of all the claims aforesaid, in said district, to the secretary of the treasury; and it shall never be lawful, after that time, for any of the claimants to exhibit any further evidence in support of said claims. And the said register and receiver, and clerk, shall receive the compensation provided in the act aforesaid, to be paid out of any money in the treasury not otherwise appropriated. *Provided*, that the extra compensation of one thousand dollars each, which is hereby allowed to the register and receiver, for services under and by the provisions of this act, shall not be paid until a report of all the claims be made to the secretary of the treasury.

SECT. 5. *And be it further enacted*, That the proper accounting officers of the treasury be, and they are hereby, authorized to adjust and pay the accounts of the register and receiver, acting as commissioners, their contingent expenses, and the receiver the compensation heretofore allowed for bringing their reports to Washington, out of any money in the treasury not otherwise appropriated.

SECT. 6. *And be it further enacted*, That all claims to land within the territory of Florida, embraced by the treaty between Spain and the United States, of the twenty-second of February, one thousand eight hundred and nineteen, which shall not be decided and finally settled under the foregoing provisions of this act, containing a greater quantity of land than the commissioners were authorized to decide, and above the amount confirmed by this act; and which have not been reported as antedated or forged by said commissioners, or register and receiver acting as such, shall be received and adjudicated by the judge of the superior court of the district within which the land lies, upon the petition of the claimant, according to the forms, rules, regulations, conditions, restrictions, and limitations prescribed by the district judge, and claimants in the state of Missouri, by act of Congress, approved May twenty-sixth, eighteen hundred and twenty-four, entitled "An act enabling the claimants to land within the limits of the state of Missouri and territory of Arkansas, to institute proceedings to try the validity of their claims." *Provided*, that nothing in this section shall be construed to authorize said judges to take cognizance of any claim annulled by the said treaty, or the decree ratifying the same by the King of Spain, nor any claim not presented to the commissioners, or register and receiver, in conformity to the several acts of Congress, providing for the settlement of private land claims in Florida.

SECT. 7. *And be it further enacted*, That it shall be lawful for the claimants to lands, as aforesaid, to take an appeal, as directed in the act aforesaid, from the decision of the judge of the district, to the supreme court of the United States, within four months after the decision shall be pronounced; and the said judges shall each be entitled to receive the extra compensation given to the district judge of Missouri, for the performance of the duties required by this act, out of any money in the treasury not otherwise appropriated.

SECT. 8. *And be it further enacted*, That so much of the said act, the provisions of which, so far as they are applicable, and are not altered by this act, are hereby extended to the territory of Florida, as subjects the claimants to the payment of costs in any case where the decision may be in favour of their claims, be, and the same is hereby, repealed; and the costs shall abide the decision of the cause, as in ordinary causes before the said court. And so much of the said act as requires the claimants to make adverse claimants parties to their suits, or to show the court what adverse claimants there may be to the land claimed of the United States, be also hereby repealed.

SECT. 9. *And be it further enacted*, That it shall be the duty of the attorney of the United States, for the district in which the suits authorized by this act shall be instituted, in every case where the decision is against the United States, to make out and transmit to the attorney general of the United States, a statement, containing the facts of the case, and the points of law on which the same was de-

cided; and it shall be the duty of the attorney general, in all cases where the claim exceeds one league square, and in all other cases, if he shall in such latter cases think the decision of the district judge is erroneous, to direct an appeal to be made to the supreme court of the United States, and to appear for the United States, and prosecute such appeal; which appeal in behalf of the United States may be granted at any time within six months after the rendition of the judgment appealed from, or at any time before the expiration of the term thereof, which may commence next after the expiration of said six months; and it shall be the further duty of the district attorney to observe the instruction given to him by the attorney general in that respect.

SECT. 10. *And be it further enacted*, That it shall be lawful for the President of the United States to appoint a law agent, whose special duty it shall be to superintend the interests of the United States, in the premises, to continue him in place as long as the public interest requires his continuance, and to allow such pay to the agent as the President may think reasonable. It shall also be the duty of said agent to collect testimony in behalf of the United States, and to attend, on all occasions, when said claimants may take depositions; and no deposition so taken by them shall be read as evidence, unless said agent or district attorney shall have been notified, in writing, of the time and place of taking them, so long previous to said time as to afford to him an opportunity of being present.

SECT. 11. *And be it further enacted*, That it shall be lawful for the President to employ assistant counsel, if in his opinion the public interest shall require the same, and to allow to such counsel and the district attorney, such compensation as he may think reasonable.

SECT. 12. *And be it further enacted*, That any claims to lands, tenements, and hereditaments, within the purview of this act, which shall not be brought by petition before said court within one year from the passage of this act, or which, after being brought before said court, shall, on account of the neglect or delay of the claimant, not be prosecuted to a final decision within two years, shall be for ever barred, both at law and in equity; and no other action at common law, or proceeding in equity, shall ever thereafter be sustained in any court whatever.

SECT. 13. *And be it further enacted*, That the decrees which may be rendered by said district, or the supreme court of the United States, shall be conclusive between the United States and the said claimants only, and shall not affect the interests of third persons.

CHAP. 71. An Act for the relief of purchasers of the public lands, that have reverted for non-payment of the purchase money.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That in all cases where public lands have been purchased, on which a further credit has not been taken under the provisions of the act of the second of March, one thousand eight hundred and twenty-one, and have reverted, or are liable to revert, to the United States, for failure to pay the purchase money, or have been sold by the United States by reason of such failure to pay, and in all cases where one twentieth of the purchase money shall have been deposited and forfeited to the United States, it shall be the duty of the register of the land office, where the purchase or deposit was made, to issue, upon application, to the person or persons legally entitled to the benefit of the payments made previous to such reversion or sale, his, her, or their legal representatives or assigns, a certificate for the amount so paid, and not refunded, which shall be received and credited as cash in payment of any public land that has been heretofore, or may hereafter be, sold by the United States, in the state or territory in which such original purchase or deposit was made.

SECT. 2. *And be it further enacted*, That it shall be the duty of the commissioner of the general land office, to prescribe the form of such certificates, which shall, in every case, specify the tract or tracts of land so reverted or sold, the amount paid, date of payments, and by whom made; and it shall be the duty of the register issuing such certificates, to keep a record of the same, and to forward to the general land office, at the close of each month, an abstract of the certificates issued during the month; and for each certificate, the officer issuing the same shall be entitled to receive, from the applicant, the sum of fifty cents.

SECT. 3. *And be it further enacted*, That the said certificates, when received in payment for lands, shall be entered in the books of the land office where received,

and transmitted with the accounts of the receiver of the public moneys, to the general land office, in such manner as the commissioner of said office shall prescribe; and if, upon comparison of the original with the returns from the office whence any certificate issued, it shall appear to the satisfaction of the said commissioner that such certificate has been issued and duly paid, according to the true intent and meaning of this act, the same shall be passed to the credit of the person paying the same, as so much cash.

SECT. 4. *And be it further enacted*, That for any moneys forfeited, on lands sold at New-York or Pittsburg, the certificate shall be issued by the secretary of the treasury; which certificate shall be received in payment for lands at any of the land offices of the United States, as the certificates issued in conformity to the foregoing provisions of this act, are made receivable.

SECT. 3. *And be it further enacted*, That in no case shall a certificate be issued to any person, except to the person who originally forfeited the lands, or to his heir or heirs; nor shall a grant issue, or the lands purchased with any scrip be transferred, until six months after the certificate shall have been deposited in the office.

SECT. 6. *And be it further enacted*, That if any tract of land, returned as sold to the general land office, shall have been paid for in forged or altered certificates, such sale shall be void, and the land subject to be sold again, at public or private sale, as the case may be. And in case any such forged or altered certificate shall be received upon any debt for land heretofore sold, or in part payment of any tract of land that may be hereafter sold, it shall be the duty of the commissioner of the general land office, by advertisement, or in such other manner as he shall direct, to give notice thereof to the person making such payment; and if, within six months after notice, such person shall not pay into the proper land office the amount so falsely paid, the tract of land upon which such payment was made shall, with all money actually paid thereon, be forfeited to the United States.

SECT. 7. *And be it further enacted*, That where two or more persons have become purchasers of a section or fractional section, the register of the land office for the district in which the lands lie, shall, on application of the parties, and a surrender of the original certificate, issue separate certificates, of the same date with the original, to each of the purchasers, or their assignees, in conformity with the division agreed on by them. *Provided*, that in no case shall the fractions so purchased be divided by other than north and south, or east and west lines; nor shall any certificate issue for less than eighty acres.

CHAP. 72. An Act to provide for extending the term of certain pensions chargeable on the Navy and Privateer Pension Fund.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That in all cases where provision has been made, by law, for the five years' half pay to the widows and children of officers, seamen, and marines, who were killed in battle, or who died in the naval service of the United States during the last war; and also in all casee where provision has been made for extending the term for five years, in addition to any term of five years, the said provision shall be further extended for an additional term of five years, to commence at the end of the current or last expired term of five years, in each case respectively; making the provision equal to twenty years' half pay, which shall be paid out of the fund heretofore provided by law; and the said pensions shall cease, for the causes mentioned in the laws providing the same, respectively.

SECT. 2. *And be it further enacted*, That the pensions of all widows, who now are, or who, at any time within one year last past, have been in the receipt thereof, under the provision of the following laws of the United States, or either of them, to wit: an act passed March the fourth, one thousand eight hundred and fourteen, entitled "An act giving pensions to the orphans and widows of the persons slain in the public or private armed vessels of the United States," and an act passed April the sixteenth, one thousand eight hundred and eighteen, entitled "An act in addition to an act, giving pensions to the orphans and widows of persons slain in the public or private armed vessels of the United States," so far as regards persons receiving pensions from the fund arising from captures and salvage, made by the private armed vessels of the United States, be, and the same are hereby, continued, under the restrictions and regulations in the said acts contained, for and during the additional term of five years, from and after the period of the expiration

of the said pensions, respectively. *Provided, however*, that the said pensions shall be paid from the proceeds of the privateer pension fund alone, and without recourse to the United States for any deficiency, should such occur, which may hereafter arise thereon. *And provided, further*, that no such pension shall be paid to any such widow after her intermarriage had, or to be had, after she shall have become such widow.

CHAP. 73. An Act to authorize the improving of certain Harbours, the building of Piers, and for other purposes.

CHAP. 74. An Act making an appropriation to extinguish the Indian title to a reserve allowed to Peter Lynch, of the Cherokee tribe of Indians, within the limits of the state of Georgia, by the treaty of one thousand eight hundred and nineteen, between the United States and said tribe of Indians.

CHAP. 75. An Act to grant certain relinquished and unappropriated Lands to the state of Alabama, for the purpose of improving the navigation of the Tennessee, Coosa, Cahawba, and Black Warrior rivers.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That four hundred thousand acres of the relinquished lands in the counties of Madison, Morgan, Limestone, Lawrence, Franklin, and Lauderdale, in the state of Alabama, be, and the same is hereby, granted to said state, to be applied to the improvement of the navigation of the Muscle shoals and Colbert's shoals, in the Tennessee river, and such other parts of said river within said state, as the legislature thereof may direct. But if there shall not be four hundred thousand acres of relinquished unappropriated land in said counties, the deficiency to be made up out of any unappropriated lands in the county of Jackson, in said state.

SECT. 2. *And be it further enacted*, That said state of Alabama shall have power to sell, dispose of, and grant said land, for the purposes aforesaid, at a price not less than the minimum price of the public lands of the United States, at the time of such sale.

SECT. 3. *And be it further enacted*, That the said state of Alabama shall commence said improvements within two years after the passage of this act, and complete the same within ten years thereafter.

SECT. 4. *And be it further enacted*, That if said state of Alabama shall apply the lands hereby granted, or the proceeds of the sales, or any part thereof, to any other use or object whatsoever than as directed by this act, before said improvements shall have been completed, the said grant for all lands then unsold shall thereby become null and void; and the said state of Alabama shall become liable and bound to pay to the United States the amount for which said land, or any part thereof, may have been sold, deducting the expenses incurred in selling the same.

SECT. 5. *And be it further enacted*, That the improvements of said navigation shall be commenced at the lowest point of obstruction in said river, within said state, continued up the same until completed, and be calculated for the use of steam boats, according to such plan of construction as the United States' engineers, appointed to survey and report thereon, may recommend, and the President of the United States approve. *Provided*, that such plan shall embrace, if practicable a connexion of the navigation of Elk river, with the said improvements.

SECT. 6. *And be it further enacted*, That after the completion of said improvements, the surplus of said grant, if any, shall be applied to the improvement of the navigation of the Coosa, Cahawba, and Black Warrior rivers, in said state, under the direction of the legislature thereof.

SECT. 7. *And be it further enacted*, That the said rivers, when improved as aforesaid, shall remain for ever free from toll for all property belonging to the government of the United States, and for all persons in their service, and for all the citizens of the United States, unless a toll shall be allowed by an act of Congress.

CHAP. 76. An Act making an appropriation for the erection of a Breakwater near the mouth of Delaware Bay.

CHAP. 77. An Act to establish a southern Judicial District in the territory of Florida.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That there shall be established another judicial district in the territory of Florida, to be called the southern district, embracing all that part of the territory which lies south of a line from Indian river on the east, and Charlotte harbour on the west, including the latter harbour; which said court shall exercise all the jurisdiction within said district, as the other superior courts respectively exercise within their respective districts, and shall be subject to all the laws which govern or

regulate the same; and there shall be appointed for said district a judge, and he is hereby authorized to appoint a clerk for said court. There shall also be appointed an attorney and marshal, who shall exercise all the duties, give the same bond and security, and be entitled to the same salaries, fees, and compensation, that is now allowed by law to attorneys and marshals in other districts in the territory.

SECT. 2. *And be it further enacted*, That the stated sessions of said court shall be held on the first Mondays of May and November, annually, at Key West, and such other intermediate sessions, from time to time, as the judge in his discretion may think advisable and necessary. The judge shall reside at the island of Key West, and shall be entitled to receive, as a salary for his services, two thousand dollars per annum, to be paid quarterly, out of any moneys in the treasury not otherwise appropriated.

SECT. 3. *And be it further enacted*, That whenever, in any case concerning wrecked property, or property abandoned at sea, the judge aforesaid shall have determined the rate of salvage to be allowed to salvors, it shall be his duty, unless the salvage decreed shall have been adjusted, without recourse to vessel and cargo, to direct such proportion of salvage to be paid to the salvors in kind; and that the property saved shall be divided accordingly, under the inspection of the officers of the court, and before it shall have been taken out of the custody of the revenue officers.

SECT. 4. *And be it further enacted*, That whenever it shall be ascertained, to the satisfaction of the judge of said court, that any of the property saved is, from its character, not susceptible of being divided in the manner proposed, or that there are articles in the cargo of a perishable nature, it shall be his duty to direct a sale of the same, for the benefit of all concerned.

SECT. 5. *And be it further enacted*, That the property remaining, after separating the portion adjudged to the salvors, shall not be removed from such store as may be used for public purposes, nor disposed of in any other way, within nine months, unless by the order of the owners, or of their authorized agents; and that the duties accruing upon such property may be secured at any port in the United States where the owners may reside.

SECT. 6. *And be it further enacted*, That no vessel shall be employed as a wrecker, unless under the authority of the judge of said court; and that it shall not be lawful to employ on board such vessel, any wrecker who shall have made conditions with the captain or supercargo of any wrecked vessel, before or at the time of affording relief.

CHAP. 78. An Act for the relief of Marinus W. Gilbert.

CHAP. 79. An Act for the relief of the legal representatives of Meriwether Lewis.

CHAP. 80. An Act for the relief of Francis English, of Indiana.

CHAP. 81. An Act for the relief of Dodd and Barnard, and others.

CHAP. 82. An Act for the relief of Alexander Garden.

CHAP. 83. An Act for the benefit of Andrew Wesbrook.

CHAP. 84. An Act for the relief of Edward Allen Talbot.

CHAP. 85. An Act to amend and explain an act, entitled "An act confirming an act of the legislature of Virginia, incorporating the Chesapeake and Ohio Canal Company, and an act of the state of Maryland for the same purpose.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the assent already given by the United States to the charter of the Chesapeake and Ohio Canal Company, by an act of Congress, entitled "An act confirming an act of the legislature of Virginia, entitled an act incorporating the Chesapeake and Ohio Canal Company;" and an act of the state of Maryland, confirming the same; shall not be impaired by any change of the route of the said canal, from or above the town of Cumberland, on the river Potomac, or the distribution thereof into two or more sections, at any time hereafter, or any change in the dimensions of that part of the present eastern section, extending from Cumberland, or the mouth of Will's creek, to the mouth of Savage, at the base of the Alleghany, or any substitution which the interest of the Chesapeake and Ohio Canal Company may, in the opinion of the company, require to be made, of inclined planes, railways, or an artificial road for a continued canal, through the Alleghany mountain, in any route which may be by the company finally adopted therefor, between the town of Cumberland and the river Ohio.

SECT. 2. *And be it further enacted*, That

to obviate any possible ambiguity that might arise in the construction of the second section of the act of Congress aforesaid, the authority, by that act designed to be given to the states of Maryland and Virginia, or to any company incorporated by either or both of those states, to extend a branch from the said canal, or to prolong the same, from the termination thereof, by a continuous canal, within or through the district of Columbia, towards the territory of either of those states, shall be deemed and taken to be as full and complete, in all respects, as the authority granted, by that act, to the Chesapeake and Ohio Canal Company, to extend the main stem of the said canal, within the said district; or the authority reserved to the government of the United States to provide for the extension thereof, on either or both sides of the river Potomac, within the district of Columbia. *Provided*, that nothing herein contained shall impair the restriction in the charter of the Chesapeake and Ohio Canal Company, designed to protect the canal from injury, by the prolongation thereof, or by any branch therefrom.

SECT. 3. *And be it further enacted*, That the act of the legislature of Maryland, which passed at their December session of one thousand eight hundred and twenty-seven, entitled "An act further to amend the act incorporating the Chesapeake and Ohio Canal Company," be, and the same is hereby, confirmed, so far as the assent of Congress may be deemed necessary thereto.

Approved 23d May, 1828.

CHAP. 86. An Act authorizing a subscription to the stock of the Chesapeake and Ohio Canal Company.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the secretary of the treasury be, and he is hereby authorized and directed, to subscribe, in the name and for the use of the United States, for ten thousand shares of the capital stock of the Chesapeake and Ohio Canal Company, and to pay for the same at such times, and in such proportions, as shall be required of and paid by the stockholders generally, by the rules and regulations of the company, out of the dividends which may accrue to the United States upon their bank stock in the bank of the United States. *Provided*, that not more than one fifth part of the sum, so subscribed for the use of the United States, shall be demanded, in any one year, after the organization of the said company; nor shall any greater sum be paid on the shares so subscribed for, than shall be proportioned to assessments made on individual or corporate stockholders. *And provided, moreover*, that for the supply of water to such other canals as the state of Maryland or Virginia, or the Congress of the United States, may authorize to be constructed, in connexion with the Chesapeake and Ohio canal, the section of the said canal leading from the head of the Little Falls of the Potomac river, to the proposed basin next above Georgetown, in the district of Columbia, shall have the elevation, above the tide, of the river at the head of the said falls, and shall preserve, throughout the whole section aforesaid, a breadth at the surface of the water of not less than sixty feet, and a depth below the same of not less than five feet, with a suitable breadth at bottom.

SECT. 2. *And be it further enacted*, That the said secretary of the treasury shall vote for the president and directors of the said company, according to such number of shares as the United States may at any time hold in the stock thereof, and shall receive, upon the said stock, the proportion of the tolls which shall, from time to time, be due to the United States for the shares aforesaid; and shall have and enjoy, in behalf of the United States, every other right of a stockholder in the said company.

CHAP. 87. An Act to enlarge the powers of the several Corporations of the district of Columbia, and for other purposes.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the Corporation of Washington, the Corporation of Georgetown, and the Corporation of Alexandria, within the District of Columbia, shall, severally, have full power and authority to subscribe and pay for shares of the stock of the Chesapeake and Ohio Canal Company; and all such subscriptions as shall have been already made by either of the said Corporations, shall, and the same are hereby declared to be valid and binding on the said Corporations, respectively.

SECT. 2. *And be it further enacted*, That the said Corporations shall, severally, have power and authority, from time to time, as the same may be deemed by them, respectively, either necessary or

expedient, to borrow money, at any rate of interest, not exceeding six per centum per annum, to pay their respective subscriptions, and the interest accruing thereon, to the amount which they have subscribed, or shall hereafter subscribe.

Sect. 3. *And be it further enacted*, That the said Corporations shall be, and the same are hereby, respectively, empowered to cause to be constituted certificates of stock for the sums borrowed, in pursuance of the authority severally vested in them by this act; each of said certificates shall be of the form following, to wit:

City or Town of [Here insert the title of the city or town.]

Mayor's Office.

Be it known, that there is due from the Corporation of the city or town of [Here insert the title of the city or town] unto [Here insert the name of the creditor] or —— assigns, the sum of [Here insert the amount in dollars] bearing interest at [Here insert the rate of interest] per centum per annum, from the —— day of ——, eighteen hundred and ——, inclusively, payable quarter yearly. The principal sum above mentioned is to be paid on the —— day of ——, in the year eighteen hundred and ——, which debt is recorded in this office, and is transferable only by appearance in person, or by attorney, at this Office. In testimony whereof, I have hereunto subscribed my name, and caused the seal of the said city to be affixed.

———— ————, Mayor.

———— ————, Register, or other recording officer of the Corporation.

A list of all such certificates, denoting their respective numbers, dates, and sums, and the persons to whom the same shall have been issued, authenticated by the Mayor, subscribing the same, shall be deposited by said officer, at the time of subscribing the same, or within ten days thereafter, with the Secretary of the Treaury of the United States.

The said certificate shall not be issued, in any case, for a less sum each, than one hundred dollars. The forgery of any such certificate, or of any transfer thereof, or of any power of attorney, purporting to authorize such transfer, shall be punishable in like manner with the forgery of a certificate of the public debt of the United States.

Sect. 4. *And be it further enacted*, That the said Corporations are, respectively, empowered to employ an agent, or agents, for the purpose of obtaining subscriptions to the loan or loans authorized by this act, or of selling, from time to time, the certificates of stock which may be created in pursuance thereof, and to fix the compensation of such agent or agents, which they shall respectively pay, as well as all other expenses attending the said loans, out of the proceeds thereof, or of any other funds which they may respectively provide.

Sect. 5. *And be it further enacted*, That a tax, at the rate of one per centum and thirteen hundredths of one per centum, on the assessed value of the real and personal estates within the city of Washington, as shall appear by the appraisement thereof, made under the authority of the Corporation, or of the several acts of Congress, hereinafter declared to be revived and in force, within the said Corporation, to be existing at the time hereinafter limited for the collection of the said tax; and at the rate of fifty-six hundredths of one per centum on the assessed value of the real and personal estate within the town of Georgetown, as shall appear by the appraisement thereof, made under the authority of the Corporation, or of the several acts of Congress, hereinafter declared to be revived and in force, within the said Corporation, to be existing at the time hereinafter limited for the collection of the said tax; and at the rate of fifty-eight hundredths of one per centum on the assessed value of the real and personal estate within the town of Alexandria, as shall appear by the appraisement thereof, made under the authority of the Corporation of the said town, or of the several acts of Congress, hereinafter declared to be revived and in force, within the said Corporation, to be existing at the time hereinafter limited for the collection of the said tax, be, and the same is hereby imposed and assessed on the real and personal estate lying and being in the said city and towns: And, upon the failure of the said Corporations, or of any of them, to pay, into the Treasury of the United States, ninety days before the same shall become due, to the holders of the shares or certificates of such loan or loans, as aforesaid, according to the terms and conditions thereof, the sum or sums which they, or any of them, shall have, respectively, stipulated to pay at the expiration of the period aforesaid, so that

the same shall not be ascertained beforehand to be in readiness to meet the demand or claim about to arise on the shares or certificates of the said loan—the President of the United States shall be, and he is, hereby, empowered to appoint a collector or collectors, whose duty it shall be to proceed and collect the tax imposed, as above, on the real and personal estate in the said city and towns, or either of them, the Corporation or Corporations of which shall have so failed to pay, as aforesaid, in advance, the sum or sums about to become due and demandable, as aforesaid, or any part thereof, remaining unpaid, as aforesaid, into the Treasury, ninety days in advance; such part, in case a part only be so in arrear, to be rateably and equally assessed, levied, and collected, upon the property chargeable, as aforesaid, with the said tax, within the said city and towns, or either of them, making such default in paying as required, ninety days in advance, as aforesaid; the appraisement or assessment of the value of the said estates, preparatory to the collection of the said tax, if not previously made by the said Corporation, to be made in the mode prescribed, as aforesaid, in the several acts of Congress hereby revived and put in operation. *Provided*, that if satisfactory evidence be afforded the President of the United States, by the several Corporations aforesaid, that they are proceeding, in good faith, to raise and pay, in due time, their portions, respectively, of the said loan or loans, and will be competent to raise the same by the means on which they rely, he shall be, and he is, hereby, empowered to restrain such collector or collectors from proceeding to collect the said tax within the Corporation affording the evidence aforesaid, until the expiration of the ninety days aforesaid, when, if the amount of the said tax be not actually paid, the collection thereof shall proceed, without further delay, on notice to the collector of such default.

SECT. 6. *And be it further enacted*, That the collector or collectors who may be appointed as aforesaid, shall give bond, with good and sufficient security, for the faithful performance of the duties required by this act, and shall possess all the powers, be subject to all the obligations, and proceed, in all respects, in the discharge of his or their duties, in collecting the said tax, as the several collectors possessed, were subject to, and were required to do, by an act, entitled, "An act to provide additional revenues for defraying the expenses of government, and maintaining the public credit, by laying a direct tax upon the District of Columbia," approved the twenty-seventh of February, one thousand eight hundred and fifteen, and by the several acts of Congress therein referred to, or which were subsequently passed, in order to alter or amend the same; all of which acts, for the effectual fulfilment of the purpose of this act, according to the tenor and intent thereof, are hereby declared to be revived, and in full force within the limits of the several Corporations aforesaid.

SECT. 7. *And be it further enacted*, That the tax imposed by this act shall be continued and collected, from time to time, according to the provisions and conditions of this act, and of the several acts aforesaid, so long as the proceeds thereof may, by any possibility, be required to meet the payment of the several loans authorized as aforesaid. *Provided, however*, that all or either of the said Corporations may, in the negotiation of such loan or loans as they, or either of them, shall deem it expedient to make, in pursuance of the authority vested in them by this act, stipulate such terms or conditions for the payment of the interest, or the redemption of the principal sum thereof, as shall dispense with the system of taxation provided by this act.

SECT. 8. *And be it further enacted*, That, in the event that any loan or loans shall be negotiated by the said Corporations, or any one of them, to the extent, in whole or in part, of the subscription of one or all of the said Corporations, to the stock of the Chesapeake and Ohio Canal Company, in conformity with the provisions of this act, and based upon the system of taxation therein provided, a copy or copies of the contract or contracts, for any and all such loans, shall, as soon as practicable after the execution thereof, be deposited, either by the Corporation or Corporations contracting such loan or loans, or by the creditor or creditors interested therein, with the Secretary of the Treasury; and, out of all such sums as shall be paid, by the respective Corporations, in advance, as aforesaid, on account of their several contracts, or as shall be levied and collected, in manner hereinbefore provided, the holders of the certificates of any such loan shall be entitled to receive, at the public Treasury,

such amount as may be due to them, respectively; and, on the occurrence of any deficiency in the sum or sums voluntarily paid in, or assessed and collected, within the said Corporations, respectively, for the payment of their respective creditors, the extent of such deficiency shall be ascertained by the Secretary of the Treasury, from a reference to the terms of the loan or loans, in relation to which such deficiency may occur; and, being so ascertained, and published in some one or more newspapers printed in the District of Columbia, the Secretary of the Treasury shall instruct the proper collector to proceed to collect, and pay into the public Treasury, the said amount, with all lawful charges attending the same, according to such farther rateable assessment upon the estates and property within the jurisdiction of the Corporation in arrear, according to the provisions of this act, and of the several acts referred to therein, as shall be sufficient to supply such ascertained deficiency; and, on the completion of such collection, the holder or holders of the certificate of the stock of the Corporation, shall be entitled to receive such amount as may have been found due, and unprovided for, by the sums before paid in, or collected on account of such Coporation.

CHAP. 88. An Act in addition to an act, entitled "An act concerning discriminating duties of Tonnage and Impost," and to equalize the duties on Prussian vessels and their cargoes.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That, upon satisfactory evidence being given to the President of the United States, by the government of any foreign nation, that no discriminating duties of tonnage or impost are imposed or levied in the ports of the said nation, upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise, imported in the same from the United States, or from any foreign country, the President is hereby authorized to issue his proclamation, declaring that the foreign discriminating duties of tonnage and impost, within the United States, are, and shall be, suspended and discontinued, so far as respects the vessels of the said foreign nation, and the produce, manufactures, or merchandise, imported into the United States in the same, from the said foreign nation, or from any other foreign country; the said suspension to take effect from the time of such notification being given to the President of the United States, and to continue so long as the reciprocal exemption of vessels belonging to citizens of the United States, and their cargoes, as aforesaid, shall be continued, and no longer.

SECT. 2. *And be it further enacted*, That no other or higher rate of duties shall be imposed or collected on vessels of Prussia, or of her dominions, from whencesoever coming, nor on their cargoes, howsoever composed, than are, or may be, payable on vessels of the United States, and their cargoes.

SECT. 3. *And be it further enacted*, That the Secretary of the Treasury be, and he is hereby, authorized, to return all duties which have been assessed since the fifteenth day of April, one thousand eight hundred and twenty-six, on Prussian vessels and their cargoes, beyond the amount which would have been payable on vessels of the United States and their cargoes, and that the same allowances of drawback be made on merchandise exported in Prussian vessels, as would be made on similar exportations in vessels of the United States.

SECT. 4. *And be it further enacted*, That so much of this act as relates to Prussian vessels and their cargoes, shall continue and be in force during the time that the equality for which it provides shall, in all respects, be reciprocated in the ports of Prussia, and her dominions; and if, at any time hereafter, the said equality shall not be reciprocated in the ports of Prussia, and her dominions, the President may, and he is hereby authorized to, issue his proclamation, declaring that fact, and thereupon so much of this act as relates to Prussian vessels and their cargoes, shall cease and determine.

CHAP. 89. An Act declaring the assent of Congress to an act of the state of Alabama.

CHAP. 90. An Act to incorporate the Trustees of the Female Orphan Asylum, in Georgetown, and the Washington City Orphan Asylum, in the district of Columbia.

CHAP. 91. An Act making appropriations for Custom Houses and Warehouses.

CHAP. 92. An Act to continne in force, for a limited time, and to amend an act, entitled "An act to enable claimants to lands within the limits of the state of Missouri and territory of Arkansas, to institute proceedings to try the validity of their claims."

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United*

States of America, in Congress assembled, That the act approved the twenty-sixth of May, eighteen hundred and twenty-four, entitled "An act to enable claimants to lands within the limits of the state of Missouri and territory of Arkansas, to institute proceedings to try the validity of their claims," shall be, and the same hereby is, continued in force; that is to say, for the purpose of filing petitions in the manner prescribed by that act, to and until the twenty-sixth day of May, in the year one thousand eight hundred and twenty-nine, and for the purpose of enabling the claimants to obtain a final decision on the validity of their claims, in the courts of Missouri and Arkansas respectively, the said claims having been exhibited within the time above specified. The said act shall be continued in force to and until the twenty-sixth day of May, in the year one thousand eight hundred and thirty, and no longer; and the courts having cognizance of said claims, shall decide upon and confirm such as would have been confirmed under the laws, usages, and customs of the Spanish government, for two years, from and after the twenty-sixth day of May, one thousand eight hundred and twenty-eight; and all the claims authorized by that act, to be heard and decided, shall be ratified and confirmed to the same extent, that the same would be valid, if the country in which they lie had remained under the dominion of the sovereignty in which said claims originated.

SECT. 2. *And be it further enacted*, That so much of the said act as subjects the claimants to the payment of costs in any case where the decision may be in favour of their claims, be, and the same is hereby repealed, and the costs shall abide the decision of the cause, as in ordinary causes before the said court; and so much of the said act as requires the claimants to make adverse claimants parties to their suits, or to show the court what adverse claimants there may be to the land claimed of the United States, be also hereby repealed. And the confirmations had by virtue of said act, and the patents issued thereon, shall operate only as relinquishment of title on the part of the United States, and shall in no wise affect the right or title, either in law or equity, of adverse claimants of the same land.

SECT. 3. *And be it further enacted*, That where any claim, founded on concession, warrant, or order of survey, shall be adjudged against and rejected, the claimant or his legal representatives, by descent or purchase, being actual inhabitants and cultivators of the soil, the claim to which shall have been rejected, shall have the right of pre-emption, at the minimum price of the public lands, so soon as the land shall be surveyed and subdivided by the United States, of the quarter section on which the improvement shall be situate, and so much of every other quarter section which contains any part of the improvement, as shall be within the limits of the rejected claim.

CHAP. 93. An Act to authorize the legislature of the state of Indiana, to sell the lands heretofore appropriated for the use of schools in that state.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the legislature of the state of Indiana shall be, and is hereby, authorized to sell and convey, in fee simple, all or any part of the lands heretofore reserved and appropriated by Congress for the use of schools within said state, and to invest the money arising from the sale thereof in some productive fund, the proceeds of which shall be for ever applied, under the direction of said legislature, for the use and support of schools, within the several townships and districts of country for which they were originally reserved and set apart, and for no other use or purpose whatsoever. *Provided*, said land, or any part thereof, shall in no case be sold without the consent of the inhabitants of such township or district, to be obtained in such manner as the legislature of said state shall by law direct. *And provided, also*, that in the apportionment of the proceeds of said fund, each township and district aforesaid shall be entitled to such part thereof, and no more, as shall have accrued from the sum or sums of money arising from the sale of the school lands belonging to such township or district.

SECT. 2. *And be it further enacted*, That if the proceeds accruing to any township or district from said fund, shall be insufficient for the support of schools therein, it shall be lawful for said legislature to invest the same, as is herein before directed, until the whole proceeds of the fund belonging to such township or district, shall be adequate to the permanent maintenance and support of schools within the same,

CHAP. 94. An Act to confirm claims to lands in the district between the Rio Hondo and Sabine rivers, founded on habitation and cultivation.

CHAP. 95 An Act supplementary to the several acts providing for the adjustment of land claims in the state of Mississippi.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the claimants of lands within that part of the limits of the land district of Jackson court house, in the state of Mississippi, lying below the thirty-first degree of north latitude, whose claims have been presented to the commissioners appointed to receive and examine claims and titles to lands in said district of Jackson court house, or to the register and receiver of the land office at Jackson court house, acting as commissioners under the provisions of the act of the third of March, one thousand eight hundred and nineteen, entitled "An act for adjusting the claims to lands, and establishing land offices in the district east of the island of New-Orleans," and which have not been reported to Congress, or whose claims have not been heretofore presented to said commissioners, or to the register and receiver acting as commissioners, or whose claims have been acted upon, but additional evidence adduced, be allowed until the first day of January, one thousand eight hundred and twenty-nine, to present their titles and claims, and the evidence in support of the same, to the register and receiver of the land office at Jackson court house, in the state of Mississippi, whose powers and duties in relation to the same shall, in all respects, be governed by the provisions of the acts before recited, and of the act of the eighth of May, eighteen hundred and twenty-two, entitled "An act supplementary to the several acts for adjusting the claims to land, and establishing land offices in the district east of the island of New-Orleans."

SECT. 2. *And be it further enacted*, That the said register and receiver shall have power to receive and examine such titles and claims, and for that purpose shall hold their sessions at Jackson court house and the town of Shieldsborough. They shall give immediate notice after the passage of this act, of the time and place of their meeting, but may adjourn from time to time, as may best suit the convenience of claimants, upon giving due notice thereof. And the said register and receiver shall have power to appoint a clerk, who shall be a person capable of translating the French and Spanish languages, and who shall perform the duty of translator, and such other duty, as may be required by the said register and receiver; and the said register and receiver shall each be allowed, as a compensation for their services in relation to said claims, and for the services to be performed under the provisions of the several acts to which this is a supplement, the sum of eight hundred dollars each, and the clerk the sum of eight hundred dollars, which several sums of money shall be paid out of any money in the treasury not otherwise appropriated. *Provided*, that the payment of the whole of the aforesaid compensation shall be withheld by the secretary of the treasury, until a report, approved by him, shall have been made to him by said register and receiver, of the performance of the services herein required.

CHAP. 96. An Act making appropriations to carry into effect certain Indian treaties.

CHAP. 97. An Act making appropriations for the purchase of books, and for other purposes.

CHAP. 98. An Act supplementary to an act, entitled "An Act providing for the correction of errors in making entries of lands at the land offices," passed March third, eighteen hundred and nineteen.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the provisions of the act, entitled "An act providing for the correction of errors in making entries of lands at the land offices," approved March third, one thousand eight hundred and nineteen, are hereby declared to extend to cases where patents have issued, or shall hereafter issue; upon condition, that the party concerned shall surrender his or her patent to the commissioner of the general land office, with a relinquishment of title thereon, executed in a form to be prescribed by the secretary of the treasury.

CHAP. 99. An Act to enable the President of the United States to hold a treaty with the Chippewas, Ottawas, Pattawattimas, Winnebagoes, Fox, and Sacs nations of Indians.

CHAP. 100. An Act making an appropriation for the suppression of the Slave Trade.

CHAP. 101. An Act to authorize the Postmaster General to erect an additional building, and employ five additional clerks.

CHAP. 102. An Act allowing compensation to the members of the legislature of the territory of Arkansas, and for other purposes.

CHAP. 103. An Act to provide for opening and making a Military Road in the state of Maine.

CHAP. 104. An Act making an appropriation for the Navy Hospital Fund.

CHAP. 105. An Act to repeal a part of the act, entitled "An act supplementary to, and to amend an act, entitled 'An act to regulate the collection of duties on imports and tonnage,'" passed the second of March, one thousand seven hundred and ninety-nine, and for other purposes.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the thirty-seventh section of the act, passed on the first of March, one thousand eight hundred and twenty-three, entitled "An act supplementary to, and to amend an act, entitled 'An act to regulate the collection of duties on imports and tonnage,'" passed second of March, one thousand seven hundred and ninety-nine, and for other purposes, be, and the same is hereby, repealed.

CHAP. 106. An Act to increase the pay of Lieutenants in the Navy.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That from and after the passing of this act, all lieutenants in the navy of the United States shall, in addition to the pay and emoluments now allowed them by law, each receive ten dollars per month, and one ration per day.

CHAP. 107. An Act authorizing the establishment of an Arsenal on the waters of Mobile or Pensacola bays.

CHAP. 108. An Act to authorize the selection of lands for the benefit of a seminary of learning, in the state of Alabama, instead of other lands heretofore selected.

CHAP. 109. An Act to authorize the legislature of the state of Illinois, to sell and convey a part of the land reserved and granted to said state for the use of the Ohio Saline.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Legislature of the state of Illinois shall be, and is hereby, authorized and empowered to cause to be sold and conveyed in such manner, and on such terms and conditions, as said Legislature shall by law direct, such part or parts of the tract of land reserved and granted to said state, for the use and support of the Salt Works, known by the name of the Ohio Saline, in the county of Gallatin, in the said state, and to apply the proceeds of such sale to such objects as the said Legislature may by law hereafter direct. *Provided*, that the Legislature shall not sell and convey more than thirty thousand acres of the land reserved and granted for the use of the Saline aforesaid.

CHAP. 110. An Act to aid the state of Ohio in extending the Miami Canal from Dayton to Lake Erie, and to grant a quantity of land to said state, to aid in the construction of the canals authorized by law, and for making donations of land to certain persons in Arkansas territory.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That there be and is hereby granted to the state of Ohio, for the purpose of aiding said state in extending the Miami Canal from Dayton to Lake Erie, by the Maumee route, a quantity of land, equal to one half of five sections in width, on each side of said canal, between Dayton and the Maumee river, at the mouth of the Anglaize, so far as the same shall be located through the public land, and reserving each alternate section of the land unsold to the United States, to be selected by the commissioner of the general land office, under the direction of the President of the United States; and which land, so reserved to the United States, shall not be sold for less than two dollars and fifty cents per acre. The said land, hereby granted to the state of Ohio, to be subject to the disposal of the Legislature of said state, for the purpose aforesaid, and no other. *Provided*, that said canal, when completed, shall be, and for ever remain, a public highway, for the use of the government of the United States, free from any toll, or other charge whatever, for any property of the United States, or persons in their service, passing through the same. *And provided, also*, that the extension of the said Miami canal shall be commenced within five years, and completed within twenty years, or the State shall be bound to pay to the United States the amount of any lands previously sold; and that the title to purchasers, under the state, shall be valid.

SECT. 2. *And be it further enacted*, That so soon as the route of the said canal shall be located, and agreed on by said state, it shall be the duty of the Governor thereof, or such other person or persons as may have been, or shall hereafter be, authorized to superintend the construction of said canal, to examine and ascertain the particular lands to which the said state will be entitled under the provisions of this act, and report the

same to the Secretary of the Treasury of the United States.

SECT. 3. *And be it further enacted*, That the state of Ohio, under the authority of the Legislature thereof, after the selection shall have been so made, as aforesaid, shall have power to sell and convey the whole, or any part of said land, and to give a title, in fee simple, therefor, to the purchaser thereof.

SECT. 4. *And be it further enacted*, That the state of Indiana be, and hereby is, authorized to convey and relinquish to the state of Ohio, upon such terms as may be agreed upon by said states, all the right and interest granted to the state of Indiana, to any lands with the limits of the state of Ohio, by an act, entitled, "An act to grant a certain quantity of land to the state of Indiana, for the purpose of aiding said state in opening a canal, to connect the waters of Wabash river with those of Lake Erie," approved on the second of March, one thousand eight hundred and twenty-seven; the state of Ohio to hold said land on the same conditions upon which it was granted to the state of Indiana, by the act aforesaid.

SECT. 5. *And be it further enacted*, That there be, and hereby is, granted to the state of Ohio, five hundred thousand acres of the lands owned by the United States, within the said state, to be selected as hereinafter directed, for the purpose of aiding the state of Ohio in the payment of the debt, or the interest thereon, which has heretofore been, or which may hereafter be, contracted by said state, in the construction of the canals within the same, undertaken under the authority of the laws of said state, now in force, or that may hereafter be enacted, for the extension of canals now making; which land, when selected, shall be disposed of by the Legislature of Ohio for that purpose, and no other. *Provided*, the said canals, when completed or used, shall be, and for ever remain, public highways, for the use of the government of the United States, free from any toll or charge whatever, for any property of the United States, or persons in their service, passing along the same. *And provided, further*, that the said canals, already commenced, shall be completed in seven years from the approval of this act; otherwise the state of Ohio shall stand bound to pay over to the United States the amount which any lands, sold by her within that time, may have brought; but the validity of the titles derived from the state by such sales, shall not be affected by that failure.

SECT. 6. *And be it further enacted*, That the selection of the land granted by the fifth section of this act, may be made under the authority and by the direction of the governor of the state of Ohio, of any lands belonging to the United States within said state, which may at the time of selection be subject to entry at private sale, and within two years from the approval of this act. *Provided*, that in the selection of the lands hereby granted, no lands shall be comprehended which have been reserved for the use of the United States, as alternate sections, in the grants hitherto made, or which may be made during the present session of Congress, of lands within the said state, for roads and canals. *And provided*, that all lands so selected shall, by the governor of said state, be reported to the office of the register of the district in which the land lies, and no lands shall be deemed to be so selected, till such report be made, and the lands so selected shall be granted by the United States to the state of Ohio.

SECT. 7. *And be it further enacted*, That this act shall take effect, *Provided*, the legislature of Ohio, at the first session thereof hereafter to commence, shall express the assent of the state to the several provisions and conditions hereof; and unless such expression of assent be made, this act shall be wholly inoperative, except so far as to authorize the governor of Ohio to proceed in causing selection of said land to be made, previous to the said next session of the legislature.

SECT. 8. *And be it further enacted*, That each head of a family, widow or single man, over the age of twenty-one years, actually settled on that part of the territory of Arkansas which, by the first article of the treaty between the United States and the Cherokee Indians west of the Mississippi, ratified the twenty-third day of May, one thousand eight hundred and twenty-eight, has ceased to be a part of said territory, who shall remove from such settlement according to the provisions of that treaty, shall be authorized to enter with the proper register of the land office in Arkansas, a quantity not exceeding two quarter sections of land on any of the public lands in that territory, the sale of which is authorized by law, and in conformity with the lines of

the public surveys, at any time within two years from the passage of this act; and upon presenting the certificate of such entry to the secretary of the treasury, a patent shall be issued to such settler, or to his, her, or their heirs, for the lands so entered, as a donation from the United States, as an indemnity for the improvements and losses of such settler under the aforesaid treaty.

SEC. 9. *And be it further enacted*, That the register and receiver of the land office, to which application may be made to enter such lands, shall be authorized to take the proper testimony of such actual settlement and subsequent removal, as in cases of pre-emptions heretofore granted to actual settlers, for which a reasonable compensation shall be made to such registers and receivers by the United States.

CHAP. 111. An Act to revive and continue in force an act, entitled "An Act to provide for persons who were disabled by known wounds, received in the revolutionary war."

SEC. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the act, entitled "An act to provide for persons who were disabled by known wounds, received in the revolutionary war," passed on the tenth day of April, one thousand eight hundred and six, and limited, as in said act declared, to the term of six years, and afterwards revived and continued in force for and during the term of six years, by an act, entitled "An act to revive and continue in force 'An act to provide for persons who were disabled by known wounds received in the revolutionary war, and for other purposes,'" passed on the twenty-fifth of April, in the year one thousand eight hundred and twelve, and afterwards revived and continued in force for the term of one year, by an act, entitled "An act to revive and continue in force an act, entitled 'An act to provide for persons who were disabled by known wounds, received in the revolutionary war,'" passed on the fifteenth day of May, in the year one thousand eight hundred and twenty, and further revived and continued in force for the term of six years, by an act, entitled "An act to revive and continue in force an act, entitled 'An act to provide for persons who were disabled by known wounds, received in the revolutionary war,'" passed on the fourth day of February, in the year one thousand eight hundred and twenty-two, shall be, and the said act is hereby, revived and continued in full force and effect, for and during the term of six years from and after the passing of this act, and from thence unto the end of the next session of Congress. *Provided*, that any evidence which has been taken to support any claim of any person disabled in the revolutionary war, under the authority of the act of the fifteenth of May, one thousand eight hundred and twenty, reviving and continuing in force for one year "An act to provide for persons who were disabled by known wounds, received in the revolutionary war," shall be received and acted upon by the secretary of war, in the same manner as if said act was still in force, and had not expired. *And provided, also*, that this act, and any thing contained in the act hereby revived and continued in force, shall not be construed to repeal or make void the fourth section of an act, entitled "An act concerning invalid pensions," passed the third of March, one thousand eight hundred and nineteen; and the said fourth section of the said last mentioned act shall be, and the same is hereby, declared to be, and to continue to be in full force and effect, any thing in the said act hereby revived and continued in force, to the contrary notwithstanding.

SEC. 2. *And be it further enacted*, That the right any person has, or hereafter may acquire, to receive a pension in virtue of any law of the United States, shall be construed to commence at the time of completing his testimony, pursuant to the act hereby revived and continued in force.

SEC. 3. *And be it further enacted*, That the agents for the payment of pensions to invalid pensioners of the United States, shall in future be required to give bonds, with two or more sureties, to be approved by the secretary of the department of war, in such penalty as he shall direct, for the faithful discharge of the duties confided to them respectively.

CHAP. 112. An Act to incorporate the Sisters of Charity, of St. Joseph, and the Sisters of the Visitation, of Georgetown, in the district of Columbia.

CHAP. 113. An Act altering the duties on Wines imported into the United States.

SEC. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That from and after the first day of January next, the duties now imposed on wines imported into the United States,

shall cease, and that, in lieu thereof, the following duties shall be levied and collected on all wines so imported; that is to say:

On the wines of France, Germany, Spain, and the Mediterranean, when imported in casks, unless specially enumerated, fifteen cents per gallon; except the red wines of France and Spain, when not imported in bottles, which shall pay only ten cents per gallon.

On wines of all countries, when imported in bottles or cases, unless specially enumerated; on wines of Sicily; and on all wines not enumerated, whether imported in bottles, cases, or casks, thirty cents per gallon, in addition to the duty now existing on the bottles when thus imported.

On Sherry and Madeira wines, whether imported in bottles, cases, or casks, fifty cents per gallon, in addition to the duty on the bottles when so imported.

SECT. 2. *And be it further enacted*, That the duties imposed by this act on wine imported, shall be levied and collected on all wines remaining in the public warehouses after the first of January, one thousand eight hundred and twenty-nine, in lieu of the duties existing when the same may have been imported.

SECT. 3. *And be it further enacted*, That a drawback of the duties on wines, imposed by this act, shall be allowed on exportation; and that all existing laws concerning the exportation of merchandise for the benefit of drawback, the collection of duties, and the recovery, distribution, and remission of all penalties and forfeitures, shall be taken and deemed to be applicable to importations under this act.

CHAP. 114. An Act making appropriations for certain Fortifications of the United States, for the first quarter of the year one thousand eight hundred and twenty-nine.

CHAP. 115. An Act in relation to the Banks in the district of Columbia.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall be, and is hereby declared to be lawful for the several banks of the district of Columbia, in calculating their discount or interest, to charge according to the standard and rates set forth in "Rowlett's Tables," and in computing the time which a note may have to run, to reckon the days inclusively.

CHAP. 116. An Act to amend the acts concerning Naturalization.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the second section of the act, entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," which was passed on the fourteenth day of April, one thousand eight hundred and two, and the first section of the act, entitled "An act relative to evidence in cases of naturalization," passed on the twenty-second day of March, one thousand eight hundred and sixteen, be, and the same are hereby, repealed.

SECT. 2. *And be it further enacted*, That any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States, between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen. *Provided*, that whenever any person, without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same, or he shall not be so admitted; and the residence of the applicant within the limits, and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

CHAP. 117. An Act making appropriations for the support of the Navy of the United States, for the first quarter of the year one thousand eight hundred and twenty-nine.

CHAP. 118. An Act making appropriations for the payment of the Revolutionary and other Pensioners of the United States, for the first quarter of the year one thousand eight hundred and twenty-nine.

CHAP. 119. An Act to authorize the licensing of vessels to be employed in the Mackerel Fishery.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That from and after the passage of this act, it shall be the duty of the collector of the district to which any vessel may belong, on an application for that purpose by the master or owner thereof, to issue a license for carrying on the mackerel fishery to such vessel, in the form prescribed by the act, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," passed the eighteenth day of February, one thousand seven hundred and ninety-three. *Provided*, that all the provisions of said act respecting the licensing of ships or vessels for the coasting trade and fisheries, shall be deemed and taken to be applicable to licenses and to vessels licensed for carrying on the mackerel fishery.

CHAP. 120. An Act in addition to "An act making an appropriation for the support of the Navy of the United States, for the year 1823."

CHAP. 121. An Act for the better organization of the Medical Department of the Navy of the United States.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That from and after the passing of this act, no person shall receive the appointment of assistant surgeon in the navy of the United States, unless he shall have been examined and approved by a board of naval surgeons, who shall be designated for that purpose by the secretary of the navy department; and no person shall receive the appointment of surgeon in the navy of the United States, until he shall have served as an assistant surgeon at least two years, on board a public vessel of the United States at sea, and unless, also, he shall have been examined and approved by a board of surgeons, constituted as aforesaid.

SECT. 2. *And be it further enacted*, That the President of the United States may designate and appoint to every fleet or squadron an experienced and intelligent surgeon, then in the naval service of the United States, to be denominated "surgeon of the fleet," who shall be surgeon of the flag ship, and who, in addition to his duties as such, shall examine and approve all requisitions for medical and hospital stores for the fleet, and inspect their quality; and who shall, in difficult cases, consult with the surgeons of the several ships, and make records of the character and treatment of diseases, to be transmitted to the navy department; and who, in addition to the compensation allowed to surgeons at sea, shall be allowed double rations while acting as surgeon of the fleet, as aforesaid.

SECT. 3. *And be it further enacted*, That assistant surgeons who shall have been commissioned less than five years, shall each receive thirty dollars a month, and two rations a day; after five years' service, they shall be entitled to an examination by a board of naval surgeons, constituted as aforesaid, and having been approved and passed by such board, they shall each receive an addition of five dollars a month, and one ration a day; and after ten years' service, a further addition of five dollars a month, and one ration a day.

SECT. 4. *And be it further enacted*, That every surgeon who shall have received his appointment, as is herein before provided for, shall receive fifty dollars a month, and two rations a day; after five years' service, he shall be entitled to receive fifty-five dollars a month, and an additional ration a day; and after ten years' service, he shall receive sixty dollars a month, and an additional ration a day; and after twenty years' service, he shall receive seventy dollars a month, and the rations as last aforesaid.

SECT. 5. *And be it further enacted*, That every assistant surgeon (after having faithfully served two years) shall, while in actual service at sea, in addition to the usual compensation allowed him by law, receive double rations and five dollars a month; and every surgeon in the navy, while in actual service at sea, shall also, in addition to his usual compensation, receive double rations, and ten dollars a month.

CHAP. 122. An Act authorizing the legislative council of the territory of Michigan, to take charge of the school lands in said territory.

Be it enacted, by the Senate and House of Representatives of the United States of

America, in Congress assembled, That the governor and legislative council of the territory of Michigan be, and they are hereby, authorized to make such laws and needful regulations, as they shall deem most expedient, to protect from injury and waste, section numbered sixteen, in said territory, reserved in each township for the support of schools therein; and to provide, by law, for leasing the same, for any term not exceeding four years, in such manner as to render them productive, and most conducive to the objects for which they were designed.

CHAP. 123. An Act making appropriations for the Military Service of the United States, for the first quarter of the year one thousand eight hundred and twenty-nine.

CHAP. 124. An Act making appropriations to enable the President of the United States to defray the expenses of delegations of the Choctaw, Creek, Cherokee, and Chickasaw, and other tribes of Indians, to explore the country west of the Mississippi.

CHAP. 125. An Act to establish sundry Post Roads, and to discontinue others.

CHAP. 126. An Act for the relief of the legal representatives of William Shannon and Hugh Shannon.

CHAP. 127. An Act for the relief of Elizabeth Shaw.

CHAP. 128. An Act for the benefit of the trustees of the Lafayette Academy, in Alabama.

CHAP. 129. An Act for the relief of Frederick Onstine.

CHAP. 130. An Act for the relief of Benjamin Freeland, of Indiana.

CHAP. 131. An Act for the relief of Mary James, of Bedford county, Virginia.

CHAP. 132. An Act for the relief of Samuel Ward.

CHAP. 133. An Act for the relief of Allen B. M'Alhany.

CHAP. 134. An Act for the relief of Sarah Chitwood.

CHAP. 135. An Act confirming to Francis Valle, Jean Baptiste Valle, Jean Baptiste Pratte, and St. James Beauvois, or to their heirs or legal representatives, of the county of Madison, in the state of Missouri, certain lands.

CHAP. 136. An Act for the relief of John Miles.

CHAP. 137. An Act for the relief of Mary Reynolds.

CHAP. 138. An Act for the benefit of John Winton, of the state of Tennessee.

CHAP. 139. An Act for the relief of Abraham C. Truax.

CHAP. 140. An Act for the relief of Caleb Stark.

CHAP. 141. An Act for the relief of Bannister Stone.

CHAP. 142. An Act for the relief of Philip Coombs and others.

CHAP. 143. An Act for the relief of the widow and children of Captain William Beckham.

CHAP. 144. An Act for the relief of Amos Sweet, Stephen Jenks, Arnold Jenks, David Jenks, and Betsey Jenks, widow of George Jenks, second, deceased.

CHAP. 145. An Act to continue a copyright to John Rowlett.

CHAP. 146. An Act for the relief of the legal representatives of Joseph Summerl and Israel Brown, deceased.

CHAP. 147. An Act for the relief of Nathaniel Briggs.

CHAP. 148. An Act for the relief of John Willard and Thomas P. Baldwin.
Approved 24th May, 1828.

CHAP. 149. An Act for the relief of James Fraser.

CHAP. 150. An Act for the relief of Philip Slaughter.

CHAP. 151. An Act for the relief of John T. Ross.

CHAP. 152. An Act for the relief of Robert Huston.

CHAP. 153. An Act for the relief of Seth Knowles.

CHAP. 154. An Act for the relief of John Brahan.

CHAP. 155. An Act for the relief of the legal representatives of General Moses Hazen, deceased.

CHAP. 156. An Act for the relief of Archibald Band and John Findlay, executors of the last will and testament of Doctor Robert Johnson, deceased, and for the relief of John Scott, executor of Charles Yates, deceased.

CHAP. 157. An Act for the relief of Francis H. Gregory and Jesse Wilkinson.

CHAP. 158. An Act for the relief of David Ellis.

CHAP. 159. An Act for the relief of Cyrus Sibley, agent of George M. Brooke.

CHAP. 160. An Act for the relief of Jonathan Taylor, of Kentucky.

CHAP. 161. An Act further to indemnify the owner and underwriters of the British ship Union, and her cargo.
Approved 26th May, 1828.

RESOLUTIONS.

No. 1. Resolution authorizing the Speaker of the House of Representatives to frank letters and packages.
Approved 3d April, 1828.

No. 2. Resolution providing for the distribution of certain public documents, and the removal of certain books from the library.
Approved 24th May, 1828.

No. 3. Resolution authorizing an examination of the claims to land of John F. Carmichael.
Approved 19th May, 1828.

No. 4. Resolution in relation to Charles Carroll, of Carrollton.

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, That Charles Carroll, of Carrollton, the only surviving signer of the Declaration of Independence, be, and he is hereby, authorized to receive and transmit letters and packages by the mail, free of postage.

Approved 23d May, 1828.

No. 5. Resolution in relation to the manner of executing the Printing ordered by either House of Congress.

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, That after the termination of the present session of Congress, it shall be the duty of the secretary of the Senate and clerk of the House of Representatives, so to regulate and direct the printing of the respective Houses, as to abolish the practice of making "title pages" to executive documents, reports of committees, memorials, or any other documents, unless the same shall be so directed by them, and that the whole matter shall follow in close order, from the first page. And they shall further direct, that the printing of the yeas and nays of the journal shall be in consecutive order, as ordinary matter. They shall also so regulate the printing of the executive documents, as to have the respective communications from the President and heads of departments bound in distinct volumes; and they may also so change the form of the volume, by increasing its size, as to combine the greatest quantity of matter, with the greatest economy in the execution of the work.

No. 6. Resolution in relation to the Mail Route between the cities of New-Orleans and Mobile.

No. 7. Resolution to authorize the President to loan the Barracks at Sackett's Harbour to the trustees of a military and scientific school to be established there.

Approved 24th May, 1828.

ACTS PASSED AT THE SECOND SESSION OF THE TWENTIETH CONGRESS OF THE UNITED STATES.

John Quincy Adams, President; J. C. Calhoun, Vice President, and President of the Senate; Samuel Smith, President of the Senate pro tempore; Andrew Stevenson, Speaker of the House of Representatives.

CHAP. 1. An Act making appropriations for the support of Government, for the first quarter of the year one thousand eight hundred and twenty-nine.

CHAP 2. An Act restricting the location of certain land claims in the territory of Arkansas, and for other purposes.

CHAP. 3. An Act to preserve from injury and waste the School Lands in the territory of Arkansas.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the governor and general assembly of the territory of Arkansas be, and they are hereby, authorized to make and carry into effect, such laws and needful regulations as they shall deem most expedient to protect from injury and waste, the sixteenth section in all townships of land in said territory, where surveys have been or may hereafter be made, which sections are reserved for the support of schools in each township, and to provide by law for leasing or renting the same, for any term not exceeding five years, in such manner as to render said school lands most valuable and productive, and shall apply the rents derived therefrom to the support of common schools in the respective townships, according to the design of the donation, and to no other purpose whatever.

CHAP. 4 An Act extending the term within which Merchandise may be exported with the benefit of the drawback.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That from and after the passage of this act, all goods, wares, and merchandise, which are now entitled to debenture, or which may be

hereafter imported, may be exported with the benefit of drawback, and without any deduction from the amount of the duty on the same, at any time within three years from the date when the same may have been, or shall be imported. *Provided*, that all existing laws regulating the exportation of goods, wares, and merchandise, shall have been in all other respects complied with.

And provided, further, That this act shall not be so construed as to alter in any manner the terms of credit now allowed by law for the duties on goods, wares, or merchandise, imported.

CHAP. 5. An Act to allow a Salary to the Marshal of the district of Connecticut.

CHAP. 6. An Act for the relief of John B. Lemaitre, junior.
Approved 6th January, 1829.

CHAP. 7. An Act to amend an act, entitled "An act for the better organization of the Medical Department of the Navy," approved 24th May, 1828.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That every surgeon who was in the navy at the time of the passage of the act for the better organization of the medical department of the navy, approved twenty-fourth May, one thousand eight hundred and twenty-eight, shall be entitled to the additional pay and rations (according to length of service) provided for by the fourth section of that act, notwithstanding such surgeons may not have been examined, or received their appointments in the manner prescribed by the first section thereof.

CHAP. 8. An Act for altering the times for holding the sessions of the Circuit Court of the United States for the district of Georgia, at the places provided by law.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the sixth circuit court of the United States for the district of Georgia, which is by law appointed to be holden on the fourth Monday in November, annually, at Savannah, in the said state, shall hereafter be holden on the Thursday after the first Monday in November, annually, at Milledgeville, in the said state; and that the session of the said court which is now required by law to be holden on the sixth day of May, annually, at Milledgeville, in the said state, shall hereafter be holden on the Thursday after the first Monday in May, annually, at Savannah, in the said state; and that all process which shall have been issued, and all recognizances returnable, and all suits and other proceedings, which have been continued to the said courts respectively, on the days and at the places heretofore provided by law for their meeting, shall be returned, and held to be continued to the said courts, at the times and places herein provided for the meeting of the said courts respectively.

CHAP. 9. An Act to allow a Salary to the Marshal of the eastern district of Virginia.

CHAP. 10. An Act to establish a Port of Entry at Magnolia, in Florida.

CHAP. 11. An Act allowing an additional Drawback on Sugar refined in the United States, and exported therefrom.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That from and after the passage of this act, there shall be allowed a drawback on sugar refined in the United States, and exported therefrom, of five cents per pound, in lieu of the drawback at present allowed by law on sugar so refined and exported. *Provided*, that this act shall not alter or repeal any law now in force, regulating the exportation of sugar refined in the United States, except to change the rate of drawback when so exported. *And provided*, that this act shall cease to be in force, so soon as the exports of sugar shall be equal to the imports of the same article.

CHAP. 12. An Act in addition to the act, entitled "An act to amend the judicial system of the United States."

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That if, at any session of the supreme court, four justices thereof shall not attend on the day appointed for holding said session, such justice or justices as may attend shall have authority to adjourn said court from day to day, for twenty days after the time appointed for the commencement of said session, unless four justices shall sooner attend; and the business of said court shall not, in such case, be continued over to the next stated session thereof, until the expiration of said twenty days, instead of the ten days now limited by law.

SECT. 2. *And be it further enacted*, That if it shall so happen, during any term of the said supreme court, after four of the

judges shall have assembled, that on any day less than the number of four shall assemble, the judge or judges so assembling shall have authority to adjourn said court from day to day, until a quorum shall attend, and, when expedient and proper, may adjourn the same without day.

CHAP. 13. An Act to authorize the citizens of the territories of Arkansas and Florida, to elect their officers, and for other purposes

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the citizens of the territory of Arkansas, qualified to vote, shall and may, at such time and place, and under such rules and regulations, as the legislature of said territory may prescribe, elect their officers, civil and military, except such as, by the laws of Congress now in force, are to be appointed by the President of the United States; and except, also, justices of the peace, auditor and treasurer for said territory, who shall be chosen by joint vote of both houses of the legislature, at such time, and for such term of service, as the said legislature shall prescribe.

SECT. 2. *And be it further enacted*, That the term of service, and the duties and powers, fees, and emoluments, of the officers, civil and military, so chosen by the citizens, shall be prescribed by the legislature, and they shall be commissioned by the governor of the territory, and subject to be removed from office in such mode and for such cause as the legislature shall declare by law. All laws now in force, inconsistent with the provisions of this act, are hereby repealed This act shall take effect from and after the first day of December, one thousand eight hundred and twenty-nine.

SECT. 3. *And be it further enacted*, That every bill that shall have passed the House of Representatives and the Legislative Council of the legislature of the territory, shall, before it become a law, be presented to the governor of said territory; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that House shall agree to pass the bill, it shall be sent with the objections to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases, the votes of both Houses of the legislature shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journal of each House respectively. And if any bill shall not be returned by the governor within three days (Sunday excepted) after it shall have been presented, the same shall be a law, in like manner as if he had signed it, unless the legislature, by their adjournment, prevent its return, in which case it shall not be a law.

SECT. 4. *And be it further enacted*, That it shall be lawful for the qualified voters of the territory of Florida to elect their officers, civil and military, in such manner, and under such rules, regulations, restrictions, and conditions, as are prescribed in the foregoing provisions in the two first sections of this act.

SECT. 5. *And be it further enacted*, That the members of the legislative council in the territory of Florida, shall be elected by the qualified voters in the respective counties hereinafter designated, at the time provided by law, in the following manner, to wit: From the county of Escambia, two members; from the counties of Walton and Washington, one member; from the county of Jackson, two members; from the county of Gadsden, two members; from the county of Leon, two members; from the counties of Jefferson, Madison, and Hamilton, one member; from the county of Alachua, one member; from the county of Duval, one; from the county of Nassau, one; from the counties of Saint John and Musqueto, two; from the county of Monroe, one member. And any act of Congress, or of the legislative council of said territory, defining the limits of election districts in the same, inconsistent with the foregoing provision, be, and they are hereby, repealed.

SECT. 6. *And be it further enacted*, That it shall be lawful for the governor and legislative council, at any time hereafter, to alter or arrange the districts in such manner, as to secure, as near as may be, an equality of representation in each district.

SECT. 7. *And be it further enacted*, That the act of the governor and legislative council of the territory of Florida, fixing the seat of justice of Jackson county, in said territory, be, and the same is hereby, annulled; and the people and local autho-

rities of said county shall have the privilege of selecting their county seat, in such manner as other counties have been authorized to do, under the laws of said territory.

Approved 21st January, 1829.

CHAP. 14. An Act to allow further time to complete the issuing and locating of Military Land Warrants.

CHAP. 15. An Act authorizing the laying off a town on Bean river, in the state of Illinois, and for other purposes.

CHAP. 16. An Act releasing the lien of the United States upon a part of the land of Benjamin Owens, in Anne Arundel county, state of Maryland, to the trustees of Mount Zion meeting-house, in said county and state.

CHAP. 17. An Act for the relief of Daniel Goodwin, executor of Benjamin Goodwin, deceased.

Approved 5th February, 1829.

CHAP. 18. An Act to provide for the purchase and distribution of certain copies of the Digest of the Laws of the United States, by Thomas F. Gordon.

CHAP. 19. An Act to alter the time for holding the sixth Circuit Court of the United States, for the district of South Carolina.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the sixth circuit court of the United States, for the district of South Carolina, which is required by law to be holden on the second Monday in December, annually, shall hereafter be holden on the fourth Monday in November, annually; and that all process which shall have been issued, and all recognizances returnable, and all suits and other proceedings, which have been continued to the said court, on the day heretofore provided by law for the meeting of the same, shall be returned and held continued to the said court, at the time herein provided for the meeting thereof.

CHAP. 20. An Act to authorize the appointment of a Surveyor for the Virginia military district, within the state of Ohio.

CHAP. 21. An Act for the relief of Jacob Rentleman.

CHAP. 22. An Act for the relief of Augustus Aspinwall

CHAP. 23. An Act for the relief of Robert L. Kennon.

Approved 24th February, 1829.

CHAP. 24. An Act making additional appropriations for the support of Government for the year one thousand eight hundred and twenty-nine.

CHAP. 25. An Act making appropriations for building light houses and beacons, and placing buoys, and for improving harbours, and directing surveys.

CHAP. 26. An Act making additional appropriations for the military service of the United States, for the year one thousand eight hundred and twenty-nine.

CHAP. 27. An Act authorizing the subscription of Stock in the Chesapeake and Delaware Canal Company, and in the Dismal Swamp Canal Company.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the secretary of the treasury be, and he is hereby authorized and directed to subscribe, in the name and for the use of the United States, for seven hundred and fifty shares of the capital stock of the Chesapeake and Delaware Canal Company, and also for two hundred shares of the capital stock in the Dismal Swamp Canal Company, and pay for the same at such times, and in such proportions, as may be required by the said companies respectively, to be paid out of any money in the treasury not otherwise appropriated.

SECT. 2. *And be it further enacted*, That the secretary of the treasury shall vote for president and directors of the said companies respectively, according to such number of shares, and shall receive upon the said stock the proportion of the tolls which shall, from time to time, be due to the United States for the shares expended.

CHAP. 28. An Act making provision for the payment of pensions to the widow or children of pensioners, in certain cases, and for other purposes.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That in case of the death of any invalid pensioner, before the certificate of the continuance of his diability, required by the act, entitled "An act regulating the payments to invalid pensioners," passed March third, one thousand eight hundred and nineteen, was obtained, it shall be lawful for the secretary of war, and he is hereby directed, to pay to the legal representatives of such deceased invalid, the arrears of pension due at the time of his death, at the rate at which it was fixed at his last examination. *Provided*, such last examination was within two years from the time of his death.

SECT. 2. *And be it further enacted*, That whenever any revolutionary pensioner shall die, the secretary of war shall cause to be paid the arrears of pension due to the said pensioner at the time of his death; and all payments under this act shall be made to the widow of the deceased pensioner, or her attorney; or if he left no widow, or she be dead, to the children of the pensioner, or to their guardian, or his attorney; and if no child or children, then to the legal representatives of the deceased.

SECT. 3. *And be it further enacted*, That in all cases of applications for pensions, for wounds received in the revolutionary war, the testimony to establish the facts may be authenticated in the same manner with those who apply for pensions for wounds received in the late war with Great Britain.

CHAP. 29. An Act making appropriations for completing certain Roads, and for making examinations and surveys.

CHAP. 30 An Act for the construction of the Cumberland Road, westwardly of Zanesville.

CHAP. 31. An Act for the continuation of the Cumberland Road.

CHAP. 32. An Act making appropriations for the Indian Department, for the year one thousand eight hundred and twenty-nine.

CHAP. 33. An Act to authorize a subscription for stock, on the part of the United States, in the Louisville and Portland Canal Company.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the secretary of the treasury be, and he hereby is, authorized and directed to subscribe for or purchase, in the name and for the use of the United States, any stock which may have been forfeited to the company, and which shall be undisposed of on the fourth day of March next, not exceeding thirteen hundred and fifty shares, of the capital stock of the Louisville and Portland Canal Company; and to pay for the same, when called upon by said company, out of any money in the treasury not otherwise appropriated. *Provided*, said shares can be had for a sum not exceeding one hundred dollars each.

SECT. 2. *And be it further enacted*, That the said secretary of the treasury shall vote for president and directors of said company, according to such number of shares, and shall receive, upon the said stock, the proportion of tolls which shall, from time time, be due to the United States for the stock aforesaid.

CHAP. 34. An Act making additonal appropriations for the support of the Navy of the United States, for the year one thousand eight hundred and twenty-nine.

CHAP. 35. An Act making additional appropriations for the payment of the Revolutionary and other Pensioners of the United States, for the year one thousand eight hundred and twenty-nine.

CHAP. 36. An Act making appropriations for the erection and completion of certain Barracks and Quarters, and for other purposes.

CHAP. 37. An Act making additional appropriations for certain Fortifications of the United States, for the year one thousand eight hundred and twenty-nine.

CHAP. 38. An Act providing for the printing and binding sixty thousand copies of the abstract of Infantry Tactics, including Manœuvres of Light Infantry and Riflemen, and for other purposes.

CHAP. 39. An Act to authorize the establishment of a Town, on land reserved for the use of schools, and to direct the manner of disposing of certain reserved quarter sections of land, for the seat of government in Florida.

CHAP. 40. An Act confirming the Reports of the Register and Receiver of the Land Office for the district of Saint Stephens, in the state of Alabama, and for other purposes.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That all the claims to lands and town lots contained in the abstracts denominated A, number one, D, number one, E, number one, F, number one, reported to the treasury department by the register and receiver of the land office for the district of Saint Stephens, in the state of Alabama, under the provisions of the act of Congress of the third of March, one thousand eight hundred and twenty-seven, be, and the same are hereby, confirmed to the extent therein recommended for confirmation.

SECT. 2. *And be it further enacted*, That all the claims contained in special reports, numbered one to four, inclusive, and in a supplementary report of the said register and receiver, made as aforesaid, be, and the same are hereby, confirmed.

SECT. 3. *And be it further enacted*, That every person or persons, or the legal representatives of such person or persons, who on the fifteenth day of April, one thousand eight hundred and thirteen, had, for ten consecutive years prior to that day, been in possession of a tract of land, not claimed by any other person, and not exceeding the quantity contained in one league square; and who were, on that day, resident in that part of Louisiana

situated east of Pearl river, and west of the Perdido, and below the thirty-first degree of north latitude, and had still possession of such tract of land, shall be authorized to file their claim in the manner required in other cases, before the said register and receiver, at Saint Stephens, for their decision thereon. And it shall be the duty of the said register and receiver to hear and record the evidence offered to support such claim; and if the same shall be established by sufficient proof, agreeably to the provisions of this section, the said officers shall, in their report, recommend the confirmation of the right to such claim, as in other cases. *Provided*, that no more land shall be reported for confirmation, by virtue of this section, than is actually claimed by the party, or than is contained within the acknowledged and ascertained boundaries of the tract claimed; nor shall the provision of this section authorize the confirmation of any land heretofore sold by the United States.

SECT. 4. *And be it further enacted*, That the confirmation of all the claims provided for by this act, shall amount only to a relinquishment for ever, on the part of the United States, of any claim whatever to the tracts of land and town lots so confirmed, and that nothing herein contained shall be construed to affect the claim or claims of any individual or body politic or corporate, if any such there be.

SECT. 5. *And be it further enacted*, That the register and receiver of the land office at Saint Stephens be, and they are hereby, invested with power to direct the manner in which all claims to lands and town lots, which have been confirmed by this and former acts of Congress, in their district, shall be located and surveyed, having regard to the laws, usages, and customs of the Spanish government on that subject, and also the mode adopted by the government of the United States, in surveying the claims confirmed by virtue of the second and third sections of an act of Congress, entitled "An act regulating the grants of lands, and providing for the disposal of the lands of the United States, south of the state of Tennessee," approved the third of March, one thousand eight hundred and three; and that so much of the fourth section of the "act supplementary to the several acts for adjusting the claims to land, and establishing land offices in the district east of the island of New-Orleans," approved the eighth of May, one thousand eight hundred and twenty-two, as interferes with the power granted to the register and receiver of the land office at Saint Stephens, be, and the same is hereby, repealed.

SECT. 6. *And be it further enacted*, That certificates of confirmation and patents shall be granted for all lands and town lots confirmed by virtue of the provisions of this act, in the same manner as patents are granted for lands and town lots confirmed under former acts of Congress.

SECT. 7. *And be it further enacted*, That the secretary of the treasury be, and he is hereby, authorized and empowered to make such compensation, not exceeding two hundred and fifty dollars, in addition to the sum already paid, to the present receiver of the land office at Saint Stephens, as to him may seem a just and proper equivalent for the services rendered by him in the discharge of the duties under the provisions of an act of Congress passed on the third day of March, one thousand eight hundred and twenty-seven.

CHAP. 41. An Act to provide for the apprehension and delivery of Deserters from certain foreign vessels in the ports of the United States.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That on application of a consul or vice-consul of any foreign government, having a treaty with the United States, stipulating for the restoration of seamen deserting, made in writing, stating that the person therein named has deserted from a vessel of any such government while in any port of the United States, and on proof, by the exhibition of the register of the vessel, ship's roll, or other official document, that the person named belonged at the time of desertion to the crew of the said vessel, it shall be the duty of any court, judge, justice, or other magistrate, having competent power, to issue warrants to cause the said person to be arrested for examination; and if, on examination, the facts stated are found to be true, the person arrested, not being a citizen of the United States, shall be delivered up to the said consul or vice consul, to be sent back to the dominions of any such government, or, on the request and at the expense of the said consul or vice consul, shall be detained until the consul or vice consul finds an opportunity to send him back to the dominions of any such govern-

ment. *Provided, nevertheless*, that no person shall be detained more than two months after his arrest; but at the end of that time shall be set at liberty, and shall not be again molested for the same cause. *And provided, further*, that if any such deserter shall be found to have committed any crime or offence, his surrender may be delayed until the tribunal before which the case shall be depending, or may be cognizable, shall have pronounced its sentence, and such sentence shall have been carried into effect.

CHAP. 42. An Act to continue the present mode of supplying the army of the United States.

CHAP. 43. An Act for the relief of the Navy Hospital Fund.

CHAP. 44. An Act for the relief of William Otis.

CHAP. 45. An Act for the relief of George Wilson, of Pennsylvania.

CHAP. 46. An Act for the relief of John T. Smith and Wilson P. Hunt.

CHAP. 47. An Act for the relief of the heirs of John Gwyn.

CHAP. 48. An Act for the relief of Thomas Griffin.

CHAP. 49. An Act for the benefit of the trustees of the Valley Creek Academy, in the state of Alabama.

CHAP. 50. An Act making appropriations for carrying into effect certain treaties with the Indian tribes, and for holding a treaty with the Pattawatimas.

Approved 2d March, 1829.

CHAP. 51. An Act making appropriations for the public buildings, and for other purposes.

CHAP. 52. An Act making additional appropriations for completing and repairing Piers, for the improvement of certain Harbours, and of the navigation of certain rivers.

CHAP. 53. An Act for the preservation and repair of the Cumberland Road.

CHAP. 54. An Act to authorize the President of the United States to cause the reserved Salt Springs in the state of Missouri to be exposed to public sale.

CHAP. 55. An Act to authorize the President of the United States to cause the reserved Lead Mines, in the state of Missouri, to be exposed to public sale, and for other purposes.

CHAP. 56. An Act to incorporate the Washington, Alexandria, and Georgetown Steam Packet Company.

CHAP. 57. An Act providing for ceding to the state of South Carolina the jurisdiction over, and the title to, a certain tract of land, called Mount Dearborn, in the said state.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the secretary of war be, and he is hereby, authorized and required to appoint a commissioner, to meet such commissioner as may be appointed on the part of the state of South Carolina, to assess the value of a tract of land on the Catawba river, at or near Rocky Mount, (and commonly known as Mount Dearborn,) or so much thereof as in the opinion of the superintendant of public works in South Carolina, may be important or necessary for the completion or preservation of the public works of said state. And if said commissioners shall disagree as to the value of said land, they are hereby authorized to choose, jointly, a third commissioner, the assessment and valuation of any two of whom, when certified under their hands and seals, shall be conclusive.

SECT. 2. *And be it further enacted*, That so soon as the state of South Carolina shall pay into the treasury of the United States the amount of such valuation, the secretary of war be, and he is hereby, directed to convey to the state of South Carolina all the right and title of the United States in or to said land so assessed; and from and after the execution of said conveyance, the jurisdiction of the United States over the soil so conveyed, be, and the same is hereby, retroceded to the state of South Carolina.

CHAP. 58. An Act for the relief of Charles A. Burnett.

CHAP. 59. An Act for the relief of the legal representatives of John Guest, deceased.

CHAP. 60. An Act for the relief of Samuel Chesnut.

CHAP. 61. An Act for the relief of the representatives of James A. Harper, deceased.

CHAP. 62. An Act for the relief of Thomas Hunt.

CHAP. 63. An Act for the relief of William R. Maddox.

CHAP. 64. An Act for the relief of Joshua Foltz.

CHAP. 65. An Act concerning the government and discipline of the Penitentiary, in the district of Columbia.

SECT. 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the Penitentiary erected in the city of Washington, in pursuance of "An act to provide for erecting a penitentiary in the district of Columbia, and for other purposes," passed twentieth May, eighteen hundred and twenty-six, shall be designated and known as the penitentiary

for the district of Columbia, and shall be exclusively appropriated to the confining such persons as may be convicted of offences which now are, or may hereafter be, punishable with imprisonment and labour, under the laws of the United States, or of the district of Columbia.

Sect. 2. *And be it further enacted*, That it shall be the duty of the President of the United States to appoint, annually, five respectable inhabitants of the district of Columbia, to be inspectors of the said Penitentiary, who shall severally hold their offices for one year, from the date of their appointment.

Sect. 3. *And be it further enacted*, That the President shall also appoint one warden of the said Penitentiary, who shall hold his office during the pleasure of the President.

Sect. 4. *And be it further enacted*, That said inspectors shall hold their first meeting within ten days after their appointment; they shall appoint one of their number to be their secretary, who shall keep regular records of their proceedings; a majority shall be a quorum for the transaction of all business, and all questions shall be decided by a majority of those present; they shall hold regular meetings of the board, at least once in every month, and oftener, if they shall find it necessary; they shall, singly, in turns, visit and inspect the Penitentiary, at least once in each week, upon some stated day, to be fixed by their by-laws; they shall direct in what labour the convicts shall be employed; it shall be their duty to prepare a system of rules and regulations, minutely providing for the discipline, health, and cleanliness of the Penitentiary, the hours of labour, meals, and confinement, the government and behaviour of the officers and convicts, so as best to carry into effect the several directions and requisitions of this act; they shall take care that these rules and regulations be made known to the officers of the prison, and the convicts, and that the strictest obedience be paid thereto; they shall provide that the strictest attention be paid to preserve cleanliness throughout the buildings, kitchens, cells, bedding, and as far as may be, in the persons and clothing of the convicts; they shall appoint, and at their pleasure remove, such keepers and other inferior officers and servants, as may be required for the service and government of the Penitentiary; they shall, from time to time, inspect the accounts of the Penitentiary, and see that the affairs thereof are conducted with economy and integrity; they shall, in the month of January in every year, report to Congress a detailed account of the expenses and income of the Penitentiary, the number of convicts received, discharged, or deceased during the year, the rules and by-laws passed, altered, or repealed, within such year, and such other matters relating to the discipline and management of the prison, as may be proper to make known its state and condition; and it shall be their duty so to manage the affairs of the Penitentiary, if it be possible, that the proceeds of the labour of the said convicts shall pay all the expenses of the said Penitentiary, and more; but nothing herein contained shall prevent the said inspectors from employing the said convicts in labour for the United States. And if the said Penitentiary shall fail to support itself, it shall be the duty of the said inspectors to state, in their annual report to Congress, what they suppose to be the reason of such failure.

Sect. 5. *And be it further enacted*, That the warden shall receive a salary of twelve hundred dollars a year; the other officers and servants of the Penitentiary shall receive such annual or monthly pay as the inspectors shall direct.

Sect. 6. *And be it further enacted*, That it shall be the duty of the warden to keep accurate accounts of all materials bought or furnished for the use or labour of the convicts, and also of the proceeds of their labour; he shall make all contracts and purchases for the supplies necessary for the penitentiary; he shall have power to let out the labour of the convicts by contract, subject always, however, to the rules and discipline of the Penitentiary; he shall, under the superintendence and inspection of the inspectors, oversee and manage all the affairs of the Penitentiary, and shall be responsible for the due enforcement of its rules, by-laws, and discipline; he shall make out and deliver to the inspectors, at each of their monthly meetings, an account of all moneys received and expended by him on account of the Penitentiary, during the preceding month, specifying from whom received, and to whom paid, and for what, which account shall be sworn to by the warden, and carefully filed and preserved among the papers of the board of inspectors. He shall, also, on the first Monday of January, April, July, and October, in each

year, make out and exhibit to the proper accounting officer of the treasury department, an account of all moneys received and paid on account of the Penitentiary, for the last three months, specifying from whom received, to whom paid, and for what, and shall settle the same with the said department.

SECT. 7. *And be it further enacted*, That the warden, before he enters upon the duties of his office, shall give bond to the United States, with sufficient security, to be approved by the inspectors of the Penitentiary, in such sum as they shall direct, conditioned that he will faithfully perform the duties of his office, and truly account for all goods, money, or other articles belonging to the United States, or to individuals, which may, in the discharge of the duties and trusts of his office, come into his custody, and pay or deliver the same over to the United States, or such persons as may be legally entitled thereto, whenever he shall be lawfully required; which bond may be sued in the name of the United States, for the use of the United States, or any individual who may have a claim thereon, as often as the said condition may be broken; provided such suit shall be brought against the security within six years of the time when the cause of action accrued.

SECT. 8. *And be it further enacted*, That if the warden of the said Penitentiary shall have any interest himself in any contract made by him touching the affairs of the Penitentiary, with a view of gaining for himself, either directly or indirectly, any profit or advantage thereby, he shall be deemed guilty of a misdemeanor, and he shall, on conviction thereof, be punished by fine, not exceeding two thousand dollars, and be dismissed from office, and every such contract may be declared void by the said inspectors.

SECT. 9. *And be it further enacted*, That the said inspectors shall not be concerned in any contract touching the affairs of the said Penitentiary; but if any such contract shall be at any time made, in which the said inspectors, or any of them, have, directly or indirectly, any interest, the same, so far as relates to that interest, shall be wholly null and void.

SECT. 10. *And be it further enacted*, That all suits that may be necessary to be brought for any matter or thing relating to the affairs of the said prison, shall be brought in the name of the United States, whether the contract on which such suit is founded be made in their name, or not.

SECT. 11. *And be it further enacted*, That the male and female convicts confined in the said Penitentiary shall be kept, and shall labour, wholly separate and apart from each other. Every convict shall be confined singly in a separate cell at night, and at such times of the day as he or she may be unemployed in labour, except at such hours and places as may be specially assigned, by the rules of the Penitentiary, for religious or other instruction, or for meals, or when transferred to the infirmary on account of sickness, upon the recommendation of the physician. Each convict, immediately upon being received into the Penitentiary, shall be thoroughly cleansed with warm water and soap, and shall have the hair cut close; and the warden and other officers shall take the strictest precautions to guard against the introduction of any infectious or contagious disease, from the persons or clothing of such convicts; which precautions it shall be the duty of the inspectors to regulate and prescribe in their by-laws. A descriptive list of the names, ages, persons, crimes and sentences of the convicts, shall be kept by the warden, and such description shall be entered immediately upon the reception of each convict. The convicts shall be clothed at the public expense during the whole term of their confinement, in habits of coarse and cheap materials, uniform in colour and make, and so striped or otherwise conspicuously marked, as may clearly distinguish them from the ordinary dress of other persons. Their bedding, and other personal accommodations, shall be of the cheapest and coarsest kind, consistent with use and durability. The convicts shall be fed on the cheapest food which will support health and strength, with as little change or variety in the said diet, as may be consistent with the health of the convicts and the economy of the Penitentiary. They shall be kept, as far as may be consistent with their age, health, sex, and ability, to labour of the hardest and most servile kind, and as far as may be, uniform in its nature, and of a kind where the work is least liable to be spoiled by ignorance, neglect, or obstinacy, or the materials to be injured, stolen, or destroyed. They shall not at any time be permitted to converse with one another, or with strangers, except by the special permission and in presence of some officer of the

prison, as may be regulated by the by-laws. They shall be made to labour diligently, in silence, and with strict obedience.

Sect. 12. *And be it further enacted*, That the warden of the said Penitentiary shall have power to punish any convict in the Penitentiary, who shall wilfully violate or refuse to obey the rules of the Penitentiary, or to perform the work assigned him, or who shall resist by violence any of the officers of the Penitentiary in the exercise of their lawful authority, or shall wilfully destroy any property, tools, or materials; and it shall be the duty of the said warden to inflict such punishment, either by confinement in solitary cells, by diet on bread and water, by putting such convict in irons, or in the stocks; but all such punishments shall be regularly reported to the visiting inspectors at the next weekly visitation, and to the board of inspectors at their monthly meeting; and it shall be the duty of the inspectors to adopt and enforce special rules and by-laws, regulating the times, measure, extent, and mode of such punishments, in relation to the several offences against the discipline of the Penitentiary, and to report the same in their annual report to Congress, whenever they shall be adopted, altered, or repealed.

Sect. 13. *And be it further enacted*, That the inspectors shall appoint one regularly practising physician, to be the physician and surgeon of the Penitentiary, whose duty it shall be to visit the Penitentiary at such times as may be prescribed by the inspectors, and to render all medical and surgical aid which may be necessary. One apartment, or more, as may be needed, shall be fitted up as an infirmary, and in case of sickness of any convict, he or she, upon examination of the physician, shall upon his order be removed to the infirmary, and the name of such convict shall be entered in a hospital book, to be kept for that purpose; and whenever the physician shall report to the warden that such convict is in a proper state to return to the ordinary employment of the prison, such report shall be duly entered in the same book, and the convict shall return to the ordinary discipline of the Penitentiary, so far as may be consistent with his or her health and strength. Special rules for the order and government of the infirmary, shall be made and enforced by the inspectors; and nothing in this act contained, shall be construed to forbid any such relaxation of the general discipline of the Penitentiary, as may be required for the sick.

Sect. 14. *And be it further enacted*, That the inspectors shall have power, and it is hereby made their duty, to provide for the separate labour and instruction of any convict under the age of fourteen years, and to make and enforce such rules and regulations therefor, as may in their judgment most conduce to the reformation and instruction of such youthful convicts, any thing in this act to the contrary notwithstanding. They shall also have power, and it shall be their duty, to provide for all the convicts the means of religious worship, and religious and moral instruction, subject, however, to general rules, not inconsistent with the discipline heretofore prescribed.

Sect. 15. *And be it further enacted*, That no person shall be permited to visit the said Penitentiary, without a written order from one or more of the said inspectors, except the President of the United States, the secretaries of the several departments of the government, members of Congress, and the judges of the courts of the United States.

Sect. 16. *And be it further enacted*, That if any keeper, assistant keeper, or other officer or servant, employed in or about the said Penitentiary, shall convey out of or bring into the Penitentiary, to or from any convict confined there, any letter or writing, or shall bring into the said Penitentiary, to sell or give away, any spirituous or vinous liquors, or any other thing whatsoever, without the consent, in writing, previously obtained, of the said inspectors, every such person so offending shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by fine, not exceeding five hundred dollars, and imprisonment in the jail of the county for any time not exceeding one year.

Sect. 17. *And be it further enacted*, That the inspectors shall prescribe, and it shall be the duty of the warden rigidly to enforce, such rules for the government of the subordinate officers of the Penitentiary, as may prevent all tyrannical or violent behaviour to the convicts, or all conversations between them and the convicts, or with each other within their hearing, except for necessary purposes, and may best preserve order, silence, and gravity of deportment, throughout the establishment.

SECT. 18. *And be it further enacted*, That in case of the death of the warden, or the temporary vacancy of his office, or his absence, sickness, or other disability, such keeper or other officer as may be especially designated by the inspectors, shall have power to exercise the authority and discharge the several duties of the warden, as prescribed by this act and the rules of the Penitentiary.

SECT. 19. *And be it further enacted*, That the sum of twenty-seven thousand dollars be, and the same is hereby, appropriated out of any money in the treasury not otherwise appropriated, for the purpose of carrying this act into effect, and for completing the said Penitentiary, and preparing it for the reception of convicts.

Approved 3d March, 1829.

RESOLUTIONS.

No. 1. A Resolution amendatory of a joint resolution, passed third March, one thousand eight hundred and nineteen.

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, That within thirty days before the adjournment of every Congress, each House shall proceed to vote for a printer to execute its work for and during the succeeding Congress; and the person having the majority of all the votes given, shall be considered duly elected; and that so much of the resolution, approved the third day of March, one thousand eight hundred and nineteen, entitled "A resolution directing the manner in which the printing of Congress shall be executed, fixing the prices thereof, and providing for the appointment of a printer or printers," as is altered by this resolution, be, and the same is hereby, rescinded.

Approved 5th February, 1829.

No. 2. A Resolution in relation to the survey and laying out a Military Road, in the state of Maine.

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be, and he hereby is, authorized, if it shall seem to him necessary for maintaining the rights, and not inconsistent with the engagements of the United States, to cause to be surveyed and laid out a military road, to be continued from Marshill, or such other point on the military road already laid out in the state of Maine, as he may think proper, to the mouth of the river Madawaska, in the state of Maine.

Approved 2d March, 1829.

TRIALS AND LEGAL DECISIONS,

IN THE COURT OF IMPEACHMENTS AND FOR THE CORRECTION OF ERRORS OF THE STATE OF NEW YORK.

Charles King and Johnston Verplanck, plaintiffs in error, vs. Erastus Root, defendant in error.

This cause was originally commenced in the supreme court of the state of New York, by the plaintiff, now defendant in error, (Erastus Root,) against the defendants, for an alleged libel. The libel, the testimony produced at the trial of the cause, the charge of the judge, and the subsequent proceedings with the view of obtaining a new trial, are fully detailed in the American Annual Register for the year 1826–7, page 231.

Inasmuch as the publication complained of was concerning the official conduct of a public officer, and as the decision of the supreme court was upon that point; it was thought expedient to subject its judgment to the supervision of the highest legal tribunal in the state, in order to ascertain the proper limits, within which the press was to be restrained, when discussing the conduct of public officers. That decision was finally obtained, and was adverse to the defendants. An examination of the proceedings in this case will suffice to show, how far the judgment of the court restrains the freedom of the press. Among the questions arising in the cause, was one deeply interesting to the community, viz., whether, in a prosecution for a publication concerning the official conduct of a public officer, the belief of the publisher in the truth of the charges is a question for the consideration of the jury: whether the intention is an inference of law, or a question of fact.

The vital importance of these questions to the freedom of a well regulated press in this country, would form a sufficient apology for the continuation of the report of this case; and the circumstances under which this decision was given; and the manner in which it appears reported among the decisions of the courts, furnish additional reasons.

Upon the adoption of the amended constitution in 1822, the government of the state of New York fell into the hands of the political party to which the plaintiff belonged, and all its different departments were organized under the auspices of that party. The court for the trial of impeachments and correction of errors, which is the court of last resort, is composed of the senate and the chancellor, for the revision of judgments in the common law courts. The political character of a large majority of its members, at the time of the decision of this cause, was the same as that of the plaintiff. Certain grounds were distinctly urged to the supreme court, and to the court for the correction of errors, in favour of a new trial: and considering the importance of the principles involved in this decision, and the nature of the cause; it was due to the profession, and to the cause of truth and justice, that the principal reasons, or at least the points on which the counsel for the defendants relied for a reversal of the judgment, should have obtained a place in the reports. This however not having been done, but, contrary to the custom of the reporters, the decisions of both courts appearing, unaccompanied either by the reasons of counsel, or the points presented by them for decision,* it has been deemed proper to insert in this volume, the ar-

* Vide 7 Cowen, 616—4 Wendell, 135.

gument of the opening counsel for the defendants. The counsel for the plaintiff were requested to furnish their arguments in reply, but they declined doing it.

The argument upon the writ of error was brought on in the court for the trial of impeachments and correction of errors, on the 20th of October, 1829.

Joseph Blunt opened the argument for the plaintiffs in error.

This action, he stated, was brought for a publication in the New York American, alleged to be libellous, and made under the following circumstances:

During the presidential election of 1824, an extra session of the legislature of New York was called by the governor, with the view of giving to the people, in their primary assemblies, the choice of the members of the electoral college of this state.

A powerful party in the legislature, favouring the election of Mr. Crawford, was opposed to this project; and while it was warmly urged upon the legislature by a large portion of the community, it was as warmly resisted by others. Great excitement was produced, and the attention of the whole state was directed upon the proceedings of the legislature at Albany. The meeting took place at a season of the year, when Albany was thronged with strangers, and the capital was daily filled during the session with intelligent and distinguished men from the different states of the confederacy. On this striking occasion, in the presence of an assemblage comprehending many of the most influential and illustrious names of our country, the plaintiff, who is the defendant in error, while presiding over the senate of the state, conducted himself in a manner which induced one of the defendants, who was then in the senate chamber, to make the publication complained of, giving an account of his appearance and conduct at that time, and to animadvert upon it in language, which such conduct fully deserved.

I do not mean to contend in this place, that this account was accurate. This I am precluded from doing by the verdict of the jury. All that the defendants are required to show is, that they fully believed that their account was correct, that they had good reasons for believing it, and that they made no intentional misrepresentations.

If that were the case, no language could be deemed too harsh and severe in commenting upon acts, which degraded not only the station filled by the plaintiff, but reflected discredit upon the people of the state, and the body over which he presided. A citizen, attached to our institutions, and zealous for their character, and forming such conclusions from what actually passed before his eyes, would be filled with indignation, and his justly excited feelings would manifest themselves in strong and appropriate expressions.

Such was the impression made upon the mind of the defendant, who wrote the libel in question, by the conduct of the plaintiff. Believing him to have been intoxicated on that occasion, he did not hesitate to say so; and he animadverted upon his situation in terms of pointed severity.

For so doing this action was brought by the plaintiff, and the venue was laid in Delaware county, the place of his own residence. The defendants sought to have the trial take place either in Albany, where the transaction occurred, or in New York, where many persons, who were present at the time alluded to, resided.

This motion was resisted by the plaintiff, and upon the pretence that he had as many witnesses in his own county as the defendants had in New York, (although he stated in his deposition that he was unacquainted with their names,) the venue was retained in Delaware.

Under such circumstances the trial came on, and the defendants acting in good faith and under the impressions which influenced them in publishing the libel, attempted to prove it to be true. With this view they introduced several witnesses who were present on the occasion referred to, all men

of the highest character in both public and private life;—three members of the senate,—two gentlemen who now represent their country at different courts of Europe,—and three others who were also present, and who all stated that the description given of the plaintiff in the alleged libel was substantially true. Indeed the statement given by them fully justified the publication, and the judge who tried the cause charged the jury that "there was no doubt of the entire credibility of every witness upon either side. They were gentlemen of the first integrity and intelligence, and no inducement could be supposed in the case sufficient to lead them to misrepresent or withhold any fact within their knowledge." In addition to this testimony, they proved that it was currently reported in Albany at the time that the plaintiff was intoxicated in the senate on the occasion alluded to; and the character of the plaintiff as an habitual and notorious drunkard was established beyond all controversy.

On the other hand, the plaintiff produced several witnesses, who stated that they were also present in the senate, and that in their opinion he was not intoxicated. They did not, however attempt to deny that his character for sobriety was bad.

After a full discussion of the testimony, the Hon. judge who tried the cause charged the jury and they retired. After being out all night they came in, and upon his reiterating a portion of the charge to which exception had been taken, they rendered a verdict for $1400 in favour of the plaintiff.

The supreme court was moved for a new trial, on exceptions to the legal principles advanced in the charge of the judge, and also on the ground, that the verdict was contrary to evidence. This motion having been denied, a writ of error was brought on the bill of exceptions, and the cause is now here for a reversion of the legal doctrines laid down at the trial of this cause. The grounds urged upon the consideration of the supreme court are comprehended in the following propositions:

1st. Proper testimony was excluded from the consideration of the jury.

2d. The judge ought, when required so to do, to have charged the jury that if they believed the publication to have been made in good faith, and with a full belief in its truth, these circumstances should induce them to mitigate the damages.

3d. The question of malice ought to have been submitted upon all the evidence, as a question of fact for the decision of the jury.

It is to be observed, that at the trial of the cause, the defendants were not permitted to inquire into the general habits of the plaintiff for temperance, not even upon cross-examination.

The testimony concerning the prevalance of the concurrent reports at Albany as to the plaintiff's conduct in the senate on the occasion alluded to, was also excluded from the consideration of the jury, as well as the evidence of the general character of the plaintiff for intemperance, unless it appeared to be equal in degree with the offence charged. They were told that this testimony was not to be taken into consideration by them; not even in their estimation of damages; and this opinion concerning general character was reiterated, when the jury, puzzled as some were at the charge, came into court for new and clearer directions.

The jury were also told, and this formed one of the principal objections to the charge, that they were simply to inquire whether the plaintiff was intoxicated as described by the defendants. The intention and motives of the defendants in making the charge, their belief in its truth, were excluded from their consideration. Their malice, it was stated, and emphatically stated by the judge, was a legal inference; a conclusion of law from the falsity of the publication; and notwithstanding he was requested to direct the jury to inquire into the

motives of the defendants, he refused so to do, but persisted in saying that their intention or malice was a legal inference. (Here Mr. Blunt read the charge of the judge, vide Am. Ann. Register for 1826–7, p. 247, and then proceeded):

When this opinion came before the supreme court for revision, the court did not altogether confirm all the positions of the judge at circuit.

It assumed a new ground, and one which enabled it to avoid deciding directly upon all the questions submitted for its consideration.

The judge at the circuit charged the jury, that inasmuch as the defendants had professed to state what they saw, no concurrent reports at Albany of the plaintiff's drunkenness were admissible in mitigation of damages, as showing the belief of the defendants in their statement. The supreme court, perceiving this ground to be untenable, assumed a different one, and observed that the notice of justification accompanying the plea of not guilty, was an admission of malice, and therefore no evidence short of proving the truth of the charges was admissible in mitigation of damages, as showing the motives of the defendants.

This was a new ground, but still it as completely excluded the evidence offered in mitigation, as that assumed by the judge at circuit; and it will be incumbent on us, in reference to that point, to overturn both positions; and after reading the reasons advanced by the supreme court in support of its decision, we shall proceed to inquire into their validity, as well as into the correctness of those advanced by the judge at the trial. (The opinion of the supreme court was then read, vide page 259, Am. Ann. Register, for 1826–7.)

The first question he continued, that we shall submit for the consideration of this court, grows out of the rejection of proper testimony, whether by the total exclusion of it by the judge, or by his charging the jury to disregard it in making up their verdict. In cross examining the witnesses produced on the part of the plaintiff, they were asked what were the general habits of the plaintiff as to temperance. This course of cross examination being objected to, was prohibited by the judge.

What was the effect of this decision under the circumstances in which the cause was then placed? The jury was inquiring into the condition of the plaintiff at a particular time. Several respectable witnesses on the part of the defendants said that he was intoxicated. Others produced by the plaintiff, said that in their opinion he was sober. The testimony was conflicting, and it was the province of the jury to decide upon it. If then it had appeared, that it was the general and even invariable habit of the plaintiff to commence the day with strong and frequent potations, repeated as the day advanced, until the afternoon (the time concerning which the inquiry was made) would always find him completely under their influence, and in a state either of riotous or beastly drunkenness;—suppose that the proof to be produced would have established this as his invariable habit, (and we have a right to assume this as a fact,) what then was the effect of excluding it? It deprived the defendants of strong corroborative evidence, which would have fortified and strengthened the statements of their witnesses. If his habit was to get drunk every day, their opinion that he was intoxicated on the afternoon alluded to, was more likely to be correct than the opposite opinion; and the proof would have furnished the jury with a powerful reason to adopt their statement. Again, the motives of the defendants in making the publication were to be inquired into. Were they actuated by malice, or not? This was one of the questions the jury was compelled to pass upon; first, (as we shall contend,) in reference to the justification of the defendants; and secondly, in estimating the amount of damages.

Was this proof thus excluded calculated to throw any light upon their motives? In ascertaining this, we

must inquire whether they believed the charge or not, and whether they would not be more likely to believe that he was intoxicated at the time alluded to, provided he was in the habit of daily intoxication.

There were obviously some peculiarities in his appearance, from which some of the spectators drew one conclusion and others drew an opposite conclusion. The defendants' witnesses inferred that he was drunk, and his own witnesses thought that he was sober. The jury, in inquiring into the motives of the defendants were not only to ascertain which of these conclusions was correct; but also whether a man might not have fairly inferred that the plaintiff was intoxicated, and whether the defendants had not formed that opinion in good faith.

In both points of view therefore, the testimony was admissible, first, to fortify the conclusion drawn as to his intoxicated condition, and secondly to exculpate the defendants from all malice in making the charge. In the latter point of view the judge erred in charging the jury, that the concurrent report at Albany was not admissible in mitigation of damages.

If it was generally believed, that the plaintiff was in the condition in which he was described to be, it demonstrates that there was good reason to believe what the defendants published concerning him, and that the defendants believing it were not actuated by malice in making the publication. That the defendants made the statement in good faith is a complete answer to all imputation of malicious falsehood; and while malice forms a good ground for aggravating damages, the absence of malice affords an equally good reason for mitigating them.

These principles are so clear, that it is not a little remarkable that the judge should have ventured to charge in opposition to them, and the extraordinary reason he advanced for his extraordinary position deserves a particular examination.

The defendants stated that "they saw what they asserted," and therefore, said the judge, no concurrent report could have produced their belief in the charge. The honourable judge here fell into the common error of forming a general rule from particular instances, not altogether similar to the case under consideration.

If the charge had been made concerning a fact, about which an eye observer could have made no mistake, then the defendants' mode of stating it might have been evidence of malice. As if the defendants had stated, that they saw the plaintiff sentenced to an infamous punishment, for a criminal offence. Here there could have been no mistake, and in stating that they saw what they stated, they evince malice by asserting what they must have known to be false. But when the charge is simply an inference from appearances, and men might honestly draw different conclusions from the same appearances, the fact that many drew the same inference, as to the plaintiff's condition, affords strong proof of the sincerity of their belief, and of their good faith in making the statement complained of. It is one thing to be mistaken, and it is another to make an intentional misstatement, and although the injury to the plaintiff may be the same; the motive of the defendant, which in truth is the sole foundation of what are called vindictive damages, is entirely different in the latter case, and ought materially to mitigate the damages.

In the case of Wolcott vs. Hall, 6 Mass. 514, which was relied on in the supreme court, to sustain the doctrine of the circuit judge, the reports offered in evidence were not contemporaneous, and were rejected by the court, on the ground that the reports might have been set on foot by the very slander in question. They were consequently properly rejected. This case is different, inasmuch as the reports were contemporaneous with the conduct alluded to, and the publication was subsequently made in a New York journal. The true rule is laid down in Leceister *vs.*

Walter, 2d Campbell 251, and confirmed by this court, in the case of Paddocks *vs.* Salisbury, 2d Cowen 814. There, a general suspicion that plaintiff was guilty of the offence charged, was admitted in mitigation of damages, and the doctrine is reasonable, as such a suspicion or belief prepares the mind to adopt the opinion on which the charge is founded.

But the judge also said, at the circuit, that the concurrent report was not admissible, unless it appeared that defendants said nothing more than was reported at Albany. This was also an erroneous view of the principle. The principle is, that all mitigating circumstances, are admissible in mitigation. The proposition is so clear, and even identical, that an apology would be necessary for stating it, had it not been contradicted by such high authority. An exaggeration of a report is not so great an offence as a fabricated falsehood. The report showed that others entertained a belief, that the plaintiff was intoxicated at the time referred to, and the different opinions of men, as to the degree of excitement under which he laboured, could not so entirely alter the applicability of the rule, as to exclude the report from the consideration of the jury, in estimating the damages.

The judge was misled, by not preserving the distinction between a case, where the offence charged is different in character from that about which the report prevails, and where it only differs in degree, and not in kind. Here the offence was of the same character, and because the exact degree of intoxication was not specified in the report, it is most extraordinary, that the jury should not have been allowed to consider the concurrent opinions of other persons, as to the condition of the plaintiff, even as a circumstance in mitigation ;—that a general belief, which, if proved before the jury, from the mouths of the multitude who were present, would have completely exculpated the defendants, shall not be regarded, even as a mitigating circumstance. This is the doctrine of the judge, and it is, in itself, a doctrine so repugnant to reason and common sense, that the simple statement of it, is a stronger proof of its absurdity, than any argument and illustration that I can offer.

I now pass to the ground assumed by the supreme court, to justify the exclusion of the testimony offered in mitigation of damages. It was perceived that the reasons offered by the judge, at the circuit, were unsound, and that this exclusion could not be maintained on that ground. A new position was consequently taken, and technical doctrines were interposed, which as effectually excluded the defendants from their legitimate defence. In preparing this cause for trial, the defendants believing that they could substantiate the charges in the publication complained of, had given notice of their justification with their plea. They had also given notice that they would prove, "that the conduct and appearance of the plaintiff, at the time alluded to, were such as to induce the belief, that he was intoxicated, and to justify the obnoxious publication."

This notice was given in good faith, and in a full and honest belief of their ability to prove the charge. I would have a right, if it were necessary, even without proof, to assume this to be so. But it is not necessary. The good faith of the defendants is fully established by the statements of the respectable witnesses produced by them at the trial, who completely substantiated the truth of the belief, as far as human testimony could prove it. It is true, that this evidence did not produce conviction in the minds of a *Delaware* jury, but it at least established one fact, that the defendants sincerely believed the truth of their statements. The judge himself, said in his charge, that, "there was no doubt of the entire credibility of every witness, upon either side." And this after the defendants' witnesses swore to every particular fact asserted in the libel.

Upon a review of the whole testimony, it is impossible to doubt, that the defendants made the publication with proper motives and in good faith, and

that, believing it to be true, they gave the notice annexed to their plea.

In this state of facts, the supreme court refuses the application for a new trial, on account of the rejection of all this testimony, developing the real motives of the defendants, because (as it is gravely asserted in the opinion of the court,) the defendants admitted malice by undertaking to justify.

"By the notice annexed to the plea, the malice is confessed upon the record." "Such," say the court, after reiterating this doctrine, in various parts of its opinion, "are the conclusions to be drawn from adjudged cases and approved principles."

Supposing, for the sake of argument, this doctrine to be correct, in what situation does it place defendants in actions of libel? If they intend to justify, they must either plead or give notice of justification. Unless they do that, they are not permitted to offer any testimony establishing the truth of the libel. These are *approved principles*, and they are conformable to equity and common sense. If the defendant means to establish the truth of the charge, before a jury, it is reasonable that he should give the plaintiff notice of his intention.

But does it necessarily follow, that because defendants sometimes believe the charges they make to be true, they always make them maliciously? This publication was made concerning a public officer, then a candidate before the people for re-election. The statements made therein were concerning his public conduct. The subject matter was deeply interesting to the public. Now, I ask, if every accusation against a public officer necessarily proceeds from malicious motives? This is the effect of the doctrine. Whether true or false, the accusation is malicious. It proceeds from a malignant motive, because the justification must be preceded by a notice, and a notice according to the court "is an admission of malice upon the record."

If the defendants in this case believed the statements they made, they were bound to make the publication in question. They were bound, as good citizens and electors, to communicate these facts to their fellow-citizens. If the plaintiff were intoxicated, or if they believed him to have been so, as citizens of a free country, as editors of a public journal, they ought to have communicated the fact. They did believe it. Their witnesses believed it. They therefore were not actuated by malice in publishing their statement, but by a motive having reference to the public welfare. At all events, their motives were the proper subjects of inquiry before the jury, and not matter of record. If their belief in the truth of their statement continued unchanged, they were compelled to give a notice of justification in order to defend themselves. They do not say by that notice, that they made the charge maliciously, but that they continue to believe it true, and mean to produce their evidence before the jury at the trial. Grant that they labour under a delusion! Is self-deception malice? Is good faith and sincere belief malignity? Or did any defendant ever dream that by giving such a notice in good faith, he gave a written admission of his malice, which he had already, in his previous plea, expressly denied?

If this doctrine be true, it must be true in all cases where this *admission of malice* is to be found upon the record.

To what conclusions would this lead us? Suppose the plaintiff, on the occasion alluded to, had feigned drunkenness—that, actuated by a holy zeal for his party, like the elder Brutus, he had concealed his sanity and sobriety under the guise of a brutish behaviour and sottish demeanour. The defendants, not penetrating his patriotic motives, believe him to be what he seems, and they say the man is drunk. They also give notice when prosecuted, that they will prove the truth of their statement. At the trial the truth appears. The plaintiff proves that on that particular day, so far from yielding to his ordinary habits of intemperance, he had wholly abstained from drink, that he might act

more to the life the part of a drunken patriot. Are the defendants to be punished because they have been thus entrapped? and is their notice to be considered, as the court call it, an admission of malice on the record? Again, suppose the defendants to be informed of the peculation of a public officer, by credible persons, whose statements are fortified by documentary evidence. Upon this authority a statement is made, which is followed by a prosecution. A notice of justification of course is given. At the trial the men, upon whose authority the statement was made, do not appear: the documents are produced, and they are shown to be fabrications. The incorrectness of the charge is manifest—the character of a public servant has been injured, and his counsel call for high and vindictive damages for this *malicious* libel. The defendants now show that they were deceived; nay more, that this deception was set on foot by the plaintiff himself, who employed the informers, and fabricated the documents.

I ask if, in this case, the defendants' mistake is to be visited with vindictive damages? and yet, such is the legitimate consequence of this doctrine of "malice admitted upon the record." Can a court in this enlightened age assent to doctrines so repugnant to every principle of justice? Even the cases cited by the court to sustain this extraordinary proposition, are not similar to the one before the court. In the case of Wolcott *vs.* Hall, 6 Mass. 514, nothing was pleaded but a justification. The general issue, denying the averments in the declaration, (of which the malicious publication is a principal one,) was not pleaded. Nothing but the truth of the charge was pleaded; and under the rule that nothing comes in issue, but what is put in issue by the pleadings, the jury were confined to that simple inquiry. The case of Matson *vs.* Buck, 5 Cowen, 499, is placed upon the case of Wolcott *vs.* Hall. Here the general issue was pleaded with a notice, and in such cases all evidence in mitigation is admissible. Such was the law as declared by the supreme court of Massachusetts, (the same court, whose decision in Wolcott and Hall met with such approbation from the supreme court of this state,) in the cause of Larned *vs.* Buffington, 3 Mass. 546. In that case, the general issue was pleaded with a plea of justification, and the court there admitted evidence in mitigation, and said that where, through the fault of the plaintiff, defendant had good cause to believe the charge, it was a ground of mitigation. He may also prove that he made the publication with honest intentions.

The same rule was laid down in the cases of Leceister *vs.* Walker, 2 Camp. 251, Moor, 1 Maule and Selwyn, 811, and was recognised by the supreme court of New York in Paddock *vs.* Salisbury, 2 Cowen, 811.

The courts of our sister states have adopted the same rule. The supreme court of Connecticut, in Bailey *vs.* Hyde, 3 Conn. R. 463; that of Massachusetts in Remington *vs.* Congdon, 2 Pickering 311; of New Jersey, in Cook *vs.* Barkely, 1 Pennington 169, and that of Kentucky, in Calloway *vs.* Middleton, 2 Marshall 372. In all these cases, forming one unvaried line of authorities, the true rule of the common law, and I must say of common sense, is to be found, in clear and distinct language. That rule is, that where a plea of general issue is put in, either with or without a plea of justification, any evidence in mitigation of damages is admissible: where the plea of justification is put in alone, that evidence is not admissible. And yet the supreme court refuse to grant a new trial, because "the malice is admitted on the record," and therefore this evidence in mitigation is inadmissible. Nay more, in all these cases, the question of the admissibility of the evidence in mitigation arose under a plea of justification. Here it was a notice, and that of a qualified character. Now, in the case of Vaughan *vs.* Havens, 8 John. R. 110, the supreme court of this

state expressly decided that "the notice forms no part of the record, (I cite the words of the court,) and cannot therefore be considered as a special plea." "The notice is intended for the ease and benefit of the defendant. He may or he may not rely upon it. It has been uniformly held that it is not an admission of the matters charged in the declaration. The plaintiff is bound, notwithstanding the notice, to prove the facts alleged in the declaration." The notice here spoken of, like the one in this cause, was a *notice of justification in an action of slander;* and yet, notwithstanding the strong and emphatic language of the court in that case, the same court now holds that a notice is a part of the record, and an admission of malice—one of the material averments in the declaration.

I forbear all further comment upon the decision on this point in the cause.

It formed another objection on the part of the defendants to the judge's charge to the jury, that the jury was told that "the evidence of the plaintiff's character for intemperance was not admissible in mitigation of damages unless of the same quality and degree charged in the libel," and this was reiterated to them in the morning when they came into court for further and more explicit directions.

The character of the plaintiff for temperance had been attacked—for the injury sustained or likely to be sustained from that attack he had brought his action. His character, therefore for temperance became the subject of consideration in estimating the damages, unless it is contended, that a man of infamous character is entitled to the same damages for any imputation upon his name as a person of unimpeachable reputation.

What the judge at the circuit meant by "general character of the same quality and degree" is explained in the next sentence of his charge. For instance, he says "the defendants cannot be permitted to say that the plaintiff was drunk and an object of loathing and disgust at a specific time, and then to diminish the damages by proving him to be generally reputed to be addicted to the free use of spirituous liquors and often exhilarated by them." The doctrine of the judge therefore is, that if a man be charged with being dead drunk; a general habit of staggering drunkenness shall not be deemed a reason for mitigating the damages. In all the different degrees of intemperance,—that of booziness—half seas over—staggering drunk—beastly drunk, and—dead drunk:—In speaking of a person in that situation, you must be careful to graduate your expressions precisely to his general habit. A slight exaggeration of the degree will expose you to as fearful a retaliation as if, like Shylock in exacting the penalty of your bond, you had cut deeper than your pound of flesh. Is this reconcileable either with law or reason? For what are the jury called upon to give damages? For the injury done to the plaintiff's character for temperance and sobriety. If this be bad, no matter in what degree, it is a subject of consideration with the jury in estimating the damages; not only because the character of the plaintiff was injured by his own misconduct, but because if the plaintiff was at all addicted to the use of ardent spirits in excess, the defendants would naturally ascribe his extraordinary appearance and behaviour at the time alluded to, to intemperance. Their motives, therefore, would be shown to be free from malice, which, where it does exist, is universally admitted to be a good ground for aggravated damages.

It is not a little remarkable, and it adds to the force of this exception, that notwithstanding this direction of the judge to the jury, he had previously prevented the defendants from asking a witness (E. J. Roberts) on cross-examination "How often he had seen the plaintiff intoxicated, and to what degree." Thus preventing the defendant on one hand from inquiring into the degree of intemperance in which the plaintiff habitually indulged, and then on

the other hand charging the jury, that unless his general character for intemperance was of the same degree with that charged in the libel, it was not admissible in mitigation of damages. The striking injustice done to the defendants by these decisions was so manifest that the supreme court did not attempt to sustain the judge's charge at the circuit, but assumed a technical ground for the exclusion of this testimony. Whether this new ground be more tenable, we shall now examine. The supreme court in its decision admits, that the character of the plaintiff is a proper subject of inquiry, but denies that any examination ought to take place into his character for temperance. Inquiry, says the court, may be made into his general moral character, but not into his character for any particular quality. This extraordinary proposition, advanced I venture to say for the first time in a court of justice, is not only contrary to the ordinary practices, but also to the plainest principles. The very inquiry of the jury is concerning the character of the plaintiff for temperance and for nothing else. 1st, because his character in that particular had been attacked, and it was the duty of the jury to ascertain how much it had been injured.

2dly, because the evidence would tend to rebut the presumption of malice.

The court however, carried away by some idea concerning general character which I must confess I cannot comprehend, determined that all inquiry into his character for temperance was inadmissible—as if in an action by a female for a libel stigmatizing her as a prostitute, the defendant should be prohibited from any inquiry into her character for chastity, but confined to an investigation of her general character excluding that particular. Such are the reasons, which induce the defendants to ask a new trial on that branch of the case touching the measure of damages, and it is but seldom that a case presenting a greater violation of principle has been brought before this court for supervision. The defendants complain, that great injustice has been done them in the charge to the jury, and that several novel and extraordinary principles have been advanced in this cause, and all militating against their defence. On that account we ask a new trial, but not on that account alone. These reasons all refer to an injury affecting the defendants personally, but there were other principles advanced at this trial touching the freedom of political discussion, compared with which the doctrines I have already commented upon, sink into insignificance. These principles strike directly at the freedom of the press, and practically place it at the mercy of the judges, and I know I speak the sentiments of my clients when I say, that more on account of what they deem a violence perpetrated upon the cause of freedom and upon our liberal institutions, than because of the injustice done to themselves (though that is not trivial) they have deemed it their duty to resist this judgment to the last, and not to submit to it, until it is declared to be the law of the land by the court of final resort. At the trial of this cause, the jury were told that the question of malice was a legal inference, and it forms the 3d point in the case presented to this court, that the question of malice was not submitted upon all the evidence as a question of fact for the decision of the jury.

To prevent any misapprehension, as to the principles for which we contend, I shall submit them to the court in the shape of distinct propositions.

1st. Where the subject matter of the publication is such that no good motive can be assigned, malice is necessarily inferred.

2d. Where public motives are assignable for the publication, malice then becomes a doubtful question, and whether it is to be inferred or not, is a question of fact for the decision of the jury.

3d. When a publication is made concerning the official conduct of a public officer, good motives, and probable

cause for believing it to be true, furnish a good defence to an action for libel.

The last of these propositions may be deemed somewhat novel, and I am free to admit that it has not been distinctly sanctioned by the courts, either of England or in this state, but it should be also recollected that this question has never before been distinctly raised in our courts, and I intend to show that, on the law of political libel, the courts of England do not furnish a safe rule for the tribunals of the United States.

It is true that, by a provision of the constitution of the state of New York, the common law of England is adopted as the law of the state. But this adoption was never intended to extend to all the crudities and absurdities growing out of the feudal system, and entirely inconsistent with the institutions of this country. It was, indeed, an adoption of its principles as a body of jurisprudence, but when any of these principles are found to be inconsistent with our own institutions, they are either expressly or silently abrogated. The courts do not acknowledge the principle, that the executive can do no wrong, or that the legislature is omnipotent, and yet these are principles of the common law. They are, however, repugnant to the spirit of our institutions, and the courts therefore reject them.

This qualifying principle must be carried with us in the examination of any doctrine of the British courts, not sanctioned by our own courts, and relative to the political concerns of society. It must especially be applied in all discussions of the law of libel. A law which, protecting as it does private character, also limits and defines the freedom of the press, the great instrument of reform in the science of government.

What then, I may ask, is the common law of libel? It is a legal principle aiming at the protection of character against malicious attacks. The principle, however, does not go to the extent of declaring, that all publications concerning private character are libellous; nor even that all false publications concerning private character are libellous.

There are things more highly valued by the law, than even the exemption of individuals from untrue aspertions of their good name.

Some of the dearest interests of society depend upon free discussion; and the law, wisely looking to the higher interest, does not concede to individuals any reparation for injuries to their characters, sustained in these discussions. In general individuals are liable for written publications, affecting private character, provided they be untrue: but where the public has an interest in the discussion of the subject matter of the publications, they are then liable only for what is malicious as well as false. The malicious intent then becomes an averment, which the plaintiff must prove. It is always a necessary and material averment; but in general, the jury are at liberty to infer it from the falsehood of the publication. In this class of publications, however, the proof of intent devolves upon the plaintiff, and is one of the preliminary objects of inquiry, on the part of the jury. When that is established, or when grounds for them to adopt such an inference have been laid, it then becomes necessary for the defendants to prove the truth of the publication. Malice is never, as the judge asserted at the trial, an inference of law, but always a question of fact, and a material averment. In 1 Chitty's Plead. 226, it is said that where the law intends or infers a fact, no averment is necessary. The same doctrine is laid down by Lord Coke, Inst. 786. If therefore malice were a legal inference, no averment would be necessary. It may, indeed, be an inevitable inference from the circumstances, but it may also be a doubtful question, and the defendants were entitled to have the decision of the jury upon that point. Where no good motives can be assigned for the publication, the duty of the jury is plain. They then only inquire whether it be true or false, because if false, it is malicious. But where public

motives can be easily assigned for the publication, the law then requires the jury to inquire not only concerning its truth, but also into the motive of the defendants in making the publication. If it be false, the defendant is not necessarily to be condemned. He may have been mistaken, and the law will not condemn him when giving information, in a matter, about which the public is interested in obtaining information for an error in judgment. It concedes this much to human fallibility, and only condemns for what is wilfully or maliciously false. The intent then becomes the criterion of guilt or innocence, and whether the libel be true or false, if published without malice, and in good faith, the defendant is justified.

We contend that this is invariably the rule, where the public is interested in the subject matter of the communication. By reference to adjudicated cases, both in this country and in England, the court will find this proposition to be fully established. In the case of Weatherstone *vs.* Hawkins, 1 Term R. 110, which was an action brought by a servant against the master for giving him a bad character; the court decided that in order to sustain that action, it was necessary not only that the statement made by the master, should be untrue, but that the plaintiff should prove it to have been made with a malicious intent.

So too in discussing the character of a person applying for admission into a volunteer corps, a communication to the committee of election, must be shown to have been made from a malicious motive. Its falsity is not sufficient. Barband *vs.* Hookham, 5 Esp. R. 109.

The same doctrine is laid down in the case of Hare *vs.* Meller, 3 Leon. 138, where statement was made in a complaint to the queen: in Lake *vs.* King, 1 Saund. 131, where it was made in a petition to the house of commons: in Ashley *vs.* Younge, 2 Burr. 810, in a course of judicial proceedings: in Hodgson *vs.* Scarlett, 1 Barn. & Ald. 239, where it was made by a counsel in the discharge of his duty: and in Benton *vs.* Worley, 4 Bibb. 38, in an application to justice for a warrant.

The courts of the United States have repeatedly recognised this principle. In Jarvis *vs.* Hatteway, 3 John R. 180, the supreme court of this state held, that a statement made in proceedings in a course of church discipline was not libellous, except malicious as well as false. The same doctrine was held in Thorn *vs.* Blanchard, 5 John. 508, respecting a petition to council of appointment, to remove plaintiff from his office: and by the supreme court of Penn. in Gray *vs.* Pentland, 4 Serg. & Rawle 420, respecting an affidavit sent to governor as to the official misconduct of plaintiff, who held his appointment from the governor, and in Fairman *vs.* Ives, 7 Serg. & Lowber 221, where the libel was in a petition to the secretary of war, accusing a subordinate officer of not paying his debts. The principle indeed is recognised in its broadest extent, that in an application for relief to the proper authority, the charge is not libellous unless it is both malicious and false, and malice must be proved by the plaintiff. In addition to the cases above cited, the court will find the same doctrine sanctioned in 12 Coke 104, Cro. Eliz. 230, Andr. 229, 3 Camp. 296, 1 Binney 178, 2 Pickering 314, 3 Taunt. 456, 1 Sir Wm. Black 386, 4 Esp. R. 191.

In all these cases, forming an uninterrupted current of authorities, it was held that where the public is interested in the subject matter of the communication, the inquiry is not merely whether the publication be true, but, if false, whether it were published from malicious motives. The plaintiff was held bound to prove the malicious intent. The jury were directed to inquire whether the defendant intended to serve the public, or merely to injure the plaintiff; whether the motive was public or malicious; and if they found that it was published with a belief in its truth: the inference of malice being rebutted, they were directed to acquit the defendant.

In criminal prosecutions for political libels, it has indeed been held by the English courts that malice was a legal inference; and it is from that source that the honourable judge who tried this cause derived the doctrine then advanced by him. But this principle has not been asserted even in England in civil suits; and if it had been, I am prepared to show that the law of England on the subject of political libels is not and never ought to be the law of this country.

In civil actions of this class, the motive has been even there held to be an essential inquiry for the jury, and not, as the judge here called it, a legal inference. The jury are directed to decide upon the question of malice, and not, as they were here repeatedly told, to consider it as a question of law. In this case the question of malice was in effect excluded from the consideration of the jury; and if they might have inferred that the publication could have been made without malice, the charge was incorrect.

It is unnecessary for us to show, that such an inference might have been drawn. Happily the charge of the judge furnishes us with satisfactory evidence of the sincerity and good faith of the defendants in making this publication, where he tells the jury that entire credit is to be given to the statements of all the witnesses; although those of the defendants could not be believed without admitting their justification to be completely made out.

It is scarcely necessary to go into detail, to prove this case to belong to that class, where the public is interested in the subject matter of the publication. It was concerning the conduct of a public officer while discharging his official duties, and it accused him of what ought to have deprived him of the support of the people. His conduct, supposing this charge to have been true, degraded his office, and was offensive to decency. It was a public duty therefore to communicate it to his constituents throughout the state. The motive might have been a public one as well as malicious, and the defendants were debarred from their legal rights in having that question withdrawn from the jury.

The doctrine, that malice is an inference of law is drawn from the English criminal law concerning libels; and although in the government prosecutions for political libels, precedents in abundance may be found in which this principle is advanced, I shall contend that, that branch of English jurisprudence was never adopted in this country; that it is inconsistent with the character of our institutions; and that the general principle of the common law, that publications concerning subjects affecting the public interest are not libellous unless malicious, applies here to publications made with the intention of communicating in good faith information to the public concerning the official conduct of a public officer; that in all such publications the intent is a material question for the consideration of the jury—a question of fact, and not a legal inference.

The law concerning libels is not to be found in the earlier law books. It is intimately connected with the advance of society, and may be said to depend upon the progress of civilization. It originated in the aspirations of the people for freedom, and to obtain a greater share in the government than they had formerly enjoyed. When these movements became obnoxious to the ruling powers, they directed their attention to the subject, and suppressed political discussion without ceremony.

Shortly after the introduction of printing into England, we find the Starr chamber established:—As if this formidable tribunal, so hostile to freedom, and the abolition of which was its first triumph, was especially instituted to control the press. How government at first exercised its power in repressing political libels we may learn from Lord Bacon's history of Henry VII. In speaking of Lord Stanley's execution, this great philosopher, who with all his sagacity did

not fully appreciate the rights of the commonalty or the power of the press, says, "Hereupon presently came forth swarms and vollies of libels, which are the gusts of liberty of speech restrained and the females of sedition, containing bitter invectives and slanders against the king and some the council; for the contriving and dispersing whereof, *five mean persons were caught up and executed.*" In this summary manner was the offence of libelling the government punished under the Tudors; and although under the Stuarts the form of a trial was gone through, the proceedings were fully as subversive of the principles of freedom and justice.

During the reigns of James and Charles, as we are informed by Hume, (certainly no advocate for the liberal side of the question,) any book commenting upon the conduct or ordinances of the monarch was deemed libellous, and its authors brought before the Starr chamber for punishment. How that tribunal punished them, and what respect was paid by its members for civil rights when they came in collision with the prerogatives of government, we can learn in the civil war and in the overthrow of the monarchical government brought about by their iniquitous judgments.

Even under the commonwealth, a government which rather exemplified the triumph of a party, than the prevalence of liberal principles, although this court was abolished, the restrictions on the press were confined, and a censorship was established, which produced from Milton his celebrated and most eloquent essay in favour of unlicensed printing. An essay from which I shall have occasion hereafter to quote, as high authority illustrating and enforcing the principles advanced in this cause.

The restoration of the Stuarts did not augment the freedom of the press, and, and after this event the state prosecutions for libels against the government begin to appear in the reports of the common law courts. The first case to which I shall refer is that of John Twynn, who was executed in 1663, shortly after the restoration, for publishing "that when the magistrates prevent judgment, the people are bound to execute jndgment without and upon them."

In 1680 we find the courts advancing the doctrine laid down by the honourable judge at the trial of this cause, and as this seems to be the origin of this doctrine, (and certainly it is not of modern origin,) it will not be amiss to refer particularly to the case. It was at the trial of one Henry Carr for a libel ridiculing the Jesuits, before chief justice Scroggs, that corrupt and unprincipled minion of power. This instrument of the crown then told the jury, that they had no power to judge of the intent, and that (I read from his charge 7 St. Trials 1127.) "as for these words, illicite, maliciose, unlawful; I must recite what all the judges of England have declared under their hands: When by the king's command we were to give in our opinion what was to be done in point of the regulation of the press:—we did all subscribe that to print or publish any newspaper or pamphlet of news whatsoever is illegal; that it is a manifest intent to the breach of the peace, and they may be proceeded against by law for an illegal thing. Suppose now that this thing is not scandalous, what then? If there had been no reflection in this book at all; yet it is illicite, and the author ought to be convicted for it. And that is for a public notice to all people, and especially printers and booksellers, that they ought to print no book or pamphlet of news whatsoever without authority. So as he is to be convicted for it as a thing illicite done, not having authority." "If you find him guilty and say what he is guilty of, we will judge whether the thing imports malice or no." 7th St. Tr. 1127.

After this charge, in which the jury are repeatedly told, that they have no concern with the question of malice, they retired, and in an hour after brought in a verdict of guilty. Whereupon they received from the lips of this imaculate judge, this high com-

mendation, "you have done like honest men." And his worthy coadjutor, the then recorder of London, Sir George Jeffries, replied, "they have done like honest men."

In this case is to be found the origin of the doctrine, which the honourable judge who tried this cause laid down as a rule for the jury, and we are willing that it should have all the weight due to its antiquity, and to its pure and venerable orgin. Something, however had now been gained in England by the efforts of the presbyterians and puritan whigs. Men were no longer caught up and executed. The Starr chamber was abolished, and libellers were brought before the courts of common law. The crown, as before, was still hostile to the press, and with a view of keeping it in a state of complete control, the doctrine that malice was a legal inference was invented, as a substitute for mere arbitrary will and power. Juries were told to find guilty upon proof of publishing, and the courts would then determine whether malice was imported.

Juries however would not always acquiesce in this doctrine; and in the celebrated case of the seven bishops, they took upon themselves to determine the question of malice, and acquitted the defendants. The conflict now between the court and the jury, had fairly commenced.—The judges, always striving to retain the power of determining the real question at issue in libel prosecutions, i. e. the guilty or malicious intention of the defendants, and the juries generally acquiescing, but occasionally, in matters where the public mind was highly excited, acquitting, in spite of the directions of the judges. In this contest, although the destined victims of arbitrary power would sometimes be protected, it was always with an effort; and in the natural course of events, they were sacrificed to the power of government.

Thus in 1682 we find Thompson, Paine, and Farewell convicted and punished for publishing, that Sir Edmondbury Godfrey had murdered himself; it then being an object with the alarmists to make the nation believe that he was murdered by the Jesuits.

So too in 1693, after the revolution by which the English people flattered themselves their liberties were secured, Wm. Anderton was executed for a libel. 12 St. Tr. 1246.

In 1719 Littleton Powys took occasion, in his charge to the grand juries at the assizes, to express his opinion, and that of his brethren, concerning "the base libels and seditious papers, whose number had become intolerable," and respecting which he declared "that the government would not be at the trouble of inquiring after the authors, but would consider keepers of coffee-houses responsible for what were found there."

In 1729, at the trial of John Clarke, who was only a pressman, and in 1731, at the trial of Richard Franklin, the publisher of the Craftsman, the same doctrine as to the malicious intent was reiterated, and the jury were told that it was a legal inference, which it was the province of the court to make, and that they had nothing to do with it.

At the same time, efforts were made to introduce the English law of libel into this country. In 1735, John P. Zenger, who then published a weekly journal in the city of New York, was prosecuted by information for a libel upon the government of the province. Great exertions were made by the government to procure a conviction, and two respectable counsel were struck from the roll for signing his exceptions. All evidence of the truth of his publication was rejected by the court; but the counsel for the defendant contended, that the jury might find a verdict for the defendant from their own knowledge of the truth of the publications. This they did do, in defiance of the charge of the court, and thus ended the first attempt to introduce the English law concerning political libels into this country.

In 1752, another contest took place in England, between the court and the jury, respecting Wm. Owen, who was prosecuted for a libel upon the house

of commons, and the jury acquitted the defendant, although the proof of publication was clear. 18 St. Tr. 1228. The court catechised the jury upon their bringing in the verdict, but they adhered to it. "Upon which, (as the report has it,) the court broke up, and there was a prodigious shout in the hall." This was the third contest, in which the jury prevailed. The first was in the case of Bushnell, and the second in that of the seven bishops.

The elements of a greater conflict, however, now were gathering. The movements of the ministry in reference to this country, then in a state of colonial dependence, were only indications of the spirit which animated the councils of the government, and of its hostility to civil freedom. The same feeling which urged our ancestors to resistance, animated the whigs of England, and caused violent domestic parties. Wilkes attacked the ministers in the North Briton. Junius overwhelmed them with invective, denunciation, and sarcasm, in the Daily Advertiser; and after prostrating the servants of the crown, he laid his sacrilegious hands upon the Lord's anointed himself. This bold attack exposed the publishers and sellers of the celebrated letter to the king to state prosecutions for libels.

John Almon, a bookseller, was first brought to trial in Middlesex, where the jurors were more under the influence of the crown than in London. Defendant did not know of the publication, but the doctrine of the judges as to intention prevailed, and the defendant was found guilty. John Miller was next tried before a London jury, and the defendant's counsel contended that they were to pass upon the intent of the defendant, but Lord Mansfield told them that the intent, malice, &c., were mere formal words, "mere inferences of law, with which the jury were not to concern themselves." "They were only to decide upon the fact of publication, and the meaning of the inuendoes." The jury however thought otherwise, and acquitted the defendant, to the great joy of the popular party. 20 St. Tr. 894.

The same doctrine was advanced in the very words I have just used, in the trial of Woodfall, the printer of the letter; and in this case the jury gave in a verdict of "guilty of printing and publishing only." Ib. 899. In this last case, a motion was made for arrest of judgment by the defendant's counsel, and a motion for judgment by the counsel for the crown. The court ordered a venire de novo, but the cause was never again tried. Ib. 921.

These decisions produced great excitement in England. The causes were considered, and justly considered, as trials of strength between the great political parties of the day: the one endeavouring to augment the powers of government; the other striving to restrain them within the limits of the constitution. This great contest, of which the elements had long before been gathering, was now at its crisis. The government aimed, by the stamp act and taxation bills, to reduce the North American colonists to a state of absolute vassalage, and to crush the opposition at home by a course of measures, of which the prosecutions for libels, and secretary of state's warrants, formed a part. These measures were all features of the same policy, and indicated the same despotic parentage.

The liberties of the Anglo Saxon race were at stake, and fortunately for the cause of civil freedom, its defence was intrusted to men of uncompromising character, of clear minds, and undaunted resolution. Though Lords Mansfield, Bute, and North, aided by the whole power of the British crown, threatened to crush all who thwarted their will; the friends of English liberty were encouraged in their resistance by Camden, Chatham, and Burke, whose principles were also enforced by the American congress.

The warrants of the secretary of state were adjudged illegal in the case of Rochford *ads.* Sayre. The doctrine of the courts respecting libels, although destined to undergo a more

protracted discussion, met with a similar fate.

The principles advanced from the bench in the trials of Woodfall and the other printers, immediately became the subject of parliamentary animadversion.

Chatham commented upon them with great severity in his speech, relative to the Middlesex election, and stigmatized them "as contrary to law, repugnant to practice, and injurious to the dearest rights of the people." Lord Mansfield, who was then present in the house of lords, was compelled by this public attack, to enter upon a defence of his conduct. A debate accordingly occurred in the house of lords, in which Lord Camden, the former chancellor, took part. The remarks of this learned and upright judge are too pointed respecting the doctrine in question, to be suppressed. I read them from Dodsley's Annual Register for 1771, p. 27. He said, that, "having passed through the highest departments of the law, he was particularly interested, and even tied down by duty, to urge the making of the inquiry into the conduct of the judges: that if it should appear that any doctrines had been inculcated, contrary to the known and established principles of the constitution, he would expose and point them out, and convince the authors to their faces of the errors they had been guilty of: that he could not, from his profession, but be sensibly concerned for the present disreputable state of our law courts, and sincerely to wish that some effectual method might be taken to recover their former lustre and dignity; and that he knew of no method so effectual as the proposed inquiry. If the spirit of the times has fixed any unmerited stigma upon the character of the judges, this will purify them, and restore them to the esteem and confidence of their country; but if the popular rumours have unhappily been too well founded, we owe it to ourselves and to posterity, to drive them indignantly from the seats which they dishonour, and to punish them in an exemplary manner for their malversation."

A motion was also made at the same time, in the house of commons, proposing an inquiry into the conduct of the judges; and one of the specific charges brought against them was, that they had claimed the right to judge of the intention, which doctrine was stigmatized as illegal and tyrannical. This motion was resisted by the ministerial party, who prevailed on a division, 184 against 76, for the proposed inquiry.

The effect of these animadversions was, to produce a notice on the part of Lord Mansfield, for a call of the house of lords on the following Monday, on a matter of importance, which he had to communicate to them. It was generally supposed that this call was preparatory to a free and open discussion of the offensive doctrines, which he intended to bring on in the house of lords. But upon the appointed day, Lord Mansfield shrunk from the discussion, and merely informed the house that he had left a paper with the clerk, containing the unanimous opinion of the court of king's bench in the case of Woodfall, for the perusal of any one.

It was then asked if the paper was to be entered upon the journals of the house, to which a reply in the negative was given; and no motion being made by Lord Mansfield, Lord Camden stated to the house, that he was ready to maintain that the doctrine laid down as the judgment of the court, was not the law of England, and pressed upon Lord Mansfield to appoint an early day for the discussion.

This challenge, however, was declined, and the courts continued in theory to assert the old doctrine, but not often venturing to enforce in practice, until Mr. Fox brought forward his declaratory act, repudiating the principle as slavish, and inconsistent with the spirit of the common law. In all the discussions relating to the passage of this act in parliament, the whig leaders, Fox, Erskine, and Bearcroft,

contended that the intention ought to be submitted to the jury as a matter of fact. Lord Camden said it was always a question of fact. Lord Loughborough said that it had always been his practice to submit the whole matter in libel suits to a jury, and Pitt admitted that the law ought to be so. The act finally passed, and the question was decided in favour of the liberty of the press. The malice or intention of the libeller was formally declared to be a question of fact, and not an inference of law.

While this concession to freedom was thus slowly and by degrees wrung from the government at home, circumstances had prepared the way on this side of the Atlantic for a more general conflict resulting in a complete and decisive triumph. The resistance of our ancestors, which at first aimed at securing to them only the privileges of Englishmen, eventuated in procuring to them and their posterity complete enjoyment of the rights of men. The British colonies were separated from the mother country, and united under an independent government, republican and representative in its character. They adopted in the main, the laws and institutions of the parent kingdom, but made one great and material alteration. This variance, which lies at the root of the question I am discussing, resulted from the difference in the character and spirit of the two governments. In Great Britain it is held to be a maxim, that the king can do no wrong. The public officers throughout the kingdom are his instruments, and in some sort represent his authority; and though they are not vested with the same immunity, it is impossible to disregard the tenderness manifested by the law for public dignities, and their freedom from all constitutional responsibility. This exemption from political responsibility is a principle pervading the whole constitution. The king is incapable of doing wrong. Parliament is omnipotent, and the judiciary in fact independent of all but the executive government. In this state of things the press cannot be free. It is at most merely tolerated, and unless the government means to foster an instrument, which must ultimately overthrow it, it acts wisely in thus limiting its power. In this country an entirely opposite principle prevails. The government was established by the people and for the people. It is founded on the great maxim, of rendering all public officers accountable to public opinion. This principle of accountability pervades all our political institutions. The legislature is accountable to the people: The executive to the legislature, and also to the people: The judiciary to the legislature, and indirectly to the people. Every officer intrusted with power is accountable either directly or indirectly. At periodical elections held in various parts of the country, this delegated power is laid down, and is either intrusted to new servants, or to the old ones, whose services have been satisfactory.

This arrangement of our political institutions, presupposes information to be communicated to the people through the press, concerning their public affairs.

The government is based upon public intelligence, and the doctrine of accountability on the part of elected magistrates mainly depends upon a free press—upon a press to publish as freely of public officers, as according to the common law (which here is not warped to suit the views of government) it may publish of private individuals what it concerns the public to know, and to be held responsible only for what is maliciously, as well as untruly published.

This is the great result of our revolution in government—reformation in public measures by means of public opinion. The means of communicating information of course were intended to be free. This is the real object of that provision of the constitution guarantying the freedom of the press. It meant to secure the press from the power of the government, and to enable it to criticise with freedom public measures, and the conduct and qualifications of public officers This was the only freedom the press

wanted. It was always free in England as to publications concerning private character, when it conformed to the great principles distinguishing between publications strictly private or personal, and those aiming to subserve the public welfare. It was shackled only so far as it attempted to discuss public measures, and the conduct and character of public officers. In this country, the same freedom was extended to political discussions, which were no longer to form an exception to the common law of libel; but were to be adjudged upon as other publications affecting reputation and having the interest of the community in view, viz. to be justified where the intention is justifiable; to be condemned where it is malicious. By the change in the form and character of the government, the reason which made the law concerning political libels an exception from the common law of libel is at an end; and the maxim prevails cessat ratio, cessat lex.

It forms no longer an exception, and all authority derived from the common law respecting political libels, is to be rejected as not applicable in this country.

The honourable judge who presided at the trial of this cause, not properly appreciating the distinction, was led into a mistake and adopted the doctrine advanced in the case of Woodfall, and so much censured in parliament. The supreme court fell into the same mistake in relying upon the case of Lewis *vs.* Few. 5 John. That case indeed is not altogether applicable to the point now under discussion; in as much as the question was brought up upon a demurrer to the evidence, where the rule is, that whatever might be inferred by a jury, the court is bound to infer in favour of the plaintiff. Now we do not contend, that the jury may not infer malice from the publication itself, but that it is not necessarily inferrible, and may be rebutted from the other circumstances; and at all events, that it is a question which the jury may decide in the negative.

The case of Lewis *vs.* Few, therefore, is not in point, inasmuch as there the court were bound to infer malice, because the jury might have inferred it; but if it were directly in point, I should contend that so far as it sustains the principle, that malice is not a question of fact, but a legal inference, it is to be disregarded.

The authorities of the law for this country, in reference to political libels, are not to be found in the decisions of English judges, influenced as they have generally been by the hope of court favour, or fear of its frowns, and of whose fallibility and arbitrary disposition you have such melancholy proofs in those records of human weakness and crime, interspersed with accounts of suffering patriotism, entitled English state trials. They are to be found in the expressed opinions of the eminent men, who have contended in behalf of English freedom against the arbitrary principles of the crown, promulgated by these very judges—in the acts of our revolutionary ancestors, and of their successors who established our political institutions—and in the character and spirit of those institutions. These opinions are protests against the arbitrary doctrines of the English courts, and followed up as they have been by the acts which gave us liberty and an independent government, they form an authority with which the technical and narrow precedents of the books are not to be brought in comparison.

Milton, in his eloquent speech for an unlicensed press, asserts this very doctrine for which we are now contending. Speaking of the power of the press in reforming abuses in a community, he says, "For this is not the liberty which we can hope, that no grievance ever should arise in the commonwealth; that, let no man in this world expect; but when complaints are freely heard, deeply considered, and speedily reformed, then is the utmost bound of civil liberty attained, that wise men look for." And a little farther, "Give me the liberty to know, to utter, and to argue freely

according to *conscience*, above all liberties. Though all the winds of doctrine were let loose to play upon the earth, so truth be in the field, we do injuriously, by prohibiting and licensing, to misdoubt her strength. Let her and falsehood grapple, who ever knew truth put to the worse in an open and free encounter?"

This same doctrine was what Erskine contended for, throughout his long contest with the courts in behalf of the rights of juries and the freedom of the press.

At the trial of the Dean of St. Asaph for a libel, after alluding to the controversy between the courts and juries, respecting the right of juries to judge of the intent, he says, "now, prosecutions for libel are tried, and I hope ever will be tried, with that harmony which is the beauty of our legal constitution; the jury preserving their independence in judging of that *malus animus*, which is the essence of every crime, but listening to the opinion of the judge upon the law, and the evidence, with that respect and attention which dignity, learning, and honest intention in a magistrate must, and ought always to carry along with them."

During this trial, a contest took place between this intrepid advocate, and justice Buller, in consequence of the jury's wishing to give a verdict of "guilty of publishing only."

A motion was made for a new trial in the king's bench; and in the argument on that motion, Mr. Erskine laid down these distinct propositions, that "no act, abstacted from the intention of the actor, is a crime."

"That where the mischievous intention cannot be collected from the fact charged, because conflicting evidence is produced, it then becomes a pure unmixed question of fact for the consideration of the jury."

Again, in Stockdale's case, his ground of defence was, that his client's intentions were pure; that the pamphlet was a bona fide defence of Mr. Hastings; that this singleness and purity of intention afforded an excuse, even for intemperance of expression; that this was the question for the jury to try, and that they might safely acquit his client on that ground, for that his principles of defence could not at any time, or on any occasion be applied to shield wilful libellers from punishment, and that they were compatible only with honour, honesty, and mistaken good intention. In concluding this most eloquent and masterly defence, a defence which, taken together with his argument in the case of the Dean of St. Asaph, contains more sound principle on the law of political libel, than the collected wisdom of all the judges of England, he told the jury, that the question to be decided was not in any sense a question of law, but a pure question of fact, to be decided upon the principles he had advanced in his defence.

The jury retired, after receiving a very precise charge from Lord Kenyon, and in about two hours brought in a verdict acquitting the defendant.

These propositions of Mr. Erskine, in the case of St. Asaph, were distinctly approved by Mr. Fox, in the debate on the declaratory act, and he asserted, that the jury had a right to decide on the intention as a matter of fact, 3d vol. Senator, 627. Mr. Burke too asserted the same principles, in his speech on Mr. Dowdeswell's motion for leave to bring in a bill settling the law on this point, made in parliament, March 7th, 1771, and he further observes, that "if the intent and tendency be left to the judge as legal conclusions resulting from the fact, you may depend upon it, you can have no public discussions of a public measure." Sir James Mackintosh also adds his authority in behalf of the same position, in language particularly applicable to the case now under discussion. In his defence of Peltier, who was indicted in England during the short-lived peace after the treaty of Amiens, for a libel upon Napoleon, then 1st consul, he contends that "the essence of the crime of libel consists in the malignant mind, which the publication proves, and from which it flows. A

jury must be convinced, before they find guilty of libel, that his intention was to libel—not to state facts, which he believed to be true."

Such are the principles held by the great leaders of the whig party of England, in opposition to the arbitrary doctrines of the court. The principles of our revolutionary ancestors were no less clear and decided. At the commencement of the struggle, when it became apparent that no compromise could take place, but that their principles must be enforced, they despatched commissioners to Canada to induce that province to join the confederacy.

These commissioners were directed to establish a free press as one of the essential requisites, to qualify the Canadians for a participation in the privileges of freedom, for which they were then entering upon a war of no speedy termination.

The constitutions of the several states also afford evidence of the peculiar importance of a free press, and of the views of our own ancestors, of the common law respecting political libels. The constitutions of Massachusetts and North Carolina, established during the contest, and even amid the din of arms, furnish strong contemporary testimony of their intentions. The sixteenth article of the declaration of rights, contained in the former, asserts, that "the liberty of the press is essential to the security of freedom in a state; it ought not therefore to be restrained in this commonwealth." The fifteenth article in the constitution of the latter declares in still stronger terms, that the freedom of the press is one of the great bulwarks of liberty, and therefore ought never to be restrained.

The constitution of New Hampshire contains the same provision as that of Massachusetts. Those of Maryland, South Carolina, and Georgia, also declare the inviolable freedom of the press, and the trial by jury, as theretofore enjoyed in those several states, as if they meant to pointedly reprobate the conduct of the English courts, in denying the right of the jury, to decide upon the intent in prosecutions for libels upon government.

The provisions in the constitutions of some of the sister states, are still more pointed. That of Pennsylvania, article 9, section 7, declares immediately after the provision relative to the trial by jury, that "the printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any branch of government, and no law shall ever be made to restrain the right thereof," and after providing for the admission of the truth in evidence, it authorizes the jury, upon indictments for libels, to determine the law and the facts as in other cases.

The constitutions of Delaware, Illinois, Kentucky, Tennessee, Louisiana, Ohio, Indiana, and Mississippi, contain a similar provision, and refer particularly to the conduct of public officers, as a proper subject of privileged discussion.

The provision in the constitution of Vermont, article 13, on this subject, is as follows: "the people have a right to freedom of speech, and of writing and publishing their sentiments concerning the transactions of government, and *therefore* the freedom of the press ought not to be restrained."

These provisions, all declaring the freedom of the press, and some pointing particularly at that subject of discussion, which in England had been a prohibited topic, i. e. the proceedings of government, and the conduct of public officers, furnish strong reasons, almost amounting to demonstration, of the abrogation in this country of the distinction which the judges of the court had so long endeavoured to preserve in England.

If the character of our institutions was not in itself a sufficient argument in favour of a free discussion of the conduct of public men; those declarations, by the founders of our political institutions, inserted in the constitutions themselves, plainly indicate, that their idea of a free press was one which freely discussed the measures

and conduct of the officers of government, and that they intended expressly to reject the doctrine of the king's bench, as to malice, being a legal inference.

The course of legislation sanctioned under these constitutions has been in conformity with this idea, and strongly illustrates the tendency of our institutions, to still further enlarge the freedom of political discussion. The attempt which was made during the administration of John Adams, to bring libels against the federal authorities under the jurisdiction of the federal courts, resulted, as we well know, in the overthrow of the dominant party. In that contest the legislature of Virginia took the lead, and headed by Madison and Jefferson, after protesting against the constitutionality of the sedition act, declared that "Truth, if left to herself, will prevail. That she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless disarmed of her natural weapons, free argument and debate."

The legislature of Pennsylvania at a subsequent period, 1809, passed an act abolishing all criminal prosecutions for publications concerning the government, or investigating the conduct of public officers, and leaving individuals who had been injured by such publications, to their civil remedies.

So too in New York, when in Croswell's case, in a moment of high party excitement, part of the judges yielding to that propensity so often found in mere lawyers, to regard authorities rather than principles, determined that the truth could not be given in evidence, in defence of a political libel; although they were prevented by an equal division of the bench, from introducing that monstrous doctrine into the body of American jurisprudence, the legislature determined that no doubt should exist on that subject, and by a declaratory act, declared the truth to be a proper and legal defence.

Massachusetts has established the same doctrine, by a declaratory act, passed 1827, and has further declared that a plea in justification, shall not be deemed evidence of the publication, or of malicious intent, even though the defendant fail to prove his plea.

From this minute, and perhaps tedious examination of the history of the law respecting political libels, it appears that in England, this doctrine of which we complain, was introduced into the common law by the influence of the government; that it then was at variance with, and formed an exception to the common law respecting publications, in whose subject matter the community was interested; that this doctrine was always complained of, and sometimes successfully resisted as illegal; that the whigs of England, a party which was generally found on the side of constitutional freedom, always protested against it, and finally succeeded in triumphing over this encroachment on the rights of juries; that the doctrine itself is inimical to the freedom of political discussion, and inconsistent with the character of our government, and that in the constitutions of most of our sister states, the doctrine is expressly repudiated as incompatible with our system of government. Against these arguments, all converging to one point, what can the learned counsel for the plaintiff urge—the opinions of the judges of the king's bench, in prosecutions on the part of the government, for political libels—opinions originating in chief justice Scroggs, and ending in Lord Mansfield. They may indeed declaim against the licentiousness of the press, and of the impropriety of bringing a man's foibles before the public. But it is not the licentiousness, but the freedom of the press, for which we contend. This vice of intemperance is not a foible as has been alledged. In public men it is a crime. I do not contend for a rigid and austere code, that regards all conviviality as an offence against sound morals, but the vice stigmatized in the publication complained of, is a great and growing evil. It saps the foundation of morals, and when it shall be once tolerated in our public functionaries, it will destroy the character

of our institutions. In some cases it may demand our forbearance, and even our pity.

When a man, after devoting his talents, and expending his fortune in the public service, is seen struggling in the decline of life, amid embarrassments resulting from his devotion to his country,—deserted by the heartless flatterers who, in his day of power, sued for his smiles,—surrounded by money dealers, and merciless harpies; who like vultures, flock round their prey, ere life and sense be gone, we cannot wonder that he should seek relief from the cold ingratitude of the world, by steeping his senses in forgetfulness. We mourn over the wreck of greatness, and while we condemn his weakness, we pity and forgive the infirmity of purpose, which shrinks from contemplating his changed and fallen condition.

Even when men of commanding intellects retire from the glorious conflict of mind, and the discharge of duties for which the most gifted men, alone, are qualified to indulge in this degrading vice: when yielding to its influence, they hide their shame and their infirmity in retirement, admitting the fatal effects of indulgence, but still clinging, with blind infatuation, to the intoxicating bowl, we may deplore while we condemn the weakness of human nature, and mourn over the loss of learning and genius; but here there is nothing of vice to reprobate, except its weakness, and the example has no extensive and desolating influence.

But when a man of strong passions and intellect, whose principles render him popular, and whose political course has elevated him to power, as the favourite of his party,—when such a man indulges in the stimulus of the bowl, there is danger in the example, lest it sanctify the vice, and render it contagious. Should such a man be found in a high and prominent station where the notorious exhibition of his infirmities, must attract the attention of the community,—affecting the character of his constituents, not merely in the opinions of the world, but by the sure though imperceptible contagion which always follows vice, practised with impunity, and placed above condemnation by the rank and popularity of the offender,—in such a case it is the task of a patriot, it is the duty of every citizen, loving his country, and prizing the purity and stability of her institutions, to strip the mask from vice in power, and in strong and nervous language, to hold up the violator of public decency, to the merited scorn and indignation of society.

This is the case before the court, and we complain that the jury were not permitted to pass upon the motives of the defendants in making the publication complained of, as they would have been in the trial of any other libel, the subject matter of which was important to the public. The repudiation of the doctrines laid down at the trial of this cause is required, to restore the unity and harmony of the common law. Under the opposite principle, the intention then becomes, as it ought to be, the criterion of guilt. If the mind is not guilty, the act is not criminal. This is a maxim of the common law in all its branches.

If the publisher intend to tell the truth for justifiable purposes, the law does not infer that his intention is malicious. You prohibit free discussion for all useful ends if you adopt any other principle. You may indeed preserve the form; but the vigour and life of free discussion, the boldness of remark, the active spirit of investigation into public abuses will have departed. What indeed can be expected from writers, cowering under the uplifted scourge of such a maxim? whom no purity of intention, no singleness of purpose, nor patriotic views can save from being classed and punished with the criminal libeller and defamer? No matter how strong his belief, how unsuspecting his good faith; no matter how convincing the evidence presented to his mind; no matter how urgent the necessity of informing the public, if his communication does not conform to the evidence laid before the jury; if his assertions do not square with the conclusions of men equally fallible with himself, his intentions are to be deemed malicious, and him-

self liable to punishment. It is no answer to say, let men in publishing strictly adhere to the truth. It is a sufficient reply to this, that it is not in conformity with the common law concerning libels of this class, which makes due allowance for human fallibility. If man were of a different nature, and possessed of unerring judgment and sagacity, no objection could be made to this rule. They then would know what truth was. They would not be compelled to inquire with Pilate, when the Saviour of mankind was arraigned before him for preaching false doctrines, what is truth? They would know, and if they erred, they would sin against light and knowledge. They would intend to libel, and their intention would render them guilty. But to make it their duty to speak, and to punish them for speaking what they believe to be true, is punishing them for their fallibility, and not for their guilt. It is visiting upon man what, if it be wrong, is the error of his Maker. A principle like this is the essence of tyranny. It loses sight of the eternal distinction between right and wrong, and would be monstrous in any government.

In this government, it is fraught with the most pernicious consequences. The chief subjects of political discussion in a representative form of government, must be the conduct and principles of those who administer it, or in other words, the conduct and principles of the dominant party. So long as these are examined in a fair spirit of inquiry, with the view of imparting information to the public, and with honest intentions, the limits of discussion cannot be extended too far. In other countries, public opinion most generally acts as a check upon the government, whose official interest is somewhat at variance with the wishes of the people. It therefore is naturally arrayed on the side of those, who are prosecuted for political offences, and is a sure ally in their defence against the power of the government. As in England, it is the judge between the accuser and the accused. But in this country, it is the source and origin of political power. It stands in the double character of party and judge; and unless it can be addressed with freedom and boldness on the conduct of public officers, no abuses on the part of those in power can be redressed. The avenue to the public mind will be closed; for who will accuse a party of doing wrong, when the members of that party are to decide as jurors, simply upon the truth of the accusation, without reference to the motives and belief of the accuser? No reform, even in the worst state of public affairs, can be effected when such a doctrine prevails in a court of law. But with a press protected in the legitimate scope of its functions, by an appeal to the integrity and uprightness of purpose characterizing its publications, a majority however overwhelming can be kept in check, and within constitutional bounds. An appeal to such motives, when they are recognised by the law as forming a good defence, will obtain a hearing even in the excitement and heat of political conflicts.

On the other hand, those who administer the government are protected from unbounded abuse and calumny, by requiring qualities entirely incompatible with intentional falsehood.

But if the law infers malice when the charge is untrue; if error is to be the criterion of guilt, and a jury is required to decide upon the truth of political publications, and not upon the motives of their authors, and in so deciding, perhaps to condemn the course of those whom they have elevated to power, the rights of the minority will be placed at the mercy of the ruling party of the day. The sacred walls of the temple of justice will resound with the clamour of faction, and the accused will be acquitted or condemned, not in conformity with the principles of equity and law, but according to the excited passions and erring judgment of a fallible and prejudiced jury. The only security which the minority now have, or can have, against the abuses of power, will be destroyed. The dominant party take

possession both of the government and of the jury box, and exercise their authority without the fear of censure or control. The press in effect is silenced; and under the semblance of freedom, the worst kind of despotism is introduced,—the despotism of faction, which sacrifices the rights of the minority according to the forms of the constitution, and silences all remark, and suppresses all investigation according to the forms of law.

I am shocked to think, that a doctrine pregnant with such consequences should be advanced in a court of justice in this country; and that it should now be a question in the court of last resort, whether we should go back to the principles of the Tudors and Stuarts—to arbitrary maxims invented to suppress political discussion; or adhere to maxims which are in accordance with the just and mild spirit of the common law, when not warped to subserve the designs of government. Upon these maxims depend the freedom of political discussion. It cannot exist where they are frowned upon; and in the melancholy history of the progress of truth upon earth, you may see their violation, whenever a martyr for truth's sake was to be offered upon the shrine of human error and passion. When the Saviour of mankind came upon earth to promulgate the doctrines of charity and peace, his intentions were not questioned by the priests and rabble that called for his crucifixion; but they demanded his life because his doctrines were not true. For ages, his disciples were dragged to the stake as schismatics and heretics, or rather as victims to sustain the heathen superstitions, which they were destined finally to overthrow.

When this church, established by their blood, became in after times corrupted through the inventions of man, seeking to gratify his avarice and lust of power by the aid of religion, did those, who endeavoured to restore the primitive faith, meet with a kinder hearing or a milder fate? No! Other victims were demanded, and the councils of Constance and the fires of Smithfield, afford ample evidence of our weakness and fallibility, when error and truth appear as antagonists before human tribunals. Nor is it in religion alone, that error has wielded the tyrant's rod, while truth has suffered the martyr's fate. Even in the physical sciences she has usurped the censor's chair, and condemned the humble disciples of truth to imprisonment and death.

Need I name Galileo, imprisoned in the dungeons of the inquisition for declaring that the sun was in the centre of the solar system. That eternal truth was then deemed heresy, and the Italian philosopher suffered, not for his criminal intentions, but for his promulgation of error? The history of politics is full of the violations of this principle, and of the injustice perpetrated by error in the ascendant, upon the advocates of a better and a freer system of government; but in all these instances, it is consoling to find that the "good old cause" has constantly advanced in the opinions of mankind. Hampden, when contending for the exemption of Englishmen from arbitrary taxation, was condemned by the subservient judges who then sat in the exchequer chamber; but in a few years the judgment was reversed by the commons of England. Algernon Sidney expiated his offence, for denying the divine rights of the Stuarts, upon the scaffold; but the expulsion of that ill-fated family from their country, and the reversal of his attainder followed close upon his condemnation. The decision of the king's bench against the freedom of the press, in the case of Woodfall, was subsequently overturned by the declaratory act of Mr. Fox, passed with the almost unanimous consent of the British parliament. Such has been, in past ages, the fate of all, who ventured to question the conduct of those invested with power, to suffer in their own persons for the success of the cause; and such will always be their fate, until courts shall learn to inquire concerning the intentions of the accused, instead of

setting themselves up as arbitrators between truth and falsehood;—until in trials for political libels, as in trials for all other offences, the intention shall be a question of fact for the decision of the jury;—until good faith, integrity of purpose, and honest intentions shall serve as a protecting shield for all, who are compelled to pass through the furnace of political persecution.

I know, that these doctrines are unpalateable to those who, for the time, are invested with power. They teach them to question themselves; to doubt of their infallibility; to examine their darling prejudices; to relinquish long established opinions; to review, and even to condemn their own conduct. They require them to listen, and sometimes to yield, to the remonstrances of a minority, which they are but too much inclined to oppress.

Yet with these maxims, has the principle of free political discussion,—that guardian genius of the rights of mankind, made her way through the world, in spite of the tyranny of governments and the prejudice of the governed; against the teachings of the schools, the denunciations of the pulpits, the influence of the aristocracy, and the power of the crown. In spite of the rack, the axe, and the bayonet, she has established her dominion in the old, and extended her sway over the new world. The gloom of the cloister disappeared in her light; the scholastic and feudal systems, the offspring of error and ignorance, fled from her glance; the bastile and the inquisition crumbled before her march; the colonial fetters of rising empires were shaken off at her command, until she who, within two centuries, endured imprisonment in the dungeon with Galileo, and bowed her head on the scaffold with Sidney, assumed the arbitrament of the claims of nations, and sat in judgment on the fate of monarchs. I trust in God that this triumphant career is not destined to meet with a check in this country, which owes so much of its prosperity and happiness to the prevalence of this principle; and that this court, possessing a representation of the learning of the legal profession, happily combined and tempered, through the electoral principle, with the spirit of the age, will not lay its parricidal hands upon a principle, to which it is indebted for its very existence.

Benjamin F. Butler & John Sudam, replied for the defendant in error.
John Duer, closed the argument for the plaintiffs in error.

At the adjourned term of the court at Albany, in December, 1829, the following opinions were delivered:

By the Chancellor. There is no doubt in this case, that the publication complained of was libellous. It represented the lieutenant governor of the state as being in a state of beastly intoxication while in the discharge of his official duties in the senate; an object of loathing and disgust, blind with passion and with rum. He is charged with outraging all order, decency, and forbearance, by attempting to address the senate in that situation, and when he had no more right to do it than any grovelling sot from the public kennel. These charges were made by the editors of a public paper, of extensive circulation, as facts within their own knowledge, and which had passed under their personal observation. If the charges were true, the lieutenant governor was not only unfit for the station he occupied, but utterly unworthy of admission into the society of respectable people. And if the statement was false, the case called for exemplary damages, unless there were strong circumstances in mitigation. The jury pronounced the publication untrue, and awarded $1,400 damages to the plaintiff. They were the constitutional tribunal to decide on the truth of the charges and to settle the

amount of damages. And, if no rule of law has been violated, this court has no right to interfere as to either of those questions.

Several objections are raised to the charge of the circuit judge; and as one of these goes to the whole ground of action, that will be first considered. The counsel for the defendants requested the judge to charge the jury, "that the belief of the defendants in the truth of the charge was proved, and did away the presumption of malice." The judge did not so charge, but on the contrary he told the jury that malice in making the publication need not be proved; that it was to be implied if the charge was false. If all that the defendants had asserted of the plaintiff was true, it was a perfect answer and bar to the suit; and that, in considering this branch of the case, the motives of the defendants were to be laid entirely out of view. After reviewing the testimony on the question as to the truth or falsity of the charge, the judge concluded his remarks, on that part of the case, by saying, "if the defendants have only published the truth, they had an unquestionable right to do that, and they must be acquitted. If the plaintiff has been falsely libelled, he is entitled to a verdict." I can see nothing in the charge of the judge on this part of the case, of which the editors of the American can justly complain. They suppose the proof was sufficient to satisfy the jury of their belief of the facts, as stated in the libel. But as the editors stated the misconduct of the plaintiff as a fact within their own personal knowledge, if the jury were satisfied the charge was false, what legal evidence had they to suppose the defendants believed otherwise?

It is supposed by the counsel of the defendants, that an editor of a public paper may publish what he pleases of candidates for public office with impunity, provided he satisfies the jury he believed it was true; or that he had no ill will against the person injured. It is said in some of our law books, that in actions for libels, or for verbal slander, malice is the gist of the action. But certainly this does not mean malice, or ill will towards the individual, in the ordinary sense of the term. If such were the case, an action would not lie against the proprietor of a paper for a libel published in his absence, or without his knowledge. In *Andres* v. *Wells*, (*7. Johns. Rep.* 260,) the supreme court of this state decided that an action would lie in such a case; and such is the settled law. In ordinary cases of slander, the term maliciously means intentionally and wrongfully, without any legal ground or excuse. Malice is an implication of law from the false and injurious nature of the charge. In this respect, it is entirely different from actual malice or ill will towards the individual, which is frequently given in evidence, for the purpose of increasing the damages.

In ordinary cases of slander or libel, it is not necessary to allege in the declaration that the words were spoken, or the charge published, maliciously. It is sufficient to aver that it was falsely and injuriously done. (*Per Bayley, J.* 6 *Dow. & Ry.* 303. *Anon. F. Moore*, 459. *Style*, 392. *D'Anvers' Abr.* 166. *Mercer* v. *Sparks*, *Owen's Rep.* 51. *Noyes' Rep.* 35, *S. C.*) But there are certain privileged communications which are *prima facie* excusable, from the cause or occasion of the speaking or writing. These are not, in law, considered slanderous or libellous, although the party has not the means of proving the truth of the allegations made, or should afterwards discover he was under a mistake. In such cases the communication is lawful, and there can be no legal implication of malice. An action will sometimes lie even in the case of a privileged communication, if a person, knowing the charge to be false, adopts that method of gratifying his personal ill will against the object of his malice. But in every such case the plaintiff must show actual malice before he can recover. And that is a question of fact for the determination of a jury. (*Gray* v. *Pentland*, 2 *Serg. & Raw.*

23. 4 *id.* 420, *S. C. Burton* v. *Worley*, 4 *Bibb*, 38. *Law* v. *Scott*, 5 *Harris & Johns.* 438.)

In *Duncan* v. *Thwaites*, (5 *Dow. & Ry.* 462,) Bayley, J. says, "if an action is brought against a man for calling another a thief, would it be a good defence to such action for the defendant to say, I really believed him to be a thief at the time I said so; and though I admit that what I said was calculated to injure his character, yet I really acted most conscientiously, under a full belief that what I said was true? Does the negative of malice destroy the right of action where an injury results? The mischievous effect to the party complaining may be just as great as if it was intentional. It must not be assumed that the absence of a malicious intention would be an answer to the action." And Ch. J. Abbott, in delivering the opinion of the court in the same case, lays it down as a general rule, that every act unlawful in itself and injurious to another, is to be considered, in law, to be done *malo animo*, towards the person injured; and that this is all that is meant by a charge of malice in a declaration of this sort; which is introduced rather to exclude the supposition that the publication was made on some innocent occasion, than for any other purpose.

In *Bromage & Snead* v. *Prosser*, (6 *Dow. & Ry.* 296,) the court set aside a verdict because the judge had submitted the question of malice to the jury, in a case where the communication was not privileged, and the truth of the charge was not proved. My own opinion of the law on this subject, and the distinction between ordinary slander and privileged communications, is there so fully and correctly stated, that it would be but a waste of time to state that opinion at length. In ordinary slander, the question of *malice* is never submitted to the jury, except in relation to the amount of damage. In privileged communications the defendant is entitled to a verdict, unless there is evidence of *actual* malice.

The difficulty which existed in England, previous to Mr. *Fox's libel act*, was, that in criminal prosecutions the defendant was not permitted to give the truth in evidence; and yet the jury were required to imply malice. But in civil cases the defendant was permitted to give the truth in evidence as a full justification. Such was declared to be the law by the judges at the time that bill was under discussion in parliament; and there has never been any alteration of the law in England on this subject, in civil suits. The truth is there, a full justification.

It is, however, insisted, that this libel was a privileged communication. If so, the defendants were under no obligation to prove the truth of the charge; and the party libelled had no right to recover unless he established malice in fact, or showed that the editors knew the charge to be false. The effect of such a doctrine would be deplorable. Instead of protecting, it would destroy the freedom of the press, if it were understood that an editor could publish what he pleased against candidates for office, without being answerable for the truth of such publications. No honest man could afford to be an editor; and no man, who had any character to lose, would be a candidate for office under such a construction of the law of libel. The only safe rule to adopt in such cases is, to permit editors to publish what they please in relation to the character and qualifications of candidates for office, but holding them responsible for the truth of what they publish.

If the plaintiff has been injured in his character or his feelings by an unauthorized publication, it is the duty of the jury to award him a full compensation in damages, without reference to any particular ill will which might have been entertained against him by the defendant. For the purpose of ascertaining what injury the plaintiff has probably sustained by the false accusation, the defendant may in all cases go into evidence of the general character of the plaintiff. In ordinary cases, a man whose character

was previously bad would not be entitled to the same compensation in damages, as one who had always sustained a fair and unimpeachable reputation. But if the plaintiff's character had already been tarnished, and the jury were satisfied he was, at the time of the slander, endeavouring by a course of good conduct to retrieve his former character, that might be a reason for giving heavier damages against those, whose slanderous reports might defeat such a laudable attempt on his part.

There is another view of this subject, in which the question of actual malice becomes important with regard to the amount of damages. The jury may not only give such damages as they think necessary to compensate the plaintiff for his actual injury, but they may also give damages by way of punishment to the defendants.—This is usually denominated exemplary damages, or smart money. The plaintiff is therefore at liberty to give evidence of actual malice and vindictive motives on the part of the defendants, to increase the damages. On the other hand, the defendant may rebut all presumption of actual malice, by showing facts and circumstances which induced him to suppose the charge was true at the time he made it, although it afterwards turns out to be false. The object of this kind of testimony is not to create a suspicion in the mind of the jury that the charge is true, but to show them that the defendant was not actuated by malicious motives. Hence no evidence of this kind can be given, except such as actually was, or may fairly be presumed to have been known to the defendant at the time he made the charge.

If the charge is true, the defendant has another remedy by pleading the truth in bar of the action, which will be a complete defence; but if he sets up such defence, which turns out to be untrue, it is a deliberate repetition of the slander on the records of the court, and it is then too late for him to allege that the original charge was made under a mistake. The jury are then to pass on the truth of the charge, and it would be destructive to the rights of the plaintiff to permit such evidence to go to them in connection with the justification. When the defendant goes to trial on the general issue only, such testimony may safely be admitted, as it only goes to reduce the damages by rebutting all presumption of actual malice. The *ex parte* statements of others, and circumstances of suspicion which had been communicated to the defendant, would not be legal evidence to establish a justification; and if they were given in evidence, in connection with other testimony which was legal, they would influence the opinions of the jurors, and might induce them to give a verdict in favour of the defendant, when they would not have given such verdict on the legal evidence of guilt alone. For this reason it was long a question of doubt whether evidence of general bad character could be given in connection with a justification. Some of the most recent decisions, both in this country and in England, seem to be in favour of allowing evidence of general bad character, although there is a justification. I am disposed to defer to those decisions, but am satisfied the rights of plaintiffs, and the safety of those who are accused of crime, will not allow the principle to be extended.

The testimony rejected by the judge was neither admissible as evidence of general character, nor of particular facts, which had induced the defendants to make the charge in this case. They state the facts as within their own personal knowledge, without reference to the previous character of the plaintiff, or the opinions of any person; and the judge correctly stated to the jury that the opinions of others were of no consequence, if they did not influence the conduct of the defendants.

The statement of the judge, that the defendants may not give evidence of general character as to temperance, unless of the same quality or degree charged in the libel, was fully explained by him, so that his meaning

could not be misunderstood by the jury. The charge was certainly much more favourable to the defendants than the decision of the supreme court would have authorized, though I do not mean to say it was more so than the facts of the case required.

In aggravated cases of slander, it is not only the right but the duty of the judge to present to the jury, in plain and intelligible language, the necessity and propriety of protecting private character against unwarranted calumny and abuse. Judges have at times been permitted to use very strong language in describing the character of a libellous production. In a case before the late chief justice, in speaking of the libel, he held this language to the jury: "The declarations contained in this pamphlet evince extreme depravity of heart in the defendant, and an utter disregard of every rule of propriety, and every principle of honour; and altogether forming a tissue of expressions the most indecent, the most immoral, the most blasphemous, that ever were conceived in the heart, or uttered by the tongue of man."—(*Trumbull v. Gibbons, Judicial Repos.* 1.) And although $15,000 damages were given in that case, I believe the counsel did not think of asking for a new trial.

If I do not mistake the meaning of the circuit judge in the case before us, some of the passages complained of in his charge were intended to protect the defendants against any improper effects which had been made upon the minds of the jury by an appeal to their prejudices. I infer from the charge that the plaintiff's counsel had alluded to the case of Judge Van Ness, or of some other individual; and it was in reference to that the judge told the jury, that the defendants were called upon to answer for a specific injury; and if they had cleared themselves of that, no consideration of general expediency should induce the jury to punish them for offences not charged against them in that action. If such was the case, it was perfectly right and proper, and the defendants certainly have no right to complain.

I cannot bring myself to the conclusion that any rule of law has been violated on the trial of this cause; and I think the judgment of the supreme court should be affirmed as of the term of this court immediately preceding the death of Verplanck.

By Mr. Senator Mather. In charging the jury on the trial of this cause at the circuit, the learned judge observed that it was not incumbent on the plaintiff to prove malice on the part of the defendants in making the publication; that malice would be implied if the charge was false. This, as a general proposition, is undoubtedly correct; but it ought to be observed, lest we suffer ourselves to be misled by the broad and general terms in which it is expressed, that the malice in such case is *presumed* or *implied only*, as the rule itself purports. Every person is presumed innocent of any crime which may be charged against him, until he is proved guilty. Whoever charges another therefore with any thing criminal, is presumed to have made a false charge, and therefore to have acted maliciously, unless he shall be able to prove the truth of the charge, the burden of which proof he has assumed by making the charge. It is to be observed further, that the presumption of malice referred to is the presumption of law only. As soon as proofs are offered to enable a jury to judge of the truth of the charge, it becomes the province of the jury to inquire and adjudge in point of fact, not only whether malice existed, but to what extent, and in what degree.

To satisfy the first part of the inquiry, whether malice existed or not, so far as regards the legal presumption of malice, the jury have only to look at the proofs offered in justification. The inquiry involves only presumptions of facts. If the proofs are sufficient, the legal presumption of malice is rebutted by the facts proved. For it is to be remembered that legal presumptions are not proof, but, (as ex-

pressed by Ch. Baron Gilbert, in his Law of Evidence, vol. 1, page 142,) only stand instead of facts until the contrary be proved. If the proofs on the other hand fail to establish the justification, then the presumption of law that malice is implied if the charges are false stands good, and a verdict must, in such case, be rendered for the plaintiff. This is the whole scope and end of the rule of law with which the judge opens his charge to the jury. For, when the second inquiry arises, what is the extent and degree of the malice? an inquiry most materially bearing upon the amount of damages to be awarded to the injured party, the rule that malice is implied if the charges are false, no longer affords the least assistance. It then becomes material to look to the nature of the charges themselves, the relative situation of the parties, the circumstances attending the publication, and the probable causes existing, if any, which might be supposed to have induced the defendant to believe the charges true prior to publication.

If such probable causes are found to exist, it is manifest that they do more or less repel the presumption of malice with respect to the extent and degree in which it exists. It is self-evident that it is an exhibition of a greater degree of malice for a person to publish a false charge, knowing it to be so, than to publish the same charge, supposing by mistake that it is true. I admit it would be wrong in any case to allow to the probable causes such force as to do away entirely the legal presumption of malice, founded on the falsity of the charges; for a person has no more right to prefer any charge against the character or conduct of another, unless he can substantiate it by legal proof, than a jury would have, to pronounce an accused person guilty without such proof. If it should be asked, has not a person a right to speak or write whatever he honestly believes? the answer is obvious. No person is justified as a matter of course, in believing: it is not always honest to believe an injurious report which cannot be substantiated by sufficient evidence; and if the charge in a given case may be supposed to be true, and yet the proof of it not within the reach of the party, although he may believe it with more or less assurance, according to the apparent force of the evidence before his mind, still an honest regard to the peace of society, his own interest and self-respect, should induce him to be silent. Before giving publicity to any charges injurious to the character of another, the same considerations should induce every person to weigh well, not only the evidence of their truth, but the uncertainty and imperfections of all human tribunals in eliciting it. It is well for the repose of community; it is well for the peace of individuals, that the law imposes upon the accusing party the full responsibility of substantiating his accusations, or, in default thereof, to stand himself convicted of falsehood and of malice. Still, on the question of damages, we see that the consideration of probable cause is a most material inquiry. The existence of such cause shows that the accusing party had some reason to believe what he spoke or wrote was true; and, as we are under the necessity of forming most of our opinions as to facts not certainly known on that species of evidence, it follows that in proportion to the strength of the probability shown, in the same degree is the legal presumption of malice diminished. In that part of the charge of the learned judge which relates to this branch of the subject, it appears to me there is a material and fatal deficiency. In pursuing the subject further, I propose in the first place to show the defectiveness of the charge in this respect; and in the second place to show that the charge was erroneous on the subject of evidence relative to the plaintiff's general character, in mitigation of damages.

1. On the subject of probable cause shown in mitigation of damages, the doctrine of the judge is stated as follows:

"The defendants have also been

allowed, upon this point of damages, to prove that they had probable cause for making these charges against the plaintiff. To do this, they have offered evidence to satisfy you that it was commonly reported and believed in Albany at the time that the plaintiff was in the condition represented in the libel. This kind of proof must also go as far as is required in regard to general character. It must plainly appear that the defendants have asserted nothing more than was then matter of common report in Albany respecting the plaintiff's condition and conduct in the senate chamber." The judge then proceeds to observe, that "the jury should not only inquire whether such common opinion prevailed, but also whether it influenced the defendants to make the publication; and that, if it should appear that the defendants rested the charges on their own assertion, without any reference to or knowledge of such general belief, then the existence of such common belief, would afford no mitigation in their behalf."

This is all that is contained in the charge on the subject of probable cause shown on mitigation of damages. I observed that in this part of the charge there was a material and fatal defect. The defect I allude to is this: The judge in the first place admits the correct doctrine that probable cause may be relied upon in mitigation of damages; he then proceeds to call the attention of the jury to the evidence supposed to be relied upon by the defendants as showing probable cause, and, in so doing, selects the weakest point in the defendants' testimony on that subject, (the reports current in Albany,) and wholly overlooks the strongest, substantially as I consider, charging the jury that the evidence thus selected, and by him commented upon, was all they had a right to consider in mitigation of damages.

To show that I am not mistaken in giving this construction to the judge's language, I refer to the statements in the bill of exceptions immediately preceding the charge, where it is found "that the evidence being closed, the counsel for the defendants did then and there insist," among other things, "that if a verdict should be found for the plaintiff, the malice of the publication was taken away, and only nominal damages could be awarded; that the belief of the defendants in the truth of the charge was proved by the evidence, and did away the presumption of malice." This shows what the defendants claimed, the judge should charge the jury on this part of the case. I might well predicate my construction of this part of the charge, on the fact, that the judge utterly neglected and refused to state to the jury this claim of the defendants, which I consider their strongest point on the subject of probable cause, and limits the inquiry of the jury to the single consideration of the reports current in Albany. But that such is the true construction of the charge is further evident, and I think conclusively settled, by the fact, that his honour the chief justice, in delivering the opinion of the supreme court on this branch of the case, not only dissents from the circuit judge on the admissibility of common report as evidence of probable cause in mitigation of damages, but enters into an elaborate argument to show that the proofs offered unsuccessfully in justification could not be relied upon in mitigation as evidence of probable cause. If it had not been considered that the silence of the circuit judge, and his neglect to charge on the last point, as requested by the defendants' counsel, was equivalent to an express dissent from the doctrine asserted by the defendants' counsel, then surely there was no necessity that the supreme court should enter at all into the discussion of the subject. His honour certainly did not intend in this respect to controvert the opinion of the circuit judge. The latter had not advanced any opinion in this respect in collision with that entertained by the supreme court. He was requested to do so, but refused, the very thing which is complained of on the part of the defendants.

By referring to the testimony set forth in the bill of exceptions, it will te seen that eight witnesses on the trial of the cause at the circuit, on the part of the defendants, concurred in testifying that the facts stated in the libel was substantially if not literally true. It cannot be necessary to repeat their testimony here. It is somewhat remarkable, that by comparing the several facts given in evidence by those witnesses, it will appear, that as far as an opinion can be formed from their testimony, viewed by itself, every harsh epithet contained in the libel, every unfavourable representation of the plaintiff's condition and conduct on the occasion specified, is sustained and verified, not by doubtful opinions, but by direct statements of facts occurring under the personal observation of the witnesses. From duly weighing this fact, a consideration arises on the subject of probable cause shown in mitigation of damages, which appears to me to be of paramouut importance on this part of the case, and a leading point in the cause on the part of the defendants.

If I mistake not, I have already shown, that in proportion to the weight of probable causes tending to show the truth of the charges in any case, in that proportion the legal presumption of malice arising from the fact that those causes do not prove the truth of the charges is diminished.

A slight comparison of the testimony on the part of the plaintiff and defendants in this cause will, I think, satisfy any person, that, on the question of justification, the preponderance in favour of the plaintiff, which was even admitted by the defendants' counsel on the argument, was at the best very inconsiderable. The plaintiff introduced *ten* witnesses, the defendants *eleven*. All the plaintiff's witnesses were present on the occasion alluded to in the libel, and concur in acquitting the plaintiff, according to their judgment, of the facts charged, and they speak from personal observation. Eight of the defendants' witnesses were also present, and testify from personal observation, with equal positiveness, that the facts were true. There was no attempt to impeach the defendants' witnesses. One of the plaintiff's witnesses, however, does impeach the character for veracity of another witness on the same side. He states that the general character of that witness for truth and veracity was not good, though there was great difference of opinion as to it; but that he would believe him under oath when his interest was not concerned, or his feelings strongly enlisted, in which case he would not, for he believed he would then square his oath according to circumstances. After making due allowance for this circumstance, I am bound to believe with his honour the judge, who charged the jury, that "there is no doubt of the entire credibility of every witness upon either side, and that they are gentlemen of the first integrity and intelligence." How, then, do they stand on the question of justification? I desire it to be kept in mind that I am not here attempting to show that the justification was made out, but solely that the preponderance in favour of the plaintiff's side was exceedingly slight, a circumstance which, I trust, has been already, and will be yet more clearly shown, to be important on the question of mitigating damages. Ten for the plaintiff depose that the charges were not true; eight for the defendants that they were true. Numerically, there is a preponderance of two. But one of the two is strongly impeached as to character for veracity by another on the same side. The preponderance is therefore seen to be extremely slight.

The question then recurs with new force, how are we to determine what allowance to make in mitigation of damages? I answer, by reference to a principle already established. So far as the object of giving a verdict for the plaintiff in such case is to punish the defendants for malice in publishing the falsehood, the allowance in mitigation of damages is to be determined by es-

timating the weight of the probable causes given in evidence, and tending to show that in making the charges the defendants had reasonable ground for believing that they were publishing the truth. In this cause it has been shown that the preponderance of testimony in favour of the plaintiff below on the question of justification was very slight. That was done by showing that the evidence on the part of the defendants to establish the justification was very nearly of equal force to that by which it was rebutted on the part of the plaintiff. The circumstances thus given in evidence on the part of the defendants, all existed prior to the publication complained of, and they transpired under the observation of the defendants, or of one of them, as well as of the witnesses; and hence we see that they fall under the description of probable causes leading defendants to believe and publish the charges. Their weight or tendency to produce conviction is measured and determined by the fact, that but for a slight preponderance in the *number* of witnesses opposed, the defence would have been fully established. As the presumption of malice rests on the falsity of the charges, and as in this case that falsity was only proved, or rather presumed from, or by a slight preponderance of testimony, it follows that the presumption of malice in this cause has a very slight and narrow foundation to rest upon.

Hence, I cannot doubt, that under the guidance of these principles, the judge should have charged the jury, that in case they should be of opinion that the evidence failed to establish the justification, they were still bound to consider whether it afforded the defendants probable ground to believe the truth of their publication; that if, in their estimation, it did afford such probable cause, they were bound to consider it in mitigation of damages, and to give it force in that respect so far as the object of their verdict was to punish malice, just to the extent in which they should think it repelled the legal presumption of malice.

It certainly cannot be considered as very remarkable that the defendants should believe, on the testimony of their own observation, a fact which, under exactly similar circumstances, eight "gentlemen of entire credibility, of the first integrity and intelligence," also believed. Nor in my opinion does it require any tax upon credulity to allow that, believing that fact on such evidence, their motives in publishing it to the world, if at any, might have been only at a slight remove from honesty, good faith, and a desire to promote the public interest. In the judgment of charity, which ought to guide all men in dealing out reprehension, under such circumstances, the most that could be safely affirmed against the defendants for making the injurious charges in this case is, that they acted unadvisedly; that they did not, in deciding to publish their opinions, sufficiently consider, that, even if true, it would not be certain that they would be able to prove them when called upon in a court of justice; and that, in penning their remarks, they had infused into them a spirit of asperity at once calculated to arouse the resentment of the accused and his friends, and to create and nourish a vitiated taste in the public at large for that style of newspaper discussion.

But I am called upon to vindicate this view of the case, not only against the charge of the circuit judge, but against the more direct arguments and opinion of the supreme court. That part of their decision which relates to the question now under consideration is as follows:

"When the defendant undertakes to justify because the publication is true, the plea, or which is the same thing, a notice of justification, is a republication of the libel. It is an admission of the malicious intent with which the publication was first made. And upon the trial the jury are instructed, that if the plea is false, it is an aggravation of the offence, and calls for enhanced damages. Such a state of the case, and such an instruction, is totally inconsistent with the idea of

mitigation resting upon the absence of malice. That is confessed upon the record. When, however, the defendant does not by the pleadings admit the malice, then he may excuse his conduct by showing such circumstances as disprove a malicious intent."

In applying these principles to the case in hand, the court go on to say, "When prosecuted, defendants do not disavow the malice, and claim exemption from damages, by bringing themselves within some of the exceptions to the general rule, as to the implication of malice. They come into court, and when they may be supposed to have ascertained whether they were mistaken in the first publication, deliberately assert upon the record that the publication is true. So far, then, from disclaiming malice, they virtually admit it in the face of the court. They are clearly excluded then from the benefit of any defence based upon the absence of malice." I have thus extracted the substantial parts of the reasoning of the supreme court in order to give it its full force. Dissenting as I do from almost every idea contained in the extract, I shall be under the necessity of considering them separately.

The court say, "When the defendant undertakes to justify, &c., the plea, or notice of justification, is a republication of the libel. It is an admission of the malicious intent with which the libel was first made. The malice is confessed upon the record." What, I would inquire, is malice? It is defined to be "badness of design, extreme enmity of heart, or malevolence, a disposition to injure others *without cause*, from mere personal gratification, or from a spirit of revenge." The question then arises, does the failure of an attempt to justify show that the malice is in such case admitted? I appeal to the first principles of moral rectitude and enlightened judgment to decide, if I do not answer correctly when I say, such a state of things may or may not be construed as an admission or evidence of malice: all depends on the solution of a prior question with what intent did the party interpose such a plea or notice. If he did it, knowing it to be false, or from a reckless disregard to consequences, without having reasonable cause to suppose he could substantiate it, then I agree it may and ought to be considered as new evidence of malice, or an admission of malice; for it is a republication of that which, by its utter falsity, is legaliy presumed to be malicious; and I agree it may and ought, in such case, to enhance the damages.

But no man is bound to be infallible in pleading. If he pleads, or gives notice of justificaiion, sincerely supposing he can sustain such plea or notice by proof; if he has before pleading used all reasonable diligence to inform his judgment on that point, then the plea is very far from affording new evidence, or being an admission of malice, and this too whether in fact it shall turn out that the plea is true, or the pleader mistaken as to its truth, or unable to prove it true; for the premises which I state in such case, the reasonable inquiry, the *bona fides*, show both in a moral and legal point of view, the absence of that "badness of design or disposition to injure without cause, from mere personal gratification or spirit of revenge," in which malice consists.

But the court lay it down as a rule, that on a failure to sustain the justification, the plea, or notice of course, and in all cases is an admission of malice and of new malice. If a failure to sustain a justification does, necessarily, prove a libel to be false; if it also proves it impossible that the defendant might have only erred in judgment, in supposing that he could prove that which he could not; if, in short, it proves that there is no such thing in this imperfect world, as a man's being mistaken in judgment, and still honest at heart, and that the guilt of one who errs in judgment, is equal to that of another who errs wilfully, then, and then only, could I subscribe to the doctrine of the supreme court under consideration. We see, therefore, that in order to ascertain, on a failure of

justifying, whether a plea or notice is an admission or new evidence of malice, so as to enhance the damages, it is necessary to inquire into the motives with which the plea was interposed. Whose province is it to make that inquiry? The doctrine of the supreme court assumes it to be the province of the judge on the bench. It goes further: it assumes it not only to be the province of the judge to make the inquiry, but, having made it, always to decide one way, to wit, that the motives were malicious. This rule of the court, besides invading, in my opinion, the province of the jury, is like a two-edged sword. If the libel is false, and the defendants' motives in setting up a justification actually malicious, it cuts as it ought; if the libel is false, but the defendant in pleading a justification only mistaken in judgment as to his ability to sustain it; or if it be true, and the party only unable fully to prove it, being guilty in those cases of too great a degree of frankness, and a want of infallibility in pleading, the sword again cuts to an equal depth. Whether it ought, or ought not, in the last cases, and whether the judge's or jurors' hands should wield it, I submit to enlightened judgment, to common sense, and to those feelings of kindness and benevolence which ought ever to be consulted in forming opinions upon the conduct of men.

The court proceed to say, "Such a a state of the case, (alluding to the failure of an attempt to justify,) and such an instruction to the jury (to give enhanced damages because the plea or notice admitted and republished the malice) is totally inconsistent with the idea of mitigation resting on the absence of malice." Let us view the two circumstances here joined, separately. "Such an instruction to the jury, (i. e. to give enhanced damages because the plea or notice admitted and republished the malice,) is inconsistent with the idea of mitigation resting on the absence of malice." The court, it is to be noted by way of explanation, had, in the sentence immediately preceding this, stated that it was the usual practice to instruct jurors on trials, that if the plea was false, it was an aggravation of the offence, and called for enhanced damages. I flatter myself it has been already made somewhat manifest, that if there is any such practice at the circuits, or in any other courts in this state, it is erroneous in this respect; that as appealed to by the supreme court, it purports to be a general rule for all cases; whereas, it cannot be a correct rule, except in cases in which the jury are not only satisfied that the libel is false and malicious, but that the defendant also knew, or had reason to know, that the plea was false when it was pleaded, or had omitted to use reasonable diligence to inform himself as to the propriety or expediency of setting it up; in which last case we observed that the party might be justly charged with a reckless disregard to consequences, and want of seriousness and good faith in pleading, which, if not direct evidence of malice, are certainly nearly as inexcusable. The court then say, "Such an instruction to the jury, to enhance the damages on account of the repetition of the falsehood and malice in the plea, is inconsistent with the idea of mitigation resting on the absence of malice." I grant it; there is an entire inconsistency between them. But what right has the court to appeal to an incorrect rule, said to be adopted in practice at the circuit, and from the inconsistency of that rule with a principle under discussion, argue that the latter is also incorrect. I have shown that the supposed rule of the circuits needs a most important qualification. It is proper in a specified class of cases, and equally improper in another class. I grant it; but, in so doing, I only grant a truism, that where a case is so clear that there is no doubt, not only of the malice of the original publication, but that the plea was interposed for the sole purpose of indulging anew a malicious disposition, it would be extremely inconsistent to ask a mitigation of damages on an allegation that there was no malice. A man

would stultify himself by making such a request.

I now proceed to consider the second circumstance, in reference to which the charge of inconsistency is brought against the doctrine which I have endeavoured to show to be salutary. "Such a state of the case (meaning after the justification has failed) is inconsistent with the idea of mitigation resting upon the absence of malice." I have necessarily anticipated much that need be said in answer to this allegation, in attempting to show that the supposed rule adopted at the circuit is wrong in being stated by the court in such general terms as to include the class of cases in which a justification, being set up, the preponderance of testimony which determines it to have failed is slight, and where, from that consideration and other circumstances, judgment of charity might be supposed to allow that the accusing party not only believed the charges to be true, but that he could also prove them. Here, again, it is alleged by the court, that it is inconsistent to ask a mitigation of damages on an alleged absence of malice, because it is said the failure to justify shows malice.

It is necessary to observe in this place, that the views which I have advanced do not render it necessary for me to assert, that the mitigation of damages in any such case is to rest on an *absence* of malice, strictly speaking; and, in this respect, the language made use of by the court appears to me to imply a misconstruction of the views which are advanced on the adverse side. It is admitted, that if the justification fails, no attending circumstances are sufficient to show an *entire* absence of malice. The legal presumption of malice resulting from the falsity of the charges, is a good ground for a verdict for the plaintiff; but no person will contend that that presumption is in any sense directory to the jury in regard to the amount of damages. The degree of malice is an important consideration in settling that point. All that I contend for then is, that if the proofs offered in justification are sufficient to show that the defendant had reasonable and probable cause to believe the truth of the charges at the time of publishing them, then the jury may consider such probable cause as showing a less degree of malice to be punished, than if no such cause had been made to appear.

One ground on which the court reject the evidence of probable cause in the cases adverted to is, that it was originally introduced to support a justification, and inasmuch as it was deemed insufficient for that purpose, it must also be held insufficient for any inferior purpose: e. g. as proof of probable cause. If the probable cause were a higher end, or a more desirable object to the defendant, than proof in justification, I admit there would be force in the argument; for it may well be said, that proof which is insufficient to show the defendant had a probable cause for publishing a libel, is much more insufficient to prove he had a just cause. This is arguing from the less to the greater. But when the court say, on the contrary, "If the proofs are insufficient to support a justification, they are therefore to be held insufficient to show probable cause," it appears to me they argue from the greater to the less, which is illogical.

But the court say further, that the justification, being unsupported by legal evidence, shows malice, and new malice; and they thence also argue, that it is inconsistent to suppose that the circumstances offered in justification can be evidence of probable cause in mitigation of damages. The error of this reasoning will appear conclusively, from the following considerations: In order to determine whether circumstances offered unsuccessfully in justification show malice, it is indispensable, as a condition precedent, to inquire and determine whether they show a probable cause, (it being conceded that they are insufficient to establish a justification.) Malice is a "disposition to injure another *without cause*, from a spirit of revenge merely, or for personal gratification." To affirm, then, of any act that it is malicious, presupposes or implies that the

actor was uninfluenced by any reasonable or probable cause. The supreme court, therefore, in affirming that a plea or notice of justification unsustained, is evidence of malice, are plainly guilty of what logicians term a *petitio principii* or begging of the question.

To determine whether a plea or justification was interposed maliciously, must depend upon a due consideration of the circumstances or facts given in evidence in support of it. If those facts and circumstances, viewed separately from the testimony on the opposite side, were sufficient, as in the case in hand they certainly were to prove the truth of the plea; if, as in this case, the failure of those circumstances to produce such a result is to be attributed to the production of a greater number of witnesses on the adverse side, (all the witnesses being admitted to be of equal respectability,) it appears to me it would be in the highest degree irrational, as well as unjust, to infer from such evidence that the plea was interposed maliciously. On the contrary, it would be just, in such a case, to infer that the pleader had in view, and was actuated in pleading, by a consideration of probable cause of the most serious import; or, in other words, that he was not actuated by malicious motives in pleading the justification. In regard also to the original publication, the same considerations would show that the charge of malice was for the most part removed; and in giving a verdict for the plaintiff under such circumstances, the jury would proceed, not upon actual proof of malice, but upon the legal presumption only of its existence. The slightness of such presumption, the unsatisfactory nature of the conviction it produces as to the existence of malicious intentions, the cautious fear so justly entertained lest the punishment of the law should fall upon the head of the innocent, and a spirit of judicious discrimination between wilful falsehood on the one hand, and a mistaken judgment proceeding on probable grounds on the other, are all and every of them considerations which should induce a jury to mitigate the damages.

2. I now proceed to the second point stated in the commencement of this opinion, to show that the judge at the circuit charged the jury erroneously on the subject of proof of general reputation in mitigation of damages.

The exceptionable part of the judge's charge in this respect is found expressed in the following sentences: "Defendants, in mitigation, are entitled to show that the plaintiff had a general reputation equivalent to what they have charged upon him. Unless their proof amounts to that, it can be of no avail. They cannot give evidence of general reputation in respect to temperance in mitigation, unless such general reputation is of the same quality and degree charged in the libel. You will accordingly, before you give any weight to this sort of evidence, see clearly that it bears out the specific charge; for it cannot be resorted to in diminution of the injury, unless it comes up to the offence imputed. It is not enough that the general character appears to be of the like description with that alleged in the libel, without it also is so to the same extent and degree." It is to be observed, that the extract which I have given is the judge's summary of all the law supposed to bear on that branch of the subject.

The first observation which I deem it proper to make respecting the rule here stated by Judge *Betts* is this: the words used do not convey any definite idea to the understanding, and therefore it is impossible to apply such a rule to the facts in any given case. "Defendants in mitigation," says the judge, "are entitled to show the plaintiff had a general reputation equivalent to what they have charged upon him, and unless their proof amounts to that, it can be of no avail." What was the libellous charge in this case? It affirmed nothing relative to the plaintiff's general character, but charged him with a particular course of conduct on a particular occasion. The

question then fairly arises, in considering the rule as stated by the judge, what course of general conduct in life is equivalent to the commission of one separate offence, or a series of particular offences, all done on the same occasion? I confess, if such a question were put to me, I could only say, I know not how to answer it. I do not know any scales for the weighing of a man's course of life on one side, and a detached portion of it on the other, so as to say that one is equivalent to the other, or that one falls short of the other.

In another part of the charge, the judge stated to the jury, "that it was abundantly manifest, from the whole course of the proofs, the plaintiff had for many years indulged in a free and constant use of spirituous liquors;" and he characterizes the degree of that indulgence by these words: "a course of ruinous or degrading dissipation." It is manifest, therefore, that before any person could apply the judge's rule to the facts proved in this case, he would be under the necessity of first settling in his mind what indulgence for years, in the free and constant use of spirituous liquors, in a course of ruinous or degrading dissipation out of doors, is equivalent to being intoxicated, and behaving under that excitement in a particular manner in the senate chamber—an inquiry which I think the human mind unfurnished with powers to make. The word *equivalent* applied to such a subject, cannot convey a definite idea to the understanding.

The next and subsequent sentences contained in the above extract, seem to contain the expression of a similar idea with slight variations. "They cannot," says the judge, "give evidence of general reputation in respect to temperence in mitigation, unless such general reputation is of the same quality and degree charged in the libel." To understand this, presents the same difficulty. How can the quality and degree of a particular act, or of a number of particular acts, all done on one occasion, be so compared with the general course of a man's life, and the general reputation growing therefrom, that it shall be said one is of the same quality and degree with the other? He adds, "You will accordingly, before you give any weight to this sort of evidence, see clearly that it bears out the specific charge, for it cannot be resorted to in diminution of the injury, unless it comes up to the offence imputed." I would here inquire, if there is not a manifest impropriety in affirming of any evidence as to a man's general character for temperance, that it can be supposed to bear out a specific charge of intemperance on a particular occasion, and a like impropriety in speaking of that proof, as resorted to in diminution of an injury, which the judge says must come up to the offence imputed in order to have any weight. Certainly, if the proof as to general reputation is capable of "bearing out the specific charge, and of coming up to the offence imputed," it would no longer need to be considered in diminution of the injury, or in mitigation of damages; for, in such case, what the judge has affirmed of it, would make it equivalent to a justification.

The judge closes this part of the charge by saying, "It is not enough that the general character appears to be of the like description with that charged in the libel without it also is so to the same extent and degree." I understand by this, that the judge means that the proof offered as to general character, is not entitled to any weight unless it goes the whole length or extent and degree of the libel, which verifies my former observation, that every sentence in the extract is substantially a repetition of the same thing. I do not however object to the repetition. The error of the judge in this part of the charge appears to consist in this: He endeavours to establish a rule which, by its operation, shall destroy the effect of proof relied upon relative to general reputation, on grounds strictly analogous to those on which, as I have attempted to show, the evidence of probable cause in mi-

tigation was erroneously rejected. Proofs of probable cause were rejected wholly, because they failed to support a justification. Here, proofs establishing fully an impeachment of character for temperance to a certain extent are to be rejected wholly, provided the jury shall think they do not show a character as flagitious as the the libel would, if true. The rule appears to me to proceed on another wrong principle. It seems to assume that a course of intemperance characterized by the judge, as being "ruinous" and "degrading," extending through "many years" of a man's life, and proved by the common consent of nearly all the witnesses on both sides, is not so great an impeachment of a man's character for temperance, as to prove him intoxicated on one public occasion only; an assumption which I consider the very reverse of the truth. No single immoral act, though it may be attended with circumstances greatly enhancing its turpitude, can be supposed, after all, to involve so great an amount of guilt; neither would it so seriously impair a person's general reputation with his acquaintances, as a frequent repetition of the same immoral action through a series of years, though accompanied in the latter cases in the overt acts separately considered, with fewer circumstances to mark their criminality.

The judge's position, as far as I can understand its supposed force, proeeeds upon another unfounded assumption, i. e., it seems to assume, that, after a particular charge, affecting a man's conduct for intemperance on a specified occasion, his general character for temperance is not to be considered as impeached at all, unless the several acts in common life on which the general character arises, are, separately considered, equally outrageous with the particular acts charged in the libel. This assumption is also at war with the judge's own reasoning; for, from the manner in which he characterizes the plaintiff's intemperance as "ruinous," "degrading," &c., I am constrained to consider that he admits it to be "abundantly proved on both sides," that the character of the plaintiff in respect to temperance was at least bad. Still, the purport of the charge seems to be that the jury should not give *any* weight to that acknowledged evidence, unless they should be of opinion clearly, that such impeachment set the plaintiff's general character, in respect to temperance, in as bad a light as it would be if the several acts or courses of conduct on which the general reputation was founded, were separately of the same quality, "extent, and degree," of intemperance, with the particular act charged in the libel, so as to "bear out and come up to the specific charge," as the judge also expresses it.

I am well aware that it is not proper in the impeachment of general character, to go into proof and particular acts of misconduct; still, it is to be borne in mind, that general reputation is founded wholly on particular actions, and cannot be disparaged to any extent or degree beyond the character or description of the particular actions which, viewed conjointly, go to form the general character of the individual. If the charge of the judge in this respect is correct, the following consequences will inevitably follow: Although the general character of a party may be proved to be bad, and be of greatly disparaged fame in respect to a quality in dispute, still, if the libel overrates the badness of it, even in the least degree, the jury must give just the same damages as they would for a character the most unsullied. The rule of judgment which is thus given to the jury, and the consequences directly flowing from it, are, in my opinion, subversive of the first principles of morality and common sense. The supreme court, in giving their opinion in this cause, very justly remark, that a person of disparaged fame is not entitled to the same measure of damages, as another whose character is unblemished. This single remark certainly shows the entire fallacy of Judge Betts' reasoning. I conclude, therefore, that inasmuch as the judge

admitted to the jury that the plaintiff's general character for temperance was disparaged to some extent, he should have instructed them that *so far* it was their duty to make allowance in mitigation of damages, notwithstanding the disparagement might not be considered as coming up to and bearing out the specific charge; that in such a case damages should only be given for the excessive colouring, the over-heated epithets, and the mistaken facts imputed in the libel, which the attempted justification failed to support, and which were left uncorroborated even by general reputation, after all due allowance for the degree of disparaged character actually proved.

In looking back to another part of the judge's charge, I find a strain of argument on the subject of justification, which by analogy so fully sustains my view of this branch of the subject, that I here give an extract from it. On the subject of justification, the judge observes, "All that is libellous in the publication must be justified. Damages must be given *for such part, if any, as the defendants fail to support.*" On precisely the same ground I contend, that though a man's general character for temperance may be disparaged by a libel in too great an extent and degree, still, if the proofs in the case do disparage it materially in that respect, though in a less degree, the damages to be awarded should be in proportion to the excessive disparagement, and not to the value of a spotless character.

Here, again, I find myself called upon to defend my views against the arguments of the supreme court; for that court, on this point, as on the other already discussed, take even higher grounds, in excluding testimony, than the circuit judge. After assigning reasons, they say, in conclusion, "In no point of view, therefore, was the testimony admissible under the pleadings, even without the qualification of the circuit judge." It is worthy of observation, however, that the difference between the two courts is more nominal than real. The supreme court reject the testimony wholly; Judge Betts adopts a rule which I have shown must in the end produce the same result; for that the general reputation is incapable of "clearly and fully coming up to and bearing out the specific charge," is shown in every such case by the failure to support the justification, and it is only on the contingency of such failure that the learned judge gives the rule. "You will see clearly," he says, "that it bears out the specific charge, before you give any weight to this sort of evidence." It is said by the supreme court that the evidence of general character for temperance ought to be rejected, because the plaintiff would be taken by surprise, having no notice in regard to general character, and that the admission of such proof would be allowing the general character to be attacked in detail, whereas properly it should be attacked at large or in gross.

That the plaintiff in such case would not be taken by surprise, is manifest from the fact that the libellous charge itself, the declaration, and the plea or notice of justification, indeed the very nature of the controversy between the parties, as well as their pleadings, all conspire to indicate the necessity of the plaintiff being ready to sustain his general character as to the offence imputed. Indeed, that is the object mainly for which he commences his action, and his declaration sets out with an averment of his general good character, and particularly in reference to the charge imputed; and as, by the rules of pleading, an express notice of intention to give evidence in regard to general character is never admitted, it follows that a party plaintiff is never to expect any other notice of such intention, than such as arises from the nature of the case itself. With regard to the objection that it would be suffering the general character to be attacked in detail, I admit, if the defendants in this case had offered to prove particular instances of intemperance as an impeachment of the general character, in that respect, the objection would have been good, and within the

adjudged cases; but no such thing was attempted. The supreme court, however, close on this point by saying, that if the evidence of general character had been offered on the general issue only with a view to show there was no malice in the defendants, because in reality they only repeated what every one else did, and what the plaintiff's conduct led them to believe was the truth, a very different question would have been presented. The court, in making this distinction, appear to me to lose sight of the object for which proof is offered in respect to general character. The object of introducing such proof being to enlighten the minds of the jury on the subject of damages, there may exist the same necessity for such proofs in a case in which a justification has been pleaded with the general issue, as where the latter plea stands alone. A failure to sustain a justification does by no means prove the general character of the plaintiff to be good. I cannot, therefore, discover any reason why the jury should give the plaintiff more damages than his character really deserves, on the ground that the defendant has failed to sustain the particular charge according to his plea. Such a result would however be unavoidable in many cases, if proof as to general character is to be rejected in all cases where the defendant sets up a justification, with a plea of the general issue.

Before closing, I will refer to a few of the leading cases which will be found to bear upon the subjects discussed.

In *Starkie on Slander, p.* 410, it is said, "Though circumstanaes inducing a belief of the plaintiff's guilt in the mind of the defendant take away considerably from the malignity of his intention, yet, since they do not amount to a justification, there is still a *residuum* of malice sufficient to support the action."

Larned v. *Buffinton*, (3 *Mass. R.* 546,) was an action for slander: plea, general issue, and justification. The defendant, in mitigation of damages, offered to prove that the plaintiff left his father before he was of age, and without property; that he was a transient or roving man; unmarried; lived in many places successively; traded horses; butchered, and drove cattle, and owned no real estate. This evidence was rejected on grounds perfectly consistent with those which I have advanced. Chief Justice Parsons places the rejection on the ground that the rule of law in such cases will not admit particular facts which were pertinent to the question of general character; and further, that the particular facts stated, if proved, would not have any tendency to mitigate the damages. The judge expressly admits that under the pleadings the plaintiff's general character was put in issue, but not the particular facts stated, and that the knowledge of those facts was wholly immaterial to the jury in meting out damages. He then proceeds to state a sensible distinction between circumstances proper under the general issue *alone*, which ought to be rejected under the general issue and a justification. In the former case, he may show the words spoken in the heat of passion. This he would reject under the justification, because they were inconsistent. He adds as follows: "But we are not prepared to declare that there are no facts or circumstances for which the jury may mitigate the damages under a special justification of the truth of the words in which he shall fail. Where, through the fault of the plaintiff, the defendant, as well at the time of speaking the words as when he pleaded his justification, had good reason to believe they were true, it appears reasonable that the jury should take into consideration this misconduct of the plaintiff to mitigate the damages." The principle advanced in this extract appears to me as fully warranting the admissibility of the probable cause in mitigation, which I have contended for in the case under review in this court. The observation of the learned judge relative to a supposed inconsistency between certain circumstances admissible under the general issue, and to be rejected under a justi-

fication being confined to the example he gives, i. e. of words spoken in the heat of passion, and to cases similar in principle, I fully concur in his position, and find nothing in the opinion but what confirms me in the views I have advanced above at large.

In the case of *Wolcott* v. *Hall*, (6 *Mass. R.* 514,) the plea was a justification only. The evidence offered and rejected, was not of general character or of just grounds of suspicion, but of particular reports, i. e. that R. B. had charged the plaintiff with stealing cheese, and that E. G. had charged the plaintiff with stealing wood. Ch. J. Parsons decided that the testimony was properly excluded, not on the ground stated in 2 *Cowen*, 813, by Mr. Justice Sutherland, because the defendant had justified, but solely on the ground that particular reports could not be received under any state of pleadings. "Evidence of general character," he says, "was not offered," plainly intimating, that if offered, even under that plea, it might have been received.

In *Selwyn's N. P.* 804, it is stated, "That when the facts to be proved on the part of the defendants do not constitute a complete justification, as when they show a ground of suspicion not amounting to actual proof of the plaintiff's guilt, such facts may be given in evidence under the general issue in mitigation. In note 12 of the same page, it is said that in *Elmer* v. *Merle*, before Lord Ellenborough, which was an action for words of insolvency, the defendant was permitted to prove, that at the time there were rumours in circulation, that the plaintiff's acceptances were dishonoured; and in a case before Le Blanc, justice, that learned judge received evidence under the general issue, that the defendant had been guilty of *attempts* to commit the crime imputed to him. (2 *Cambp. N. P.* 253, 4.) In the case of the *Earl of Leicester* v. *Walter*, (*id* 251,) the defendant was permitted to show that before, and at the time of the publication complained of, the plaintiff was generally reputed to be guilty of the crime.

The case of *Alderman* v. *French*, (1 *Pick. R.* 1,) is relied upon by the plaintiff below, as establishing the doctrines of the supreme court in this case. The act of the legislature of the state of Massachusetts, passed in 1826, ch. 107, considered in connection with that decision, certainly shows that the argument makes strongly against the plaintiff here. By the second section of that act, it is provided, that when the defendant pleads the general issue, and also in justification, that the words spoken were true, such plea in justification shall not be taken as evidence that he spoke the words. It further provides: "Nor shall such plea of justification, if the defendant fails to establish it, be of itself proof of the malice of such words; but the jury shall decide upon the whole case, whether such special plea was or was not made with a malicious intent." To show the weight which is to be given to a declaratory act like this, I cite the words of Kent, justice, in *The People* v. *Croswell*, (3 *Johns. C.* 375:) "Although I admit that a declaratory statute is not to be received as conclusive evidence of the common law, yet it must be considered a very respectable authority in the case."

In *Bodwell* v. *Osgood*, (3 *Pick*,379,) the action was for a libellous communication addressed to the committee of a school district, charging the plaintiff with a want of chastity. It was put to the jury to decide whether the act was malicious or not, and they were instructed "to find for the defendant, if they should be of opinion, from the evidence, that he acted from honest intentions, and believed that the charges in the supposed libel were true." "The deliberate publication of calumny, *when the publisher knows it to be false, or has no reason to believe it to be true, is conclusive evidence of malice.* It is clear that in the class of cases in which this ranges itself, the question of malice is exclusively for the jury."

In *Kennedy* v. *Gregory*, (1 *Binney's Penn. R.* 85,) it was decided by a majority of the court, that in an action for slander under a plea of the general issue and justification, when the proof is, that the defendant, in reply to a question implicating the plainliff, answered, either "It is so," or "They say it is so," the defendant may give in evidence in mitigation of damages, that a person told him what he related. The reporter adds further: It seems also that when the slander is spoken without reference, the defendant may, in mitigation of damages, show that the slander was communicated to him by a third person. *Morris* v. *Duane*, reported in the same volume, page 90, is a still stronger case. The action was for a libel—plea, the general issue with a justification. Defendant offered to prove in mitigation, that he was not the original composer of the libel; but succeeding an editor then deceased, found the libel among the papers of the deceased on taking the office, and so published it. The reasoning of Chief Justice Tilghman is so solid and judicious in showing the propriety of such proof in mitigation, and so fully establishes the views which I have advanced in the case under consideration, that I shall insert the substance of it. "This case," he says, "is not new to me. The effect of any evidence which a defendant may offer is with the jury; the competency of it with the court. The question in this case is, whether the defendant is entitled to offer to the jury this letter with the explanation for any legal purpose connected with the cause. It certainly cannot be offered to prove the plea of not guilty, and it is no legal justification. But still, is it not material; can it be, that like damages should be given against two defendants, one of whom received his information from such sources as were entitled to a certain degree of credit, while the other devised it of his own wicked imagination? I think it cannot. Such evidence certainly goes to the degree of malice, and must weigh with the jury according to the circumstances which attend it; whether these circumstances are such as ought in reason to mitigate the damages, they will decide."

I deem it unnecessary for me to go through the whole range of cases adjudged in England on this subject. I acknowledge, that though there is a great clashing of authority on these subjects even there; still very many of their decisions tend to establish those rules of exclusion of light from the conscience and judgment of jurors which are sought also to be established here by the plaintiff. I admit that in a few recent cases, the supreme court of our own state appear to have shown a disposition to follow in this respect, without discrimination, the precedents established in some cases in the English courts; and it is now for the first time presented distinctly to this court of the last resort, to say, by the determination of this cause, whether, in this state, rules shall be adopted so obviously drawn from foreign tribunals; or that rules shall prevail, which I trust I have shown to be founded in sound sense, and to harmonize with the spirit of our own institutions.

My opinion therefore is, that the judgment of the supreme court ought to be reversed, and that a *venire de novo* should be directed to be awarded.

On the final question being put, shall the judgment of the supreme court be affirmed or reversed? the members of the court ranged themselves as follows:

For affirmance—The Chancellor, Senators E. B. Allen, S. Allen, Eaton, Hager, Hubbard, McCarty, McLean, Oliver, Rexford, Sanford, Schenck, Stebbins, Throop, Todd, and Warren, —16.

For reversal—Senators Boughton, Mather, Maynard, and McMartin, 4.

Whereupon the judgment of the supreme court was accordingly *affirmed*, with costs.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

James Jackson, ex. dem.
Theodosius Fowler, Thomas Cowper Hincks and Joanna his wife, Mary Morris and Henry Gage Morris,
vs.
James Carver.

November 7th, 1827.

BEFORE JUDGES THOMPSON AND BETTS.

Counsel for plaintiff, Messrs. *Oakley, Hoffman, Emmet, Platt*, and *Ogden*; for defendant, Messrs. *Talcott*, (Att'y Gen.) *Webster, Van Buren, Ogden Hoffman*, and *Cowles*.

The defendant having confessed lease, entry, and ouster, Mr. Oakley opened the cause for the plaintiff.

Plaintiff's counsel gave in evidence a patent from King William III. to Adolph Philipse, bearing date the 17th day of June, 1697.

Beverly Robinson, a witness for the plaintiff, then testified that he is a great grandson of Frederick Philipse, that from common reputation in the family, Adolph Philipse the patentee, was the uncle of Frederick Philipse: Adolph died a bachelor, and his nephew Frederick succeeded as heir to his estate. Frederick had five children, viz: Frederick, Philip, Susannah, Mary, and Margaret. Margaret died young, and before the memory of the witness. Philip left a widow, who afterwards married Mr. Ogilvie. Susannah Philipse married Beverly Robinson, who was grandfather of witness. Mary Philipse married Col. Roger Morris, and their children were, Amherst, Henry Gage, Joanna, and Maria. Joanna Morris married Thomas Cowper Hincks. Amherst died about the year 1796, and was never married. Frederick Philipse, his great grandfather, died at a very remote period.

Plaintiff's counsel then gave in evidence, an exemplified copy of proceedings in chancery, to perpetuate the proof of the will of Frederick Philipse the elder, setting out the will verbatim in a bill filed by the devisees against the heir at law, with the answer of the heir, confessing the will, and the proof by the subscribing witnesses of the due execution of the will. By this will, dated the 6th day of June, 1751, the lands contained in the patent aforesaid were devised to four children of the testator, to wit, Philip, Susannah, (afterwards the wife of Beverly Robinson,) Mary, (afterwards the wife of Roger Morris,) and Margaret, (who died shortly after the testator,) as an estate-tail.

Col. Thomas H. Barclay, a witness for the plaintiff, testified that he knew the family of Roger Morris intimately from his childhood. The children of Roger Merris and Mary his wife, were Amherst, Joanna, Henry Gage, and Maria. The children of Frederick Philipse the elder, were as Beverly Robinson has testified. Margaret

Philipse must have died before witness' recollection. The children of Roger Morris and Mary his wife were all born before the year 1774. Joanna, (afterwards Mrs. Hincks,) was about ten years old in 1774, and went to England about that time for her education, and returned to New York during the revolutionary war.

On cross-examination, Col. Barclay testified that Amherst was eldest son of Roger Morris, and he was a lieutenant in the British navy at the peace of 1783; he has never heard of his being in this country since that period: he is said to have died in the British navy. Henry Gage, the second son, was a child of six or seven years old before the war, and went to England with his father about six months before the British evacuated New York, in 1783: he was then about 13 or 14 years old: he is now a post captain in the British navy. Thomas Cowper Hincks was a captain of dragoons when he married Joanna Morris, some time after the peace of 1783.

Neither Roger Morris nor his wife, nor any of the family, have ever been in this country since the peace of 1783.

Joanna Philipse, mother of Mrs. Morris, died some years before the revolutionary war. Joanna Morris was married before the death of her brother Amherst. Plaintiff's counsel then gave in evidence a deed by lease and release, dated 29th June, 1753, to lead the uses of a common recovery, and an exemplified copy of a record of proceedings in the supreme court of the late province of New York, in the year 1753, for a common recovery, in order to dock the entail of the estate devised by the will of Frederick Philipse; also, three deeds of partition, dated 7th Feb. 1754, whereby it appears that the patent had been divided into nine great lots; and that lots No. one, four, and seven were assigned and released to Susannah, the wife of Beverly Robinson; lots No. two, six, and eight, were assigned and released to Philip Philipse; and lots No. three, five, and nine were assigned and released to Mary Philipse, in fee simple; and a deed of marriage settlement, bearing date the 14th January, 1758, between Mary Philipse of the first part, Roger Morris of the second part, and Joanna Philipse and Beverly Robinson of the third part, which deed contained a recital, stating that a lease for one year had been executed the day before the deed of release now produced, and corresponding therewith; which lease was stated by plaintiff's counsel to be lost, and was not produced.

By the deed of marriage settlement or release so given in evidence, the uses are limited as follows, to wit: "to and for the several uses, intents, and purposes, hereinafter declared, expressed, limited, and appointed, and to and for no other use, intent, or purpose whatsoever, that is to say, to and for the use and behoof of them the said Joanna Philipse and Beverly Robinson and their heirs, until the solemnization of the said intended marriage; and from and immediately after the solemnization of the said intended marriage, then to the use and behoof of the said Mary Philipse and Roger Morris, and the survivor of them, for and during the term of their natural lives, without impeachment of waste; and from and after the determination of that estate, then to the use and behoof of such child or children as shall or may be procreated between them, and to his, her, or their heirs and assigns for ever. But in case the said Roger Morris and Mary Philipse shall have no child or children begotten between them, or that such child or children shall happen to die during the lifetime of the said Roger and Mary, and the said Mary should survive the said Roger without issue, then to the use of her the said Mary Philipse and her heirs and assigns for ever; and in case the said Roger Morris should survive the said Mary Philipse, without any issue by her, or that such issue is then dead, without leaving issue; then after the decease of the said Roger Morris, to the only use and behoof of such person or persons, and in such

manner and form, as she the said Mary Philipse shall at any time during the said intended marriage, devise the same by her last will and testament, which last will and testament for that purpose, it is hereby agreed by all the parties to these presents, that it shall be lawful for her at any time during her said marriage, to make, publish, and declare; the said marriage, or any thing herein contained to the contrary thereof in anywise notwithstanding." Which deed of settlement included the said lots No. 3, 5, and 9; and contained a reservation whereby the said Roger Morris and his intended wife should have a right to sell in fee simple such part or parts of said lands as they should deem proper, not exceeding three thousand pounds in value.

It was admitted that the contemplated marriage between Roger Morris and Mary Philipse was consummated according to the deed of settlement.

Colonel Barclay then testified, that Mrs. Mary Morris, widow of Roger Morris, died at York, in England, about two years ago, aged about ninety-four years.

Beverly Robinson, being again called, testified that Colonel Roger Morris died in England before the death of his son Amherst, which he thinks was about the year 1796 or 1797.

Henry Livingston was then called by plaintiff's counsel to produce his map, and to prove the location of the premises. Whereupon the defendant's counsel admitted, that defendant, James Carver, is, and at the commencement of this suit was, in possession of a farm in lot No. *five*, in that patent, being the premises in question.

The cause was then rested on the part of the plaintiff.

The attorney general then opened the defence, and read the act of attainder, passed 22d day of October, 1779, wherein Beverly Robinson and Susannah his wife, Roger Morris and Mary his wife, were attainted, and convicted of adhering to the enemies of this state; and all their estates, real and personal, were declared to be forfeited to the people of this state, and were directed to e sold, &c.

It was admitted that Roger Morris and Mary his wife, and Beverly Robinson, named in the act of attainder, were the same persons named in the settlement deed.

Beverly Robinson, called by defendant's counsel, testified that his grandfather, Beverly Robinson, died about the year 1795.

Daniel Cole, called by plaintiff, testified that he is 79 years old, he was born on Morris's long lot, No. 5, in what is now called Kent, and has lived there ever since. His father lived there before him, and was a tenant of Roger Morris. The tenants on that lot held under Roger Morris before the war. Timothy Carver was father of defendant James Carver, and lived on the farm now in possession of defendant, before the war. Timothy Carver purchased it of one Cheeseman, who had it of one Serrin. Timothy Carver lived there till about three years ago, when he died, and his son, James Carver, succeeded him in the possession. The witness was asked by plaintiff's counsel whether the persons, living on said lot No. five, since the revolutionary war, claimed to hold under the commissioners of forfeitures and the attainder? To which the defendant's counsel objected. Judge Betts said, that it being set up that the tenants held under the marriage settlement, it was competent to show by the testimony of the witness, that the possession was in conformity with that instrument. It was a question of fact, and not of law. Judge Thompson remarked, that in the inquiry in relation to the commissioner of forfeitures, the witness would confine himself to what he knew in relation to the particular farm in question. Going on to inquire as to how the farm of the witness was purchased and held, seemed to be stepping over the limitation. Oakley remarked, that in offering testimony as to the manner of holding the property, it was necessary to enter into the examination of other farms. The court might overrule it. Judge Thompson remark-

ed, they did overrule it. Emmet said it was to them an essential inquiry; but as the court had overruled it, they should take exceptions to the decision.

The witness testified that his father, while living on that lot, said he held under Roger Morris, and paid rent to him before the act of attainder.

Witness and his brother also occupied parts of that lot (No. 5,) and they both paid rent to Roger Morris before the war. Roger Morris had a house at the red mills, on that lot, where he used to come and stay to receive his rents, before the war. There were then a great number of tenants on that lot, holding under Roger Morris.

Plaintiff's counsel, then gave notice to the counsel for defendant to produce a deed from the commissioners of forfeitures to Timothy Carver, for the farm now in question, which call was not complied with.

Plaintiff's counsel then called on Henry B. Cowles, one of defendant's counsel, as a witness, to prove the deed in court, to which the defendant's counsel objected, on the ground. that if Mr. Cowles was in possession of the deed, it had been delivered to him in confidence, by his client.

Mr. Oakley said, that he should call upon Mr. Cowles to be sworn, in order to testify as to the deed in question.

Mr. Van Buren questioned the right of the gentleman to claim. It was, to say the least of it, an uncourteous practice, and one, which seemed to him, to involve the necessity of demanding of counsel the betrayal of the trust reposed in them by their clients.

Judge Thompson said, that he knew there had been a case decided in the supreme court, which established, that the production of the papers, or the testimony of counsel, might be demanded. But he was opposed to the principle. He disliked this fishing method of getting out, by the oath of the counsel, the fact of a paper being in court, in order that it might lead to some other testimony.

Mr. Oakley observed, that a case had been decided in the supreme court of this state, of the same import, and a counsel was examined as to where a document was.

Mr. Webster said, he considered a document placed in the hands of counsel, in the light of any other communication made by a client to his counsel, which ought to be, and was, considered perfectly confidential.

Judge Betts said, that the court would certainly protect counsel from being forced to disclose communications made to them by their clients; but a *paper* was not considered in the light of a communication.

Mr. Oakley cited 17 Johnson, 1825, pp. 335—6, a case in which a notice was first given, to state whether a will was in court. They refused to give the information. They were then called on as witnesses, and the court sustained the call. It was there laid down, that the court could compel an attorney to go on, and state whether a paper called for, was in existence, and in whose possession.

Mr. Van Buren said, that no rule could be more pernicious, or more calculated to destroy the confidence of the client in his counsel. It would in fact render it necessary for the former to secrete his papers from the latter, lest they should be forcibly exposed, to his prejudice.

Judge Betts remarked, that he was of opinion, that this court was bound to obey the rule of evidence, established, in the case just cited by the supreme court of this state.

Mr. Emmet said, that the counsel were permitted to practise here by the will of the supreme court, and their privileges were defined by, and dependent upon, that court.

Judge Thompson observed, that it was not the privilege of counsel that was likely alone to be injured; that of the client was also most seriously affected. It was necessary for a client to communicate to his counsel all the facts calculated to conduce to his interest; but this was surely a most baneful rule, and likely to interfere with the free intercourse between counsel and client. If this questior

had now come before him, (Judge T.,) for the first time, he should have no hesitation in deciding against the admission: because, if it were permitted to fish out from counsel, information that could not otherwise be obtained; and to force them to divulge all the communications made to them by their clients, it might extend so far, that information having been obtained, as to where a document was, it might be demanded by a writ of *ducis tecum.* He was very much averse to deciding against what had become a a practice in the courts of this state. But he did not think this court bound to abide by any rule of evidence which was not founded in principle.

Mr. Platt said, that they had a right to obtain from counsel any information obtained by them, otherwise than confidentially, from their clients.

The attorney general cited a passage in Starkie on evidence, relating to the privileges of counsel.

Mr. Van Buren also read some authorities, to show, that the circuit court was not bound to adhere to the decisions of the supreme court of this state; should those decisions appear to be against the principles of law. The court was authorized to go on and settle the principle, and he hoped they would do so.

Mr. Webster cited authority to the same general effect.

Judge Betts then declared the decision of the court. If the question which had now been agitated, were open for discussion, the court should certainly decide against it. But they considered, from the decision that had already been made, that a rule of evidence, as well as of practice, had been established, which they did not see fit to alter. Nor was it clear, that, had the clients brought a suit under an act of congress, they would not have been subjected to a similar rule. The court therefore decided that the question might be asked.

Defendant's counsel excepted to this opinion.

Mr. Cowles was then sworn, and examined.

Had acted in capacity of counsel in this case; all the papers had been handed to him as counsel in defence. Asked whether he knows that the lease of the commissioners of forfeitures, to Timothy Carver, is in court, he desired to be indulged in asking a question of his associate counsel.

Judge Thompson observed, that there was no objection in this particular case, to his doing so; but it was a bad precedent to establish; as justice and truth might be obstructed by the continual application of witnesses to their counsel, for instruction as to the answers to be made to questions put to them. It might be productive of irregularity in practice, and that was the only objection he had to granting the request.

Mr. Oakley observed, that, as a matter of indulgence, the counsel for the plaintiffs had no objection to granting the request of the gentleman, and the court acquiesced in their views.

After consulting with counsel, Mr. Cowles being questioned whether the lease before mentioned was in court in his possession, or that of his associate counsel, asked, whether the court decided that he should answer.

Judge Betts said, he never knew it practised to ask more than as to whether he, the witness, had the paper.

Mr. Cowles then answered, that he had then in court, and in his possession, an instrument purporting to be a deed from John Hathorn and Samuel Dodge, as commissioners of forfeitures, to Timothy Carver, but upon consultation, with his associate counsel, he refused to produce the deed.

Henry Livingston again called by plaintiff, testified that the acting commissioners of forfeitures, were John Hathorn, Samuel Dodge, and Daniel Graham, Esquires, and that they are all dead.

Barnabas Carver, (called by the plaintiff,) testified, that he is 62 years

old, is uncle to the defendant. His brother, Timothy Carver, went into possession about the time of the war; and Timothy, while in possession, told witness, that he held the premises in question, under a deed from the commissioners of forfeitures. James Carver, the defendant, purchased of his father Timothy.

Cross-examined by Mr. Van Buren. Never heard of the marriage settlement until he heard of the purchase by Mr. Astor. The farm of witness joined the line of the patent, but was not in it. Had purchased part of the land and sold it again, and believed he had a perfect title.

By Mr. Oakley. Knew nothing of the matter in which the land was held before the revolution.

By Mr. Van Buren. Considered the title of the land good, because the title of Roger Morris had never been disputed. Never heard the titles doubted until the claim of Mr. Astor was heard of. Had seen the lease from Roger Morris to Timothy Carver.

Plaintiff's counsel then offered in evidence a copy of an abstract of deeds, made by the said commissioners of forfeitures, dated 30th August, 1788, and deposited by them in the office of the clerk of the county of Dutchess; which copy was certified by the said clerk, with the seal of the said county affixed thereto; by which abstract it appears that a deed was executed by said commissioners of forfeitures to Timothy Carver, dated November 16th, 1782, for the consideration of £71, for the farm not in question. Which evidence was objected to by defendant's counsel, and admitted by the court. Denfendant's counsel excepted to this decision.

Plaintiff's counsel then gave in evidencc the following deeds of conveyance, viz:

Thomas Cowper Hincks, and Joanna his wife, Mary Morris, and Henry Gage Morris. to *John Jacob Astor.*	Deed in fee simple, dated 19th December, 1809, for said lots No. 3, 5, 9, &c. for the consideration of £20,000 sterling.
John Jacob Astor and his wife, to *John K. Beeckman.*	Deed in fee simple, 30th June, 1810, for an undivided quarter part of said lands.
John K. Beeckman, to *Theodosius Fowler.*	Deed in fee simple, 1st July, 1810, for an undivided eighth part of said lands.

Daniel Cole was then called by defendant's counsel, and testified that he is 79 years old; he has lived on that lot No. 5, in what is now the town of Kent, all his lifetime: it is in the long Morris lot. Two men of the name of Hamlin, and Berry, Hewson, and Hill, were tenants on the same lot, and they all held under Roger Morris. Timothy Carver purchased the improvement of one Cheeseman, during the war. Timothy Carver built a log house there about the close of the war: after the war, he cleared more land. Timothy Carver, died about three years ago, and James Carver has also lived on part of that farm since he was married, say about 20 years, claiming to be owner of the soil. James Carver purchased under his father, as witness understood. Witness and his father held as tenants under Roger Morris, before the war; and afterwards purchased of the commissioners of forfeitures, and he now claims the land as his own. Hachaliah Merrit's father, it was said, also purchased of Morris, and so did James

Rhodes, as it was said; and so also did William Hill. The tenants used to buy and sell among themselves before the war.

Being cross-examined, the witness says that by a sale between the tenants, he means that they sold their improvements to each other. The lands were appraised when they purchased of the commissioners.

Enoch Crosby, a witness for defendant, testified that he has lived on Philips' long lot No. 6, about 70 years. In 1782, witness went to reside on lot No. 9: there were about a hundred and fifty families on lot No. 5, and No. 9, claiming as tenants of Roger Morris, before the revolutionary war. After the land was confiscated, they claimed to be owners of the soil, under the sales by the State. He never heard of the marriage settlement, till Mr. Astor purchased.

Isaac Field, a witness for defendant, says he is 69 years old, and has lived all his life on lot No. 9. (Morris's short lot;) his father, Solomon Field, died about 12 years ago, in possession of a farm there, and then witness inherited it. His father held as tenant of Roger Morris, till his estate was confiscated; and since then, all the former tenants of Morris, claim to hold under the state.

Nicholas Agar, a witness for defendant, says he has lived on the Morris lot No. 5, all his life, and he is now 58 years old: his father, as he understood, lived there 70 years ago. About 20 years ago, witness took a deed from his father. Before the confiscation act, his father held as tenant of Roger Morris; and after they purchased of the State, they claimed it as their own. Great improvements have been made by James Carver and others, since the war.

Joseph Cole, a witness for defendant, says he has resided on lot No. 5, he is 52 years old, and his father lived there before him. Witness bought of his father in 1802, or 1803. Great improvements have been made generally, since the war.

William Hill, a witness for defendant, says he has lived on lot No, 5, and about 20 years ago he sold a farm there.

Defendant's counsel then gave in evidence, a deed of release from Roger Morris and Mary his wife, to William Hill, dated 27th September, 1765, for the consideration of £750, for a farm in lot No. 5, containing 240 acres, in fee simple, with covenant that the grantors were seised in fee simple, and had a good right to sell the land. The release recited a lease for a year, as connected with the release, and bearing date the day before the release. The release was duly proved by the acknowledgment of the grantors. No lease corresponding in date with said recital was produced, but defendant's counsel showed a lease for one year, between the same parties, for same land, dated 27th October, 1765, for one year, which was not proved nor acknowledged.

William Hill, again called, says he purchased of his father, William Hill, the farm mentioned in that release, about 30 years ago, and the land is now held under that deed.

Defendant's counsel then gave in evidence another lease and release from Roger Morris and his wife, to William Hill, dated 18th September, 1771, consideration £220, for farm No. 40, in lot No. 5, containing 53 acres, in fee simple, with like covenant of seisin, and right to sell: the lease corresponded to the recital thereof in the release, but it was neither proved nor recorded.

William Hill again called, says his sisters, Betsey, and Deborah Hill, now live on the land mentioned in last deed.

Defendant's counsel also gave in evidence a like conveyance by lease and release, from Roger Morris and his wife, to Joseph Merrit, dated 18th September, 1771, consideration £225, for part of farm No. 76, in lot No. 5, of 200 acres, in fee simple, with like covenant of seisin and right to sell. The release was duly acknowledged at the date of the deed, and recorded September, 1825. The lease was neither proved nor recorded.

Ebenezer Boyd, a witness for de-

fendant, says he lives in Kent, on the Merrit farm, on lot No. 5, under that deed.

Noah Hill, a witness for defendant, says he lives in Putnam county, is 74 years old, and never heard of Astor's claim, till about 15 years ago, when he sent an agent to notify the settlers of his claim.

Judah Kelly, witness for defendant, has lived on lot No. 6, for 46 years, and never heard of the marriage settlemenr till Mr. Astor purchased. Since the confiscation, the settlers have all claimed to be the owners.

Thomas Lownsbury, a witness for the defendant, says he is 54 years old, has lived all his life on lot No. 5, holds a farm there, as heir to his father, who since the war, claims to be owner under the state.

Berry Cole, a witness for defendant, says he is 58 years old, lives in Carmel, on lot No. 5, was born in that neighbourhood, owns a farm on lot No. 5, had it of his father, who had it of his grandfather, Elisha Cole. Witness has possessed it about 30 years, claiming it as his own. His brothers Joseph, and Levi, lived there, and possessed and claimed the land as their own. The lands there have been divided and sold, and greatly improved. Never heard of the marriage settlement till Mr. Astor purchased,

Col. Barclay was again called by defendant's counsel, and testified that he was intimately acquainted with Col. Beverly Robinson, who resided in New York, and was a merchant there till about the year 1764 or 1765, when he removed to the Highlands, and lived there on lot No. one, till the war, or about 1775, when he removed to the city of New York, where he remained till the preliminary treaty of peace, and then he went to England.

Roger Morris also had a cottage on his lands in the Highlands, where he often went to look after his estate, and to receive his rents. Roger Morris continued to reside in this city during the war, till the fall of 1782, or the spring of 1783, when he went to England with his family.

Beverly Robinson was again called, and said his grandfather Beverly Robinson died between 1790 and 1795.

Defendant's counsel here rested their defence.

Col. Barclay was again called by the plaintiff, and testified that he heard the marriage settlement spoken of very often in the family of Roger Morris, before the year 1770. The mother-in-law, Mrs. Joanna Philipse, stated to him that it was thought prudent to secure the estate to the children of her daughter Mary, for that Roger Morris was a military officer, and might waste it or dissipate it.

Egbert Benson, a witness for the plaintiff, testified that in returning from congress, which sat at Trenton, in company with John Jay, in the year 1784, they stopped at Governor Livingston's, at Elizabethtown, and Governor Livingston then showed the marriage settlement deed to him and Mr. Jay, as a valid subsisting deed.

Governor Livingston was an ardent and decided whig during the revolution, was a part of that time in congress, and remained during the war, out of the British lines. Governor Livingston has been dead about 15 years or more.

Being cross-examined, he says he was a member of the legislature, and drew the bill of attainder, and then he had never heard of this marriage settlement.

Plaintiff's counsel then gave in evidence certain extracts from the journal of the house of assembly of the state of New York, as follows:

Friday 10 o'clock, February, 16, 1787.

(Page 53.)—"A petition of Joanna Morris, on behalf of herself and her brothers and sister, relative to the estate forfeited to the people of this state, by the attainder of Roger Morris and Mary his wife, was read and referred to Mr. Hamilton, Mr. Sickles, Mr. Hedges, Mr. Jones, Mr. Wyckoff, Mr. Frost, Mr. Rockwell, Mr. Dubois,

Mr. Taulman, Mr. Snyder, Mr. Batcheller, and Mr. Savage."

Saturday, 10 o'clock, A. M. Feb. 24, 1787.

(Page 65.)—"Mr. Hamilton, from the committee to whom was referred the petition of Joanna Morris, on behalf of herself and the other children of Roger Morris and Mary his wife, setting forth that the said Roger and Mary had been attainted, and their estates sold and conveyed in fee simple; that by a settlement made previous to their intermarriage, the real estate of the said Mary was vested in Joanna Philipse and Beverly Robinson in fee, to certain uses, among others, after the decease of the said Roger and Mary, to the use of such child or children as they should have between them, and their heirs and assigns, and praying a law to restore to them the remainder of the said estate in fee—reported, that if the facts stated in the said petition are true, the ordinary course of law is competent to the relief of the petitioners, and that it is unnecessary for the legislature to interfere.

"Resolved, That the house do concur with the committee in the said report."

Josiah Ogden Hoffman, a witness for plaintiff, testified that he is acquainted with the handwriting of William Livingston and of Sarah Williams, the subscribing witnesses to said deed of marriage settlement now shown to him, and has seen them write respectively, and that the signatures to this deed are in their proper handwriting respectively. He further says that those witnesses are both dead.

Egbert Benson, being again called by plaintiff, says that the general practice of conveying freehold estates, in the late colony of New York, was by lease and release: that it was usual to take the acknowledgment or proof of the *release*, and especially in the case of married women; but it was not customary, nor has he ever known an instance of proving or recording such a lease. He has recently made an examination in the records of this city in the register's office, and he finds no instance of such a recorded lease; on the contrary, the *releases* are there found alone recorded, with recitals of a lease merely.

Henry Livingston was again called by the plaintiff. He says that his father and his two brothers were in succession clerks of the county of Dutchess for about 70 years; that witness, during several years, acted as clerk in that office under his father, in recording deeds, searching the records, &c. and that he never knew an instance of proving or recording such a lease, given with a release, in the old mode of conveyancing.

Here the testimony was closed; and the plaintiff's counsel contended that if the *lease* connected with the *release* of marriage settlement was necessary to perfect the title of the plaintiff, the defendant was *estopped* by the recital in the release from denying the existence of such a lease; and if defendant was not estopped by that recital as a *matter of law*, then upon the evidence the jury ought to presume the due execution of the lease.

The case was summed up at great length and with much ability by Messrs. Van Buren and Webster for the state of New York, and by Messrs. Emmet* and Ogden for the plaintiff.

Judge Thompson, after some proliminary remarks upon the general outlines of the case, briefly stated to the jury the deduction of title, which had been given in evidence, from Adolph Philipse, the patentee, down to Mary Philipse, who afterwards intermarried with Roger Morris. That by the legal effect and operation of these several conveyances, Mary Philipse became seised in fee of a number of lots of land within the patent, among which was lot No. 5, in which the premises now in question

* This was the last cause tried by this eminent advocate, and his great and triumphant exertions in this case was supposed to have accelerated his death. Vide his biography infra.

lie, some time about the year 1754. Down to this time no dispute exists between the parties in relation to this title, both parties claiming under the title then held by Mary Philipse. On the part of the defendant it is contended, that this title was in Roger Morris and Mary his wife, (Mary Philipse,) when they were attainted, in the year 1779, and passed over to the people of this state, under the statute confiscating their property. On the other side it is contended, that in the year 1758, when the marriage between Roger Morris and Mary Philipse was about to take place, a marriage settlement was made, the legal operation of which was to give to Morris and his wife a life estate, with a contingent remainder over to their children. So that the attainder of Morris and his wife attached upon their life estate only, and did not affect the interest of their children. That the claims of the children could not be asserted in a court of justice until the death of both their parents, which did not occur until within two or three years past.

It will be perceived, therefore, that the important inquiries in this case relate to their marriage settlement deed, purporting to have been executed in the year 1758.

These inquiries as they have been presented to the court and jury, may be considered under three distinct heads.

I. Was this deed duly executed on or about the time it bears date, so as to vest a legal interest in the children of Roger and Mary Morris, according to the provisions in the deed?

II. Whether if it was so executed, the estate which passed under it to the children was at any time afterwards revested in Roger and Mary Morris, or either of them?

III. The legal effect and operation of the marriage settlement, and how far it was affected by the attainder of Roger Morris and his wife?

The two first branches of inquiry are matters of fact, which belong to the jury to decide. The last is matter of law for the court.

Although you are to judge and decide upon questions of fact, it is the duty of the court to aid you in the examination of the facts, so far, at least, as to call your attention to the evidence, and to suggest the rules of law by which you are to weigh and apply the testimony. And my only purpose on the present occasion will be, to endeavour to simplify your inquiries, and direct your attention to the real questions before you, stripped of much extraneous matter that has been involved in the discussion.

1. As to the execution of the deed. This instrument purports to have been made by that kind of conveyance called a lease and release. The release only is now produced, it having been duly proved and recorded. And your first inquiry will be, whether this release was duly executed on or about the time it bears date.

In entering upon this inquiry, it will be proper for you to keep in mind, that it is an ancient transaction of nearly seventy years past; and you are not to expect living witnesses to be brought into court to testify before you. The witnesses to this deed are dead; and all that can be reasonably required is, that the transaction should have taken place according to the usual and ordinary course of business of that kind, and that the conduct of the parties to the deed has at all times been consistent with the title set up under it.

The circumstances that have been relied upon to establish the fact, that the deed was executed about the time it bears date, are briefly—That the provisions in it are of so complicated a nature, as to warrant the conclusion that the draftsman was a skilful lawyer. That Governor Livingston, one of the witnesses, was at that day an eminent counsellor of law, and that the deed was probably made under his advice and direction. And that his character forbids any presumption that it was antedated for the purpose of overreaching the attainder of Roger

and Mary Moris. In addition to this, you have the proof of the deed in the year 1787, on the oath of Governor Livingston, who swears that he saw it executed by all the parties, at or about the time it bears date. It will be for you to say, whether this evidence is not sufficient to satisfy you, that the release was duly executed at or near the date thereof.

The next inquiry in this branch of the case will be, whether this release was accompanied by a lease executed at the same time. This forms an important part of the case, as it will materially affect the legal effect and operation of the release. If there was no lease, the release would only operate as a bargain and sale, and pass the legal estate to Beverly Robinson and Joanna Philipse. But the statute of uses would not execute the uses declared in favour of the children and convert their interest into a legal estate. These uses would remain equitable interests only, and to be enforced in a court of chancery. So that, unless there was a lease accompanying the release, the plaintiff cannot recover in this action. But the remedy, if any, must be in a court of equity. The circumstances which have been proved and relied upon to authorise you to presume that a lease was duly made, are: That the common mode of conveyance at that day was by lease and release; that it is fairly presumable that this marriage settlement was drawn under the direction of Gov. Livingston, who well understood the purpose and necessity of a lease; that as matter of practice, it was not deemed important to preserve the lease; it was never customary to have it proved or acknowledged with the release; and that on examination of the records of deeds in this city and in the county of Dutchess, no instance was to be found where the lease had been recorded. And that such was the practice, is corroborated by all the conveyances given in evidence in this cause—where, although the releases have been acknowledged and recorded, the leases have not. It has been contended, however, on the part of the plaintiff, that the recital of the lease in the release according to the usual form of such conveyance, is conclusive evidence that a lease was made and executed, and that the defendant is estopped from denying it. The court, however, does not think that the recital carries with it such conclusive effect. The general rule of law is, that recitals bind parties and privies. That this recital would be conclusive upon the grantors in the deed, and all claiming title under it, there can be but little doubt. If the defendant derived title under or through this deed, he might be estopped from denying that a lease was also made. But this deed is not the source of his title as now set up, nor does it form any part of it. He contends that the fee simple estate of Mary Philipse was not parted with by this deed, but was vested in her in 1779, and by her attainder became forfeited to the state; so that the defendant does not claim under this deed, and is not bound by the recital. It is therefore submitted to the jury to decide as matter of fact, whether a lease was made and executed or not: and if you shall find that there was, then the legal operation of the lease and release was to divest Mary Philipse of her fee simple estate, and to vest in her children a legal interest cognizable in a court of law, and the next inquiry will be,

II. Whether this fee simple estate was at any time afterwards, revested in Mary Philipse, either before or after her intermarriage with Roger Morris, so that the act of attainder of 1779 attached upon it.

And under this branch of the case, the first inquiry is, in what way this could be done. It seems to have been urged, on the part of the defendant, that it would be sufficient to redeliver and cancel the marriage settlement, without any reconveyance, and we have been told, that it has been so decided in the supreme court of the state of New Hampshire. The case, in which it is said to have been so decided, has not been shown to the

court, to enable it to judge of its application to the present case. But we cannot accede to the broad proposition it is said to lay down. We think the law in this state as well as in England, is well settled, that merely cancelling, or destroying a deed, will not revest the title in the grantor. A contrary dsctrine would be in the face of the statute of frauds, which provides, that no interest in lands (except leases for a term not exceeding three years) shall be granted or assigned, unless by deed or writing. A jury may, however, presume a deed or writing for that purpase, to have been given, where the acts of the parties for a great length of time, have been inconsistent with the existence of the original conveyance; and if you shall be of opinion that such is the case, in the present instance, you may presume a reconveyance, so as to vest the title in Mary Philipse. But it is to be borne in mind, that this must have been done some time before her intermarriage with Roger Morris, or at all events, before the birth of any of their children, for upon that event the children acquired an interest under this deed, of which they could not be deprived, without their consent; and, from the evidence in the cause, this must have been only a short period. The precise time of their marriage does no appear; but Colonel Barclay swears that their children, four in number, were born before the year 1774.

The circumstances which have been relied upon to raise a presumption against the title under this marriage settlement deed, are:

1. That it purports to have been made tripartite, and only one part has been shown on the present trial. The answer given to this circumstance is certainly well founded, and entitled to great weight: that it was unnecessary for the purpose of showing the title of the lessors of the plaintiff, to give in evidence more than one part. The others are not presumed to be in their possession.

2. Again, it is said, this deed has lain dormant, from the year 1758 to the year 1787, when it was proved and recorded, which affords the presumption that it was then revived, for the purpose of overreaching the attainder of Roger Morris and his wife.

It is to be observed, however, that the proving and recording were not necessary for the purpose of passing the title, but only for safe keeping, and preserving the evidence of the due execution of the deed. The situation of this country in relation to England, for some considerable portion of this time, and the absence of Beverly Robinson, in England, may account, in some measure, for the delay. But the deed cannot be considered as having lain dormant during the whole of that period. For Col. Barclay testifies, that he was very intimate in the family, and repeatedly heard it spoken of, as early as the year 1770, as a prudent measure, on the part of Mrs. Morris' mother, to secure the property to the children; and Judge Benson saw it in the possession of Gov. Livingston in the year 1784.

3. The next circumstance relied upon, is the long possession of the occupants of the farm now in question, as well as of other lands in the patent, claiming to hold as tenants under Morris, previous to the revolution. A number of old witnesses have been examined, who have fully established that fact, and if the interest claimed to have been held by the tenants, was incompatible with, or greater than that which Morris had in the lands, it would be a strong circumstance against considering this marriage settlement at that time a subsisting deed. But these witnesses only say generally, that the occupants held the land as tenants, under Morris. Whether there was a tenancy from year to year, or for a term of years, or during the life of Morris, does not appear. And this holding was not therefore inconsistent with the right which Morris had in the land, for under the marriage settlement he had a life estate therein. Nor was the giving the deeds, by Morris and his wife, to William and Joseph

Merrit, in the years 1765 and 1771, as shown in the evidence, at all at war with the right and interest they held under the marriage settlement. They conveyed these three farms in fee simple, and they had full and ample power so to do. For the marriage settlement deed secured to them the right of selling land to the amount of £3000, and the amount sold was only £1200. All these possessions, by the tenants, and sales made by Morris and his wife, are perfectly consistent with the interest they held in the land, and afford no presumption against the validity of the deed.

4. Again, it has been proved by a number of witnesses, living upon the lands falling within the present claim, that they never heard of this marriage settlement until within fifteen or sixteen years past.

This is at best but negative evidence and warrants no just conclusion against the validity of the deed, when not only its existence, but the assertion of a claim under it long before that time, is so fully proved by positive testimony. Col. Barclay heard it spoken of in the family as early as the year 1770; Judge Benson saw it in the possession of Gov. Livingston in the year 1784; it was proved and recorded in the office of secretary of state, in the year 1787; and in this same year, a claim under it was asserted by a petition to the legislature of the state, and the only answer received was, that if the facts set forth in the petition were true, the ordinary course of law was competent to the relief of the petitioners; and that it was unnecessary for the legislature to interpose. But this claim could not be set up in a court of justice during the life of Mrs. Morris, and she has died within the last two or three years.

Under these circumstances, it will be for you to say, whether the plaintiffs are justly chargeable with any delay, which ought to prejudice the claim now set up.

III. The only remaining inquiry is, as to the legal effect and operation of this marriage settlement deed, and to what extent the interests of the parties to it were affected by the attainder of Roger Morris, and Mary his wife, in the year 1779.

This is purely a question of law, and by no means free from difficulty, and it would have been more satisfactory if the cause could have been thrown into the shape of a special verdict, or a case agreed upon, so as to have given the court, time and opportunity for a more full and deliberate examination of these questions. But as the counsel have chosen to adopt a different course, we are called upon to express an opinion according to our present impressions.

We shall not at this time enter much at large, into the examination of these questions, but only state generally, the opinion of the court, so as to enable the parties to avail themselves of their legal rights, to have this opinion reviewed, if they shall be dissatisfied with it.

The opinion of the court is, that this marriage settlement deed conveyed to Roger Morris and Mary his wife, upon their intermarriage, an estate for their lives, and the life of the survivor, and a contingent remainder to their children, which vested in them respectively, as they were born.

It is contended, on the part of the defendant, that the contingent estate of the children could not vest until the natural death of their parents, who held the particular estate, and that, by their attainder, they became civilly dead, and the particular estate thereby ended, by reason whereof, there was no particular estate to support the contingent remainders, as the law requires. And that, although the life estate of Roger and Mary Morris, might have been transferred to the people of this state, yet the state could not stand seised to the uses declared in the deed. It is no doubt a well settled rule of law, that a contingent remainder to be valid, must vest, during the continuance of the particular estate, or at the instant of its termination, so that no estate can intervene between the two. But the vesting of

the contingent remainder may be at any time during the continuance of the particular estate, whenever the contingency happens upon which it is to vest. The enjoyment of it, however, is deferred, until the particular estate is ended. If the estate of the children did not vest, until the natural death of their parents, their civil death by the operation of the attainder, and the transfer of their life estate to the people of this state, might present some difficulty in supporting the contingent remainders, without the intervention of trustees to preserve them. But we think no difficulty arises on this ground, as the contingent estate of the children vested upon their birth. And all were born before the year 1779, when their parents were attainted, And after the contingent interest of the children became vested, it was unimportant, as it respected their rights, what became of the particular estate. It is unnecessary for us to express any decided opinion as to the ultimate limitations over, to Morris and wife, in case they should survive their children, as provided for in the marriage settlement. It may, however, be observed, that if they had not been attainted, and had survived their children, we see no insuperable objection to their taking the estate, according to the provision in the deed, by way of shifting uses. But, by their attainder, both their life estate and their contingent remainder, over to them, would have become forfeited, and vested in the people of this state. So that the whole interest in the land in possession and remainder, would have gone to the state, if Morris and his wife had survived their children.

These are briefly the views of the court with respect to the construction of this marriage settlement deed. And it follows of course, that the forfeiture, by reason of the attainder of Roger Morris and his wife, attached only upon their life estate, and that upon the death of their parents, there was no legal impediment to the children's coming into the possession and enjoyment of their estate.

The plaintiff will therefore be entitled to recover, if the jury shall find that the lease, as well as the release were duly executed and delivered, at, or about the time of the date. And that the estate thereby conveyed, was not afterwards divested, by any deed or instrument in writing. These questions, being matters of fact, are submitted to the decision of the jury.

The jury returned a verdict for the plaintiff.

SUPREME COURT OF PENNSYLVANIA.

Commonwealth, *vs.* Michael M'Garvey. } MURDER. Oyer and Terminer, Nov. 27, 1828.

The sheriff began to call the jury immediately upon the opening of the court. After 10 were sworn, 6 challenged for cause, (3 on the part of the prisoner, and 3 on the part of the commonwealth,) 8 set aside for blunders in the return and summoning, and 15 challenged by the prisoner peremptorily, the pannel became entirely exhausted. A tally was ordered by the court, and the jury box was finally filled as follows:

Thomas Morris,	John Moore,
Harrisan Hall,	John Twaddell,
Robert Mason,	Isaac Macauley,
John Warner,	Henry Lentz,
J. Williamson,	R. B. Carson,
Capt. W. West,	George Wall.

Thomas M. Pettit, Esq. prosecuted; W. W. Haly and F. W. Hubbell, Esqrs. for the defendant.

After the jury had been sworn or affirmed, and the indictment, charge, &c. impressively stated by F. A. Raybold, Esq. who acted as prothonotary, the attorney general opened the case for the commonwealth. He gave merely an outline or skeleton of the facts alleged by the prosecution, preferring, as he said, for the cause of mercy, that the jury should receive the first impressions of the facts from the witnesses themselves. The learned attorney general stated briefly the law pertinent to the case, and that the commonwealth and the case would call upon them for the highest verdict known to the law. The indictment contained two counts—1st, killing Margaret McGarvey with a cart whip; 2d, killing her with a knife. The witnesses were called, and testified as follows:

Rosetta M'Guire, sworn.—I lived last week at the corner of Ball and Pine alley, near Fourth and Shippen. On Friday afternoon I was up stairs, and coming down, I had to pass through Mrs. M'Garvey's room. She was sitting in her room, sewing. I left my baby in her apartment; this was about an hour before dark. When I returned up stairs, I saw the prisoner. I heard a rattling up stairs—that was the reason I went up. When I went into the room, I saw no strokes, but there was something in the countenances of Mr. and Mrs. M'Garvey that was disagreeable. I took up the baby. The deceased attempted to go down stairs; the prisoner struck her with a whip, and seized her by the hair, and ordered me out of the room; I went down stairs, and did not hear any strokes for a little time; I then heard strokes of the whip, as if he was beating her; I went back again, and saw her bleeding in the head; the blood ran down her neck. He stopped beating her when I went in; he did not say any thing, nor she; she was lying on her side, near the door. I went down stairs again, and did not see anything till the neighbours came in. I thought he struck her the last time I went down, but I was not certain—I was too much frightened to go up again. When the neighbours came in, the deceased was in bed. I heard the prisoner tell her before the second time I went up, to go—he did not say where; she said, yes. There was a great deal of blood upon the floor after it was over. That morning the deceased had got breakfast, and went to her father's afterwards. After dinner she was making a shirt; she was sewing at it when the prisoner came in. She was taken away from the house after it was over.

Cross examined.—When I first went up to Mrs. M'G. we had no particular conversation. The prisoner said nothing to me. I did not stay in the room long. The deceased did not say a word. The prisoner struck her with a whip—can't say how he held it. He called her a drunken strap—so he said afterwards. I did not hear him call her so. I said, "for God's sake Michael, could I think there would be this betwixt you and your wife." He bid me clear to my own apartment. The deceased was not drunk. He began to strike her about an hour before dark, but did not continue on steady; she did not speak a word, or cry out at all. About candle-light my husband came in.

I sell liquors in the house to my boarders. I did not sell liquor that day to the deceased; the prisoner never charged me with selling any to her; I did not tell him that she had been at her mother's that day. I have given liquor to the M'Garveys at times, but never to the deceased. She never asked me for a drop of liquor; I did give her about half of half a glass once; he was by. I do not know who told prisoner that deceased was at her mother's that day. I have seen her drinking beer. There was no wedding about that time in the family. I was just coming down stairs when prisoner came home. The deceased never holloed a word. I heard her groan. I cannot tell whether he struck

her with the lash or handle of the whip when I saw her. I took no liquor that day but what was useful to me. I don't know how much is useful. I don't think I took more than was useful to me, a glass of liquor and of beer. I was washing that day. There was a young woman below when I went down. The deceased told me she thought there were strangers below, and to fix my hair. I went down on her telling me. The prisoner was in a violent passion; he kept calling her a drunken strap, off and on. I did not call in any neighbours while it was going on; I thought it was something between man and wife that would soon cease. I was in the house all the time. The prisoner never came down until he was done beating her. My memory is very good. I repeat that I never told the prisoner that his wife was at her mother's that day. After the business was over that night, it was talked of in the house, but I did not say it.

Michael McGuire, sworn.—I was in the house when the prisoner came home last Friday. He went up stairs, and was not up long before I heard some raps that I thought were whip sounds. I went up to the head of the stairs; she was bloody. He said he would cut her throat. I was afraid to go into the room and went down, went out for a constable; saw one, but he would not come. I came back, went up stairs, and saw the prisoner having the deceased by the hair, with a whip in his right hand. The whip, a black leather one, was produced in court and identified by the witness. The prisoner held it by the butt, the lash out. I went again to the constable's house, corner of Plum and Third streets. When I came back, I saw the arms and head of the deceased out of the second story window, and James McColgey on the pavement, with his arms held out to catch her as she might fall. It was dark; I went up stairs, and saw the prisoner having the deceased sitting on the floor, his arms around her. She was all bloody about the head. Her hair was all covered with blood. The floor too. I came down stairs; there was a great crowd about the stairs. No one went up. After a considerable while, Bryan Mount came in; he and I went up. We saw her hair tied to the bedpost; it was parted in half as near as I saw. She had long hair. She was on her knees or haunches on the floor. The hair kept her head from falling. The job was pretty well over at this time. She could not speak; she was groaning. I left Mount and came down stairs. There I met Mr. McCann; he was coming up stairs. Mount told him to stop below. McCann and I went for the constable; he was not at home. McGarvey was down stairs when I returned. They sent me for the doctor, and before I got back again the prisoner was taken by another constable. The beating began an hour before dark; it lasted altogether some hours. The constable lived about three squares or so off.

Cross examined.—The prisoner and deceased lived together in the one room. They cooked there; had a fire there, shovel and tongs; they eat there; I can't say they had knives and forks there. They had reasonable good furniture. I never saw them eating. I know the hair was tied to the bedpost. I saw it. The hair was wrapped or tied around the bedpost. Her head was hanging down. There are some stout men living near. I did not go after them. McGarvey came in an hour before dark. I do not recollect where my wife was then. He walked up stairs pretty smart. I did not hear him say any thing then. When I went up he was not beating her; the door was half way shut. I saw her; he shut the door half way. It was when I was going up that he threatened to cut her throat. He had no knife; he did not speak loud. I did not remain down stairs five minutes. I stood at the front door, considering what to do. I was about a quarter of an hour away for the constable. On returning I saw my wife. I did not stay up stairs w th Mount long enough to hear what the prisoner said. I did not hear my wife say she gave the deceased liquor.

My wife told me that deceased was at her father's. I did not hear her tell the prisoner so. I did not hear the prisoner say that he beat his wife for drunkenness. I did not hear him call her a drunken strap; nothing like it. I did not hear the reason for beating her. He was in a *passion sure enough.* No one was with me when I went up the second time. I did not go into the room. I could see because I peeped in. The prisoner was not beating her then. She was sitting on the ground, and he had hold of her hair. I staid about a minute. Nothing was said by either of them. I was away the third time about a quarter of an hour, looking for a constable. It was after dark when I got back. I heard the people under the window holloing. The prisoner was in a passion, he had wild looks about him. I saw the deceased before prisoner came in; she was down stairs getting fire. The last time I saw her, when I came back, I could not tell whether her eyes were shut or open for the blood about her. Her hands were hanging down. I did not see him strike her after she was part way out of the window; nor after her hair was tied to the bedpost. I did not hear any beating after that. I came down stairs. I saw the prisoner give the deceased some liquor one day, before they came to live at the house. The window was pretty high; it is a pretty high story. It is a frame building; do not know the front. I think I might reach the ceiling of the lower room with my hand while standing up. The cellar door is under the window I believe. The cellar door is raised some from the pavement. Mount is a stout man. The deceased was a nice modest woman, as far as ever I saw. She lived in that house only since the Monday before. *I think that the prisoner had been taking some liquor when he came home.* He was not in the habit of coming home quite drunk; he was sometimes pretty *hearty.* He was not quite drunk on this Friday evening that he killed his wife.

Dr. John Welsh, sworn.—When I went to visit the deceased, there was a great crowd in the room. I cleared the room. I cut the hair off, washed off the blood, put together the edges of the wounds. I thought she was mortally wounded. There were eight large wounds on the head; any one would be sufficient to produce death. She could not speak; she appeared labouring under compression of the brain. The wounds were long and lacerated. My opinion is, they were given by a blunt weapon, and not a knife, because a sharp instrument always cuts the flesh smooth; these were lacerated. The throat was not cut with a knife; but gashed by a blow. I examined one of the wounds, the contused one. I did not make an examination of the skull after her death; her friends being Catholics, objected to it. I examined the wounds the first evening; it was evident she could not live long. The wounds might have been made by the whip on the table now. The jaw and teeth were firmly clenched together, so that I could not open them to examine the wound in the throat. The clenching was a symptom of death. I called for her friends, and told them she was irrecoverably gone. She died that night. I saw her dead body the next day. I am perfectly certain that she came to her death by reason of these wounds. I am a regular graduate of medicine in this city. The pulse of the deceased was slow and obstructed; no affection of the stomach. I did not mark the eyes, to see whether the pupil was dilated or not; the face was so much bloated.

Cross-examined—

I could not see the least appearance of liquor having had an agency in producing her death. I feel confident I could not see either fracture or fissure of the skull. I examined with my fingers, and could not see that the skull was battered down upon the brains. The same instrument might produce a contused or lacerated wound, according to the force employed. I

do not think there was enough blood spilt to produce death. The cart-whip was not produced that night. I firmly believe there was no sharp instrument made use of. It was exactly 9 o'clock at night when I brought the parents up into the room to tell the result. The examination took about three quarters of an hour. I did not use means to stop the blood; lacerated wounds generally stop soon, the mouths of the arteries being small. The wall was sprinkled with blood.

Bryant Mount was next sworn.—I live just about the middle of Pine Alley, six or eight doors from the prisoner's house. I went there, hearing of the beating, and saw him. He was standing with the whip under his arm; the deceased was tied to the bed-post by the hair of the head. It was parted in half, and a knot was on the back of the post. I wanted to untie her: he said if I did he would give me the whip; that he would keep her there until such times as she promised against drink. I tried to cut the hair apart three times with my knife; but the hair was wet with blood, and I could not do it. I said I would apply for assistance, and went to Esquire Thompson. I returned, and saw her on the bed. Her hair was still tied, when I went to the Esquire's. The prisoner said he had chastised her, because she ought to keep her own place. She did not speak; she groaned very badly, and could not lift her head. I did not see the prisoner lay hands on her at all. I knew her for three years before. I never saw her drunk. They lived not very happy together: they parted sometimes for three or four days, and she went home to her people. No one was in the room when I went in but deceased and prisoner: I heard some one come up, and I shut the door until I could see who it was.

Being cross-examined—No one was in the room when I came down. McGuire was not there when I was. I have visited the family sometimes. There is a counter in McGuire's shop. I do not know that they sell liquors: never bought any. Mrs. McGuire gave me liquor without charging for it. I was not over five minutes in the room; not over ten minutes. I never saw the deceased take liquor except once, two years ago, at Bush Hill, the 4th July; and once, at her father's house, when he came from Ireland. I do not know that she drinks at all. I never saw Mrs. McGuire drink.

James McColgan, sworn.—I lived in Shippen street, opposite Ball alley. When I came home on Friday before night, I put up my cart near the prisoner's house, at a stable. I passed his house. His horse and cart had not been put away: there was a wagon got in the alley that could not turn or get out. I allowed that the prisoner might have got a glass too much, and could not do it. I went up to him.—He was there, and said, "look at the situation this woman is in: she has been lying drunk down stairs all day." She was setting on the floor in her own blood. The prisoner said, "I am going to take her where she ought to be long ago; give me a pin to pin up her hair," I said he could not take her out in that situation; she had on hardly any linen. He had her hair in his hand; and said, "Jump up," and gave her three slaps on her back. I said, "Michael dont hit her; it will kill her." The deceased was not able to rise at all. The prisoner told me not to take the gears off the horse; that he would do it himself right away. I did it notwithstanding, and returned, giving him his key. He asked if I had given the horse any feed. I said no. I then went over to my own house, and went to the stable. While there, I heard some coloured women cry, "Murder," "Is he going to throw the woman out of the window."

I ran out of the stable, and saw the deceased hanging half way, all but her feet out of the window. I held out my hands to catch her. If she had fallen, she would have gone in the cellar. The window was about thirteen feet high from the pavement. She was hanging down head foremost. This was about twenty minutes after I had left the prisoner up stairs. When

I left, the deceased appeared to be stupified. The prisoner did not reply when I said he would kill her. It was not dark.

Cross-examined.—The deceased's hair was not tied to the bed-post when I saw her. The prisoner did not look as if he had bad intentions: she did not appear to be so much hurt. The prisoner did not put his head out of the window: his wife was hanging out eight or ten minutes in the way I said. He drew her in himself: I saw that. He gave her a pluck, and drew her in. You can see the wall now painted with the blood. I did not go up afterwards: there was a great crowd, and I could not get in. I did not think at the time the deceased was so dangerously hurt. The prisoner came down stairs, when I first was there, with a candle. I took it, and lighted the lamp up stairs. I do not frequent McGuire's house. I have known him these three years. There were some boys and men about the door when I first went in: there would have been more, but the deceased never cried murder. I did not see the prisoner that day before.

Charlotte Davis, black, sworn.—I live at the corner of Ball alley and Pine alley. I was sick a-bed last Friday; something worried me: I got up. I could see into the prisoner's room. The first thing I saw was his horse and cart. I thought there was something the matter, for a woman was walking in the room down stairs, wringing her hands. The thought scarcely passed me, before I saw the prisoner lift the window and put it up by a stick of wood. He then dragged his wife to the window by the hair; but, I think he saw me, and retreated. He then beat her over the head with the but of the whip, and then dragged her again by her hair and her heels to the window, to throw her out: his hands were all bloody. I lifted my window and cried out, "My God, is no one to help this woman!" James McColgan, a carter, was passing, and stopped.

Cross-examined.—The prisoner threw her out, and caught hold of her heels: she gave a groan. James cried out, and prisoner drew his wife in, pulled her towards the bed, and beat her again. I saw him go down stairs, ask as if for something to drink, and got a demijohn and drank. He pulled something out of his pocket, and went up again. The people then began to collect, and made a crowd. I could not see the bed exactly; it was too far back in the room. I saw him beat her before and after she was half out of the window. It was about half an hour between the time I saw the woman wringing her hands down stairs, and when James McColgan came. I often saw the deceased put away the horse when her husband could not do it himself.

Cross-examined.—It was near six o'clock when I first saw the prisoner lift the window. There was a candle in his room: there was none in mine. I cannot say whether it was dark or light. The prisoner was beating his wife for the space of twenty minutes before he brought her to the window. I could see in the room. She was sitting on the floor. He was on the side of the bedstead, and was beating her on the head. I did not hear her cry out. He dragged something black to the window first, and opened the window: then I saw the something black was his wife. I saw the whip, and the gore of blood on his hand. I cannot say who it was that the prisoner asked for liquor. There were several in the room down stairs; then the room was lighted. It was about fifteen minutes after I saw the horse, that the prisoner lifted the window. I saw him hand James McColgan something: I thought it was a pin. I saw no beating before the window was raised. I can't say how many blows he gave her: there were a great many.

Catharine Gallin, sworn.—I was sitting in my house, 89 Shippen street, about half a square from McGarvey's. I went to her house, hearing of the affair. The deceased was on her knees, her hair was tied to the bed-post in two parts: she was all bloody, and was almost naked. Mr. Mount

was there, and wanted to release her hair. The prisoner said, *no; she will come to herself.*" I ran down stairs. I was not well acquainted with the deceased. I never heard any thing against her character, nor against the prisoner.

Cross-examined.—It was about candlelight. There were very few persons about the house. The prisoner threw the whip to the other side of the room. I did not see the black men. The prisoner appeared quite calm: his hands were stained with blood. There were two women in the house. The deceased's head was as far from the bed as her hair would reach. I was not more than a minute and a half there.

James Ellis, constable, sworn.—I arrested the prisoner last Friday evening, and took him to prison. I was called upon by Wm. Little, to arrest a man that was beating his wife. He was taken before Justice Thompson, and committed. He attempted three times to escape, and two or three times to strike me. He said, "it was a damned bad country that would not allow a man to beat his wife," and that "he would have cut her throat, if he had had a knife." He appeared to be sober; not drunk: he had been drinking some: he knew what he was about. He first attempted to escape in Chesnut street, above Eleventh street: he ran fifteen or twenty yards before I caught him. He was very turbulent until we got to prison. Another constable and several citizens assisted me.

Cross-examined.—I stopped with the prisoner at a house in South street, to leave a key and some money, about $3.50. I searched him for a knife, but found none. He left his watch there, and said he expected to be out on bail the next morning. We also stopped at a house in Chesnut street, above Thirteenth, and he called for gin.

William Gwinn sworn—On Friday night, I passed prisoner's house, and felt a stick of wood fall. I looked up and saw a person hanging out of the window, and thought it was a person putting. James McColgan was there—he said it was McGarvey throwing his wife out of the window.

Cross examined—There was no crowd in the street. Two or three black people were on the opposite side of the way.

Catharine Fleming sworn—I work in the Neck, and live in Pine alley. I was coming home on Friday night, and heard of this affair. I went into the prisoner's house. A woman, Mrs. Guire, was there. I went up within two steps of the door. The prisoner had his arm around his wife: her head was hanging down; he threw her down on the left side of the face, and gave her five or six lashes with the whip, about her head. He lashed her with the butt end of it. I think that was the last of the blows. Neither of them spoke. He then came down stairs, and asked for gin, below; they did not give it to him, and he searched for some. He took a demijohn, and drank out of it. The doctor came soon afterwards. I think he had pretty well finished her when I came down.

Cross examined—When the prisoner came down for the liquor, he stayed there until he was arrested.

Mary Ann Anderson, (black) sworn—I live in Pine alley, near the corner of Ball alley. I was sitting at home, near night, and heard Charlotte say, "My God almighty, the man is throwing his wife out of the window." I ran out; she said, "no one has come yet." Two or three were waiting to catch her. The prisoner came down and asked for liquor; then pulled out a demijohn, and drank out of it. He went up stairs, and began to whip his wife again. I went up—the deceased was lying in bed, her throat was cut, and her eyes swelled up. About 4 or 5 o'clock I passed along, saw the cart, and heard him whipping her. I did not see the deceased out of the window.

Cross examined—Between 4 and 5 o'clock I was near the house, and could hear the licks. I did not go up stairs until the end of it.

Jacob Wolohan, sworn—I keep a tavern in Water street. The prisoner has worked for me. He worked for me last Friday, all the morning. I gave him a Spanish dollar between one and two. He drank a half pint tumbler of egg nog; he said he did not intend to work for me any more; he had a better chance; he had a horse and cart, and could do better. I told him I thought so too. He appeared to be sober when he left me; and he then went to work for some one else. How much he drank after that I cannot say.

Patrick Gallin, sworn—I was at the house some time before this affair begun—at least two hours. It was all quiet in the house. I saw no one but Mr. and Mrs. McGuire. After that I went away, and returned. I heard the sound of lashes of the whip, and went up the stairs to look at them. The prisoner had his hand twisted in the hair of the deceased, and was beating her with a whip in his right hand. I went up and saw him at it again. He asked her some question, and said "if she did not answer, he would cut her throat." She was not able to answer; she did not speak; she gave a little weakly groan.

William Little, sworn—I was standing in my door on Friday, two doors from the house. I saw the crowd, and asked the matter. They said Michael McGarvey had killed his wife. I went for Mr. Ellis: he said I must assist him. He took the prisoner to Esq. Thompson. I said I would go up and see the situation of the woman, and report. I went up and saw her. Her situation was dangerous and abused, not to get over it.

Susan McAnany, sworn—I am sister to the deceased. I went to her house on Friday, and saw her on the bed. She died that night between twelve and one o'clock.

The attorney general asked as to the previous treatment of the deceased by the prisoner; but the question was objected to by the counsel, and waived.

John Thompson, Esq. sworn—I was the committing magistrate. I went to the prisoner's house in the evening, after the committal. I bound him over for an assault and battery with intent to murder. I went over and saw the deceased. She was bloody and speechless, and the wounds on her head were shocking to look at. She looked as if she was dying. I went to Charlotte Davis' house, this morning, to look at the window. The two houses are opposite; the window through which the witnesses saw the deceased was thrust, is immediately opposite the window where Charlotte Davis was sitting. I looked from it, and could not see the bedpost alluded to: it was hid by the window frame and sash. The sill of the window is stained with blood, and I tracked it to the bed.

Cross-examined—I found no knife in the prisoner's possession. The gash on the throat was immediately below the chin.

The attorney general here closed the case on the part of the commonwealth. The counsel for the prisoner said that there were no witnesses on his part to be examined, and asked the attorney general to propose the points of law and facts on which he relied.

Mr. Pettit opened by saying that there were astonishingly few discrepancies or contradictions in the testimony; that although one witness might say 15 or 20, and another 20 or 25 minutes, in computing time, yet the facts were all fresh and harmonious; the case is a full one, of murder in the first degree; it is the case of a man having, without provocation, beaten to death an innocent wife, who was that very day engaged in domestic duty. There can be little doubt that it is a case of murder; and the only question is, as to the first or second degree. To establish the first branch, the killing must be wilful, deliberate and premeditated. It was a *wilful* act, of course; it continued for an hour and a half; *deliberation* need only be in existence for one half minute; here it was in full play for an hour and more. He was cautioned by Mr. Mount—the instrument was likely to kill—the beating was cruel and violent—there

was a threat to cut her throat, &c. All these facts are convincing proofs of full and perfect deliberation.

Mr. Haly went largely into the facts of the case, and contended that there was not evidence more than sufficient to convict of murder in the second degree; that there was not a premeditation to kill; that the instrument used was not likely to murder; that the blows given were the result of sudden excitement, and not of malice aforethought; that the cases already decided in Pennsylvania, rebut the position that death wounds given under excitement, constitute murder in the first degree; and that all the cases in Pennsylvania concur in favour of the prisoner. A pamphlet, written by T. Earle, Esq., bearing directly upon the case, was quoted to some extent.

Mr. Hubbell followed his colleague in an address of about equal length; 1st, contending that there was no intention to kill; and 2d, that there was no premeditation, in the common understanding of the term. The prominent facts of the case were fully canvassed, and applied to the points of law involved. He ended a full investigation of the case by a peroration, alluding to the sanguinary scriptures of the Jewish dispensation, and the horrors of public executions.

Mr. Pettit rose at nine P. M., to conclude on behalf of the commonwealth. After alluding to the unpleasant duty that all the public branches of the tribunal were compelled to perform, he went into a statement of the facts, alleging that the case presented that of a cruel, brutal, and unmanly murder, of the most wretched description.

He alluded to the prominent circumstances of aggravation to prove that there was premeditated malice in the prisoner, without provocation, or any reason to actuate him. He went into the law at length; admitting that there must be an intention to kill, but contending that such an intention was fully proved in this case; and also admitting that the wilful, premeditated killing must be proved, but alleging that that was also done. He alluded very roughly to a pamphlet of Mr. Earle, read in the cause; said "it was a very querulous work, by an inexperienced lawyer, written for the purpose of finding fault with people wiser than the author." He denied that the conduct of the deceased was improper in any respect, and vindicated her character.

The chief justice, a little after ten P. M., commenced his charge. The learned judge vindicated the manner in which the trial had been conducted, as to the alleged precipitation; he deprecated any delay in criminal cases, such as we see in civil cases; nothing is so salutary as promptness and certainty in criminal jurisprudence; public justice requires that no adjournment should take place in capital cases; in great and powerful families, a separation would admit of tampering and corruptness; the common law in this respect is excellent. As to the public excitement, his honour charged the jury to shut every avenue leading from it to their understanding; and on the other side, to divest themselves of that ridiculous humanity which would deprive justice of its due. The commonwealth and prisoners have reciprocal rights. The man who warps the facts or the law, to suit a prisoner, takes perjury on his soul. There is no discretion in the jury to do either, and God forbid that we should have no other security than that for lives. Juries would be as despotic as emperors, if they did. It has been truly said that juries are the judges of the law, but they have no right thereby to judge of its propriety. Juries can reject the law as laid down by the court, if it does not comport with their judgment; but respect should always be paid to opinions of men who have no interest to misconstrue the law against such prisoners as this. To approach the case: It is not seriously denied that the prisoner is guilty of murder—but it is denied that it is of the first degree. If the destruction of life, caused

by the beating, was intentional, it is murder of the first degree. The phrases such as wilful, &c., in the act, were used to fix a settled determination to kill.

Verdicts of juries had been improperly quoted to contradict the law, yet there was the case of James Mounks, in Centre county, who shot a man down with a rifle, who was merely passing along the road. He was hung. So was negro Bob, who flourished an axe, saying he would split any man who was saucy, and he cut down a fellow-creature. As to the evidence of intention, God only knows the heart. If, however, a man does an act, which must produce certain consequences, and those consequences happen, he is supposed to have meant to produce them. It is however only *prima facie* evidence, subject to explanation or contradiction. The prisoner contends that the weapon was not deadly, and that, if he intended death, he would have used a deadly instrument. The prisoner is entitled to the benefit of it, for as much as it is worth. Evidences of intention on the part of the prosecution are, continued beating for more than an hour; beating after her strength and life were gone; dragging her to the window; declaration of the prisoner, &c. These proofs of intention are only glimmering lights; the jury will judge of them. There are also circumstances that indicate an intention not to kill; the prisoner told the deceased in the midst of the beating to go; he said that he would not release her hair until she came to herself, and left off drinking; that he would take her away to her father, if McColgan would give him a pin to do up her hair: his having chosen a time and place where immediate detection would be inevitable. These are the circumstances, picked out from the case, as well as possible. The whole case is left to the jury, as to the law and facts.

About three o'clock, P. M. 28th, the jury signified to the court, that they had agreed upon their verdict, and upon being brought into court, and the prisoner placed at the bar, the jury pronounced the verdict of "*Guilty* of MURDER—IN THE SECOND DEGREE!"

The next day the court of oyer and terminer was crowded to excess, to hear the sentence passed on this wretched man. He was conducted into court by the peace officers. His face betokened much more placidity than when he last appeared before the court, with the expected sentence of murder, in the first degree, hanging over him.

The chief justice addressed him nearly as follows:

Michael McGarvey—You have been convicted, by a jury, of murder in the second degree. You have been most wonderfully and mercifully dealt with. The evidence was amply sufficient to warrant a conviction, which, had it been pronounced by the jury, would have deprived you of life. You have escaped by a miracle. Be grateful then to that Providence which has so wonderfully interposed to preserve your wretched existence. If the deepest remorse does not pursue your future steps, then must you have indeed a conscience impervious to all feeling of shame, and of repentance.

Your treatment of your unfortunate and murdered wife, was a disgrace to man; there was nothing to impeach the propriety of her conduct. She was mild and confiding; you have acted towards her like a devil in human shape.

The imperious duty of this court is to award the highest punishment which the law admits. Had the jury dealt with you as you deserved—had they given that verdict which would have entailed death, death you should have suffered! The sentence of the court is, that you, Michael McGarvey, be confined in the penitentiary for the term of eighteen years, nine of those years in solitary cells, to be kept on low diet, and the remaining nine years of hard labour.

ONTARIO GENERAL SESSIONS.

TRIAL FOR THE ABDUCTION OF WILLIAM MORGAN.

August, 20th, 1828.

Present, Hon. Nathaniel W. Howell, Hon. Chester Loomis, Hon. John Price, and Hon. Samuel Rawson, Judges of County Courts of Ontario county.

The indictment against Eli Bruce, Orsamus Turner, and Jared Darrow, for a conspiracy to kidnap and carry away William Morgan, from the county of Ontario, to parts unknown, was brought on for trial.

Counsel for the people, Daniel Moseley, Esq. special commissioner, Bowen Whiting, Esq. District attorney of Ontario county, and Charles Butler, Esq.

Counsel for the defendants, Hon. Dudley Marvin, and Mark H. Sibley, Esq. of Canandaigua, William H. Adams, Esq. of Lyons, and Vincent Matthews, Esq. and Ebenezer Griffiin, Esq. of Rochester.

The following persons were sworn as Jurors: Hiram Anson, Nathan Cary, Jasper W. Peet, Levi Smith, Amasa Spencer, John Stults, Evert Green, Abraham Dodge, Henry Lincoln, Daniel Short, John Pennel, jr. and Samuel Reed.

Mr. Whiting having opened the case to the jury, on behalf of the people, the following testimony was introduced.

Israel R. Hall, sworn.—The witness was jailer of Ontario county in 1826. He knew William Morgan, who was committed to the jail of said county, on the 10th of September, in that year, and discharged on the 12th of the same month, as this witness has been informed. Witness was absent from the jail at the time of Morgan's commitment and discharge.

Jeffrey Chipman, sworn.—Witness was a justice of the peace in Canandaigua, in September, 1826. On the morning of the 10th of that month, it being Sunday, Nicholas G. Chesebro came to the witness' house, and requested him to go to his office. He did so. Chesebro came in soon, and shortly after him, Ebenezer C. Kingsley, who made a complaint against William Morgan, for larceny: Chesebro stated Morgan had come from Batavia, and was, at that time, about six miles west of Canandaigua. Witness issued a warrant against Morgan, directed to the sheriff or either of the constables of Ontario county, or to Nicholas G. Chesebro, one of the coroners thereof, by virtue of which he was apprehended, brought before witness, on Monday evening, and by him discharged for want of sufficient proof to charge him. Chesebro then requested of witness a warrant against Morgan, on a demand which he held against him as assignee of Aaron Ackley. A warrant was accordingly issued, Morgan arrested, judgment entered up against him by his consent, execution thereon taken out and given to Holloway Hayward, then being a constable of Canandaigua.

Holloway Hayward, sworn.—The witness was a constable of the town of Canandaigua to 1826. He received the warrant issued against Morgan on the charge of larceny: went to Batavia with five others, of whom Chesebro was one, arrested Morgan at that place, brought him before Mr. Chipman on Monday, was present during a part of his examination, received the execution against Morgan, arrested him by virtue of it, and committed him to the jail of Ontario county, between 3 and 9 o'clock in the evening, of the 11th of September.

Mary W. Hall, sworn.—She is the wife of the jailer; she was not at home when Morgan was committed; she came home on Tuesday, the 12th of September, and found him in jail; Mr. Hall went out about dark on the evening of that day; a person came to the jail and inquired for Mr. Hall; she told him he had gone from home; the person then wished to go into Morgan's room, which she refused; he then asked permision to have private conversation with Morgan, which was also refused; he then insisted on paying the debt for which Morgan was imprisoned, and taking him away; this too was refused. The person then went in search of Mr. Hall, and soon returned without finding him, and again urged witness to permit him to pay the debt and take Morgan away, to which she would not consent; he then asked her whether she would discharge him, if Col. Sawyer would say it was right; witness did not say she would or would not. The person went away and soon came back, with Col. Sawyer. Chesebro advised to let Morgan go. Lawson paid the amount for which Morgan was imprisoned, which was a little more than three dollars; stranger went to the door and whistled, witness unlocked the door of Morgan's room, and Lawson went in and led Morgan into the hall of the jail, by the arm; after they went out the door, and before it was shut, she heard the cry of murder; she went to the door and saw three men taking Morgan east; he was struggling, his hat fell off, and one of them took it up: she saw no other persons about the jail. An unknown person rapped on the well curb, and a carriage soon passed by the jail from the west. It went east and shortly returned, driven with great rapidity. This took place about 9 o'clock in the evening of the 12th of September. She has not seen Morgan since.

Wyllis Turner, sworn.—In Sepember, 1826, witness lived with Mr Freeman Atwater, in the street on which the jail is situated, a little west of it, and on the same side of the road. As he came out of Mr. Atwater's gate one evening, he met Chesebro and Sawyer, going west; saw Sawyer pick up a stick; they turned about and went to the west corner of the jail, and were whispering together. Witness went to Mr. Hall's well, which is in the street, a little west of the jail, for water, and as he was turning the water into his pail, he heard the cry of murder: he saw three men coming down the jail steps with their arms locked. Heard the cry of murder once while they were coming down the steps, and twice after they had left them. Mrs. Hall was standing in the door; some one, he believes Chesebro, stopped the mouth of the man who cried murder: when they had gone a little distance from the steps, the middle man of the three appeared to hang back; his hat fell off, and a Mr. Osborn took it up and gave it to Sawyer; asked Sawyer what the rumpus was, who replied that a man had been arrested for debt and was unwilling to go. Saw Sawyer rap on the well curb; Hubbard's carriage soon drove by rapidly to the east, with Hubbard driving; the horses were gray, and the curtains down. The carriage went a little beyond the pound east of the jail and turned about. A man was put in by four others, who then got in, and the carriage drove west, and went round the corner of the tavern, then kept by Mr. Kingsley; witness followed the men as they went east; was near the pound when they got into the carriage. It turned round before they got in. As the carriage was returning west, some one in it cried out, "Hubbard, why don't you drive faster; damn you, why don't you drive faster." Hubbard then cracked his whip. Have seen Morgan, but did not know whether he was the man taken from the jail; did not know those who came down the steps. The moon shone bright.

Hiram Hubbard, sworn.—In Sept. 1826, the witness kept a livery stable in Canandaigua. He was applied to by Mr. Chauncey H. Coe, to take a

party to Rochester, on the 12th of September, and was paid for it last summer or fall, by Mr. Nicholas G. Chesebro. His was a yellow two-horse carriage. His horses were gray. They were at the barn near Mr. Kingsley's tavern, west of the jail. About the time he was ready, some person on the sidewalk, then and now unknown to the witness, told him to go on the Palmyra road when he was ready, for the party had gone on. This was the only direction he had as to setting out. He did not hear a rap on the well curb. He started about 9 o'clock in the evening. It was pleasant and the moon shone. No one was in the carriage when he left the barn. He went beyond the jail east, 50 or 60 rods, and stopped opposite the long house. His party, supposed to be five in number, there opened the carriage and got in. He heard no noise. He presumed the people in the road were his party. He knew none of them then, nor where they came from, and has not known them since. He can't say whether he saw them get into the carriage. He was not very particular in noticing them. After the party had got in, he turned round. On his way to Rochester, he first stopt at Brace's, 6 miles from Canandaigua, to water. The people had not gone to bed; some of the company went in; he don't know, but he saw them by candle light; he don't know how many went in. He stopt again at Beach's, in Victor, or at the house beyond, people had gone to bed. Stopt also at Mendon; nobody was up; did not feed his horses at either of these places. He stopt at Stone's, in Pittsford, long enough to water. The bar-keeper was up waiting the return of some young men belonging to the house. Don't remember whether any of his party got out beyond Brace's. He stopt in Rochester, at the large watering place in Main street, 10 or 12 minutes; it was just at twilight. Some of the party got out here, but he don't know whether any went from the carriage; he saw no one of them that he knew, and has seen none since to recognise them. The party desired him to go on beyond Rochester. He consented to go. He took the Lewiston road; on arriving at Hanford's, which was then a tavern, one of the party got out. He called for feed for his horses, but got none; he went about 80 or 100 rods beyond the house and stopt near a piece of woods: It was not a usual stopping place: the party got out before he turned his carriage; he thinks he must have seen them, but he saw no one that he knew, and has seen no one of them since; he don't know why he stopt at that place, but presumes his party told him to do so. Returning, he stopt at Hanford's, and endeavoured to get food for his horses, but could not; he saw two or three carriages going out of Rochester when he did, which turned round and went back. One was a small carriage; its colour he cannot recollect. After he had turned round he met a hack with two horses, near the house; thinks it was green; did not see it stop, nor hear it hailed; thinks it was not the hack he saw going out of Rochester. He heard nothing from his party about carriages coming from Rochester; knows Mr. Platt, who kept a livery stable in Rochester, but not his carriages. No one returned in his carriage to Rochester, except two transient persons whom he took in on the road, neither of whom was known to him An unknown man on horseback, passed his carriage between Canandaigua and Rochester.

Ezra Platt, sworn.—In September, 1826, the witness kept a livery stable at Rochester. He is a mason and a member of a chapter. A lodge had previously been established at Lewiston. A chapter was expected to be installed in that place, and the Rochester chapter had been authorized to install it. It is usual for the grand chapter to issue to suitable persons, a special commission for such a purpose. The first officers of a chapter would be proper commissioners. After the fact of the Rochester chapter having received a commission to install one at

Lewiston, had been for some time known, and about 10 days before the installation, the witness was asked if he could furnish carriages to take the commissioners to Lewiston, and he said that he could, but advised that they should take the stage. He stated he could not go himself, by reason of ill health. About 4 or 5 o'clock in the morning of the day, or day but one, before the Lewiston installation, some person called at his front door, and said he wanted a carriage to go to Lewiston, and desired it might be sent to Ensworth's, where the company was. He then went away immediately. The witness called up his driver, whose name was Parker. The driver had been in witness' employ several months, but left him a month or two afterwards, on account of sore eyes. He don't know where he lives now. The carriage was sent soon after it was called for. The witness did not see it start. He had two carriages, one of a cinnamon colour or yellow, and the other green. He thinks the first was taken. The horses were black, or of a brown bay colour. They were gone several days. He supposed the carriage was for the commissioners, and had no intimation that Morgan was going in it. He did not see the person that called for the carriage, and has never been able to ascertain who he is. The only charge he made was on the paper in his wallet, in these words, "Grand Chapter pro tempore, to carriage to Lewiston." He supposed the carriage was for the Chapter, and expected some one in its behalf, would pay him, but he has not been paid, and has never asked any person to pay him. He has heard that some of the Chapter went in a steam boat to Lewiston. He knows Hiram Hubbard, but did not see him or a carriage with gray horses that day. He let to George Ketchum, a carriage and horses to go to Batavia, the day before Morgan went from that place. If the installation was the 14th, his carriage must have gone the 11th or 12th. It was not engaged on Sunday evening, nor any thing then said about it. Reuben Leonard, kept tavern in Rochester at the time.—Don't know that any persons were at Leonard's, in relation to carriages to go to Lewiston; was not there himself. He knows nothing of a carriage and horses being employed, on the Friday evening previous, to go to Batavia.

Harry Olmstead, sworn.—He resided at Greece near Hanford's landing, in September 1826. One morning of that month, just at daylight, he saw a carriage, with a pair of gray horses, in the road south of Hanford's. The horses were very sweaty, and appeared to be much fatigued. The curtains of the carriage were drawn. There were two men on the box. He did not know either of them. Does not know how far it went beyond Hanford's. About fifteen minutes afterwards, he saw the carriage standing under Hanford's shed, opposite his house. About an hour after sunrise, he saw the same carriage come off the ridge road, take the river road, and proceed towards Rochester. Its curtains were up, and five or six men in it. He was standing in the road. He saw no other carriage that morning coming from Rochester. The end of the ridge-road is a few rods from Hanford's house. A person passed on a brown mare, whom he has since ascertained to be Edward Doyle.

Silas Walker, sworn.—Witness lives on the river road, directly opposite the point where the ridge road intersects it. On the morning of the 13th of September, 1826, while talking with Mr. Olmstead, he saw a yellow carriage with gray horses pass by. When it returned, the curtains were up, and three, four, or five persons in it, one of whom he knew to be Burrage Smith. A person, on Mr. Platt's brown mare, was forward of the carriage: he saw no other carriage that morning, having been from home most of the time.

Silas Walbridge, sworn.—He lived, in 1826, in Clarkson, about fifteen miles from the river road. Near the time of the races, which commenced that year on the 14th of September, he was applied to by a gentleman for a pair of horses to go before a hack,

which he stated would arrive between 8 and 10 o'clock in the morning. The gentleman said he did not want a driver: witness at first declined letting his horses go without a driver, but finally consented; harnessed his horses about 8 o'clock, and tied them under his shed: the hack came along between 8 and 10 o'clock, and when it approached his house, the gentleman went along by the side of it, and had some conversation with the driver, who soon drove on. He then said he did not want the horses. A person, since dead, told witness what was to take place, and when the hack came in sight, pointed it out to him. The hack was of a dark colour, and the horses dark bay.

Sarah Wilder, sworn.—The witness lived, in September, 1826, with captain Isaac Allen, about five miles east from Clarkson. Allen does not keep tavern, and there are no houses near him. About the 11th or 12th of September, in that year, at 10 or 11 o'clock in the forenoon, Mr. ——— came and inquired for captain Allen: did not know where he was: Mr. ——— went hastily in pursuit of him, holloed for him, soon found him, and returned after the hack. The hack came up before the house in about fifteen minutes. It was brown, and the horses were brown; the curtains were down, and the day was very warm. Did not know the driver. Captain Allen's horses were brought up, and capt. Allen and Mr. ——— changed the horses: those that came with the hack were put in capt. Allen's barn. The hack went west, and Mr. ——— with it, and returned about an hour before sunset the next day. The curtains were up, and no one in it. Captain Allen had gone to Clarkson, but had told witness where the horses that came with the hack the preceding day might be found. They were put to it again, and the hack returned to the east. Don't know who was with it when it returned.

William Cooper, sworn.—Witness lives in Clarkson. About the middle of September, 1826, coming from the west he passed a carriage and two pair of horses in the road about four miles west of Clarkson, and about one third of the distance from captain Allen's to Mr. Spencer's. It was between 11 and 12 o'clock in the forenoon; does not recollect the day of the month, but it was near the time of the races that year. They were then training horses on the race grounds. He cannot say whether the horses were attached to the carriage or not; they appeared to be changing them. A man on the box, whom he had never seen before, was holding the lines: one span of horses was captain Allen's, the other he did not know. The weather was very warm, and the curtains of the carriage were down. There were four or five men in a lot south of the ridge road conversing; two about fifteen rods from the carriage, the others nearer. Two of them were sitting, the others standing. Witness knew several of the men; captain Allen, Mr. Spencer, Mr. ———. He afterwards thought that another's name was Augur, but is not positive of it; the carriage did not start while he saw it.

Solomon C. Wright, sworn.—He kept a public house in Niagara co'ty in Sept., 1826. His house is on the north side of the ridge-road, at the point of its intersection by the Lockport road, six miles east of colonel Molyneaux's, and three and a half miles north of Lockport. In the month of September, in that year, on the day before the installation at Lewiston, just at night, a two-horse pleasure carriage or hack drove under his shed, and afterwards into his barn, which is a few rods further from his house. The barn doors are usually shut. The feeding troughs in the sheds were broken down, and the carriage was driven into the barn to feed the horses, and they ate from boxes placed before them on the floor where the carriage stood, in the further end of the barn. Don't know whether they were taken from the carriage: the horses were not changed: did not see those who came in the carriage get out or in: don't know where they got out;

nor how many there were: did not know any of them, or the driver: has never seen the driver since. All who came in the carriage, including the driver, took supper at his house, and each paid his own bill to him. His barkeeper was gone, and he tended bar: was in the bar when they first came in, and saw them go through the bar room to supper. The driver obtained food for the horses. Witness does not know that any persons came in the carriage: did not see the door open: don't know whether the curtains were down or not: don't know that any one was in the carriage during supper: saw no one go to the carriage during supper, and did not go himself. He once went into the barn to find a servant, while the carriage was there; neither saw or heard any person: passed the shed in going to the barn: there were horses under it: it was dark when they finished supper. After supper they proceeded west. Did not see them get into the carriage: his house, shed, and barn, are on the same side of the road. The installation was talked of. Don't know how many went in the carriage: there were less in his house after the carriage had gone than before: did not see it start: nothing mysterious about it that attracted particular attention. There were persons at his house who did not come in the carriage: he did not know them or their business. Isaac Farewell came to witness' well to get water about the time the carriage came: had no conversation with him: he has since moved to Canada. Witness knew Eli Bruce at that time: did not see him at his house that evening. He knows Elisha Mather: did not see him that night: he was at witness' house about that time: thinks it was before: saw him the next day, or the next day but one. The next day a carriage passed his house, from the west to the east: don't know whether it stopt, nor whether it was the same that was at his house the preceding night. A hack stopt at his house the next day: it is usual for carriages to stop there.

William Molyneaux, sworn.—In September 1826, witness lived in Fleming, Niagara county, on the ridge road, at a point where it is intersected by the road from Lockport, a little more than 12 miles from Lewiston, 6 from Solomon C. Wright's, and 6 or 7 from Lockport. On the night before, or the night after the installation, about 12 o'clock, Eli Bruce, who then lived in Lockport, came to witness' house with two strangers. Bruce came up stairs where witness was in bed, and said some of his friends were going to Lewiston, and asked him for a change of horses: Bruce told witness that they should be used carefully. Witness called up his son, and after consulting with him, concluded to let Bruce have his horses: Bruce and witness' son got up the horses: does not know from what place the carriage came, nor whether Bruce went on with it: one of Bruce's companions stayed overnight at witness' house, and took care of the horses that came with the carriage, and helped change them when it returned: does not know who drove: Bruce spoke of Brown as the driver. The horses returned the next morning a little before sunrise, in the charge of Brown. The carriage was large, and of a dark brown or black colour. He saw no persons but Bruce and the two strangers that came with him. Can't say which road the carriage took in the morning, nor how many were in it. Did not see Bruce again till the next winter. Brown said Bruce would pay for the horses: witness has not been paid: has an account with Bruce.

Corydon Fox, sworn.—In September, 1826, the witness lived at Lewiston, with Mr. Barton, in the capacity of a stage driver. The night before, or night after the installation, between 10 and 12 o'clock, Mr. Barton called witness up and told him to get his hack and horses ready to go to Youngstown. When he was ready, Bruce got on the box with him, and directed him to drive into a back street, to a carriage which he found standing there, without any horses attached to it. He

drove by the carriage in the back street. Some persons were standing near it, one or two got out of it, and after they and Bruce had got in his hack, Bruce told him to drive to Col. King's, about 6 miles distant. He would have noticed violence if there had been any, but he saw none; saw no person incapacitated or bound; saw nothing brought from the carriage in the road, to his hack. On arriving at King's, he stopt by direction of Bruce, who got out and called to King, who came down into the hall, where he and Bruce conversed together. While they were conversing, some one in the carriage asked for water, in a woman's voice, to which Bruce answered, "you shall have some in a moment." King and Bruce then got in, and he drove to the burying ground, about three quarters of a mile from King's, and half a mile from the fort, where he stopt by Bruce's direction. There were no houses near. The party, four in number, got out, and proceeded, side by side, towards the fort, and witness, by Bruce's orders, returned to Lewiston, where he arrived before daylight. The witness was often called up late at night, and frequently drove passengers whom he did not know; but it is not usual to take up a party in the back street; and he never before left a party at the burying ground, which is not an ordinary stopping place.—The next day, he saw Bruce at the Frontier House in Lewiston. Knows not what became of the carriage in the road. Saw nothing unusal in the manner of getting in and out of his hack.

The witness was asked whether he was taken into the lodge soon after this occurrence, but the court said the question was improper, and it was not answered.

Ebenezer Perry, sworn.—Lives in Lewiston, on Back or Ridge street. On the night following the 13th of September, 1826, after 12 o'clock, he saw a person harnessing a carriage at Mr. Barton's stable, heard it start, and went to the door. Saw a carriage coming, which went a little distance beyond another standing in the street without horses, and stopt. Two men were on the box. One of them he knew to be Corydon Fox, and the other to be recognised at an examination at Lockport, about two months afterwards, and ascertained to be Eli Bruce. Witness thought something strange was going on, and went into his garden near his house, where he had a view of what took place in the road. Saw a man go from the box of the carriage which had driven by, to the one standing in the street, and opened the door. Some one got out backwards, by the assistance of two in the carriage, He had no hat, but a handkerchief on his head, and appeared intoxicated and helpless. They went to Fox's carriage and got in. The man he supposed to be drunk, was helped in. One went back and took something from the carriage they had left; he thinks a jug; returned; got in, they drove off, and he saw no more of them.—Witness saw no person in the unharnessed carriage, the curtains being down. Said nothing about what he had seen for 4 or 5 months.

[The prosecution then called Edward Giddins, but the defendant's counsel objected to his being sworn, because he had no religious belief whatever. After hearing the testimony respecting his religious opinions, and the arguments of counsel on both sides, the court unanimously decided that he was not a competent witness.]

Elisha Adams, sworn.—He lived in Porter, Niagara county, in 1826, about 2 miles down the lake, from the village of Youngstown. The troops left the fort in June, except one old soldier who died there soon after they had gone. About the middle of September, Giddins went to New York; was absent three or four days, and witness took charge of the ferry and his house during his absence. Giddins' house was on the flat below the fort, 20 or 30 rods distant from it. That part of the fort nearest to his house, is the magazine, which forms part of the wall. There were ammunition, quartermaster's stores, &c., in the fort.

He went away the day before Giddins came home; was frequently at the fort in September; Giddins had charge of the fort and public property there; don't know where the key of the magazine was, while Giddins was absent; supposed it was in the mess house, which is to the left of the magazine as viewed from Giddins' house; heard no one in the maganize while tending the ferry; don't know that any one was there; heard about the time of Giddins' return, of Morgan's having been brought there; never heard so from either of the defendants; don't know that food or drink was carried to the magazine while Giddins was absent; was in it both before and since the troops left the fort. About the time the public property was sold, he was employed to put things in order at the fort. Witness went to Giddins' house at his request, but at what time he cannot tell, and saw there Col. King. Dr. Maxwell, and Obed Smith, had nothing to do with them. Giddins said he had some work for him to do, showed it him, went home without doing it, having no tools with him.

John Jackson, sworn.—In the fall of 1826, he lived in Lockport. The night before the installation he stayed at Giddins', his brother-in-law, went to the installation; don't know whether Giddins went; before going to the installation, he went with Giddins to the magazine; 20 or 30 minutes previous to setting out, Giddins had a pistol; requested witness to take it; he declined; did not see Giddins lay it aside; did not see it after they left the house; Giddins carried something with him; don't know what; witness approached within about 2 rods of the magazine; Giddins went up to the house, don't know whether it was opened by Giddins or not; something was said inside of the door; he heard a man's voice not uncommonly loud, and supposed a man was in the magazine; don't know what was said, nor whether he heard the voice before or after Giddins reached the door; thought he had better be missing and immediately retreated; Giddins soon followed him; witness started in 10 or 12 minutes for Lewiston. Giddins informed witness whose pistol it was that he showed him, but the defendants' counsel objected to his repeating what Giddins had told him. He never had any conversation with either of the defendants, respecting their participation in the abduction of Morgan.

William Hotchkiss, sworn.—Three or four days after the installation, went to the fort to make inquires respecting a man's being confined there—found out nothing; did not go to the magazine, nor did Giddins while witness was there.

The testimony on the part of the people closed here.

Mr. Whiting stated that the bill against Turner and Darrow, two of the defendants, had been found on the testimony of Giddins alone, and that he having been excluded, the prosecution has no evidence whatever against them.

Mr. Adams addressed the jury in behalf of Bruce, and Mr. Moseley for the people. The jury retired at 9 o'clock on Friday evening, after receiving a charge from his honour Judge Howell; and having been absent about three hours, returned a verdict of *Guilty* against Bruce, and *Not Guilty* in favour of Turner and Darrow.

The court suspended their judgment against Bruce, in order to take the advice of the supreme court, on some important questions of law, which were raised during the trial.

Reports of cases decided by the Supreme Court of Errors and Appeals of the state of Tennessee. Nashville, January Term, 1829.

SMITH *vs.* STATE OF TENNESSEE.

This was an appeal from a decision of Maury circuit court, by which the appellant was stricken from the roll as an attorney of that court, for having accepted a challenge, and fought a duel.

Opinion delivered by Judge Catron.

That an attorney may be stricken from the roll for good cause, none can doubt. Yerger's Rep. No. 2. 270, 71, Stat. 4 H. 4, C. 18; St. Westminster 1. C. 39; 2 Just. 213, 14, 15.

Much inquiry has been made into the powers of the courts to remove attorneys; if the old statute of H. 4. had itself been looked to, that which has been searched for, and found obscurely hinted at, in so many authors, could have been found in a short paragraph; the statute first provides that all who are of good fame shall be put into the roll, after examination of the justices, at their discretion, and after being sworn well and truly to serve in their offices: "And if any such attorney be hereafter notoriously found in any default, of record, or otherwise, he shall forswear the court, and never after be received to make any suit, in any court of the king. They that be good and virtuous, and of good fame, shall be received and sworn," at the discretion of the justices; and if they are notoriously in default, at discretion may be removed, upon evidence either of record, or not of record.

This statute has received the sanction of four centuries, without alteration, and almost without addition, governing a profession more numerous and powerful (when applied to counsel also, as in most of the U. States) than any known to the history of the world, without complaint of its provisions, or abuse of power on part of the courts, in its exercise, so far as the judicial history of England or America furnishes instances. It is remarkable, that there is not a provision in any act of assembly of Tennessee upon the subject, but is in strict affirmance of it; nor does a single provision go beyond it; our statutes require that the attorney shall be of good moral character, learned, and of capable mind. A loss of either of these, is good ground for withdrawing the privilege conferred by the license.

Suppose an attorney were to become insane, by the hand of providence, or intemperance, he would be disqualified, and the license should be withdrawn; were he to become besotted, and notoriously profligate, he would be neither virtuous nor of good fame, and should be stricken from the roll. A hundred instances might be cited, where the ttorneys, once qualified, might become disqualified, when the privilege should be taken from them. Who must perform this duty? The power which has conferred the appointment; that is, every court where the attorney is permitted to practise, for they equally extend the privilege. The principle is almost universal in all governments, that the power which confers an office, has also the right to remove the officer for good cause—the county court, constables, &c.; the senate, officers elected by the legislature and people; in all these cases, the tribunal removing, is, of necessity, the judge of the law and fact; to ascertain which, every species of evidence can be heard, legal in its character, according to common law rules. and consistent with our constitution and laws. This court, the circuit court, or the county court, on a motion to strike an attorney from the rolls, has

the same right (growing out of a similar necessity) to examine evidence of the facts, that the senate of the state has, when trying an impeachment. The authorities to sustain these positions are all cited in the cause of the State against Fields, and will not again be referred to.

We will now examine the practice pursued upon these principles in England. There, grounds are laid for a rule upon the attorney to show cause why he shall not be stricken from the roll: if sufficient, the rule is entered, the attorney notified to ppear and answer, as in case of a contempt; if he sees proper to answer, it is received, evidence is examined to support the motion, and to resist it, upon which the court decides.

The practice under the act of 1815, ch. 97, must be the same, with this difference, that a charge may be exhibited to a judge in or out of court, alleging the default or misdemeanour complained of; if the judge deems the charge sufficient to warrant the removal, he shall cause the attorney to be furnished with a copy, and cite him to appear in open court; when the proceedings are conducted in all respects as under the British statute. The attorney may answer the charges in writing if he chooses, when evidence will be heard to support or resist them; or if he does not answer, still the charges must be proved, or confessed by the defendant, before he can be stricken out of the roll. Suppose the charges insufficient, he may move to quash them; where the matter will end, if the motion prevails. Pleas and demurrers never entered the mind of the legislature, when prescribing the mode of proceeding by the act of 1815; they only meant that the plain man, ignorant of law, should have a plain remedy against a man of a profession possessing many advantages in skill over him—that his statement should be taken as prima facie true, the same as the affidavits upon which the rule was grounded by the previous practice, requiring legal skill, not always, and in all situations to be so easily obtained against another lawyer. The practice is a correct one, from which innocence has nothing to fear. The circuit judge was, therefore, mistaken in supposing the demurrer could be filed, or that it operated any thing; he should have stricken it out, and heard the proof. The defendant had clearly the right to quash the charges, if they are insufficient to warrant his removal; having made this motion, which was refused by the court below, we must give the judgment that court should have given, upon the validity of the charges.

The first charge is, that the defendant accepted a challenge to fight a duel, from one Robert H. Brank, in the county of Maury, Tennessee.

2d. That he did fight the duel with said Brank, in the commonwealth of Kentucky, where he did kill and murder said Brank, and that he stands indicted for said murder, in the county of Simpson, and commonwealth of Kentucky.

The act of 1809, ch. 5, sec. 1, provides "That any person or persons, citizens of this state, who shall be guilty of giving or receiving a challenge for the purpose of fighting a duel, within or without this state, or shall be the friend of either party, in bearing a challenge for that purpose, every such person or persons shall, for ever after, be incapable of holding any office or appointment, whether of honour or profit, and shall, moreover, be incapable of giving testimony in any court of record, or serving as a juror."

The act of 1801, ch. 32, sec. 3, declares the killing in a duel, murder, and that the survivor shall suffer death. This provision was wholly unnecessary, as it always has been murder, punishable with death, without the benefit of clergy, to kill in a duel; 1 Hawk. Plea. ch. 1. sec. 21, page 122. The second of the slayer being an accessary before the fact, and a principal present when the murder was committed, aiding and abetting, is equally guilty of murder, and subject to suffer death; 1 Hawk. ch. 1, sec. 31, page

124. It is the law of every Christian country in the known world. Notwithstanding the laws, sanctioned by the concurring opinion of mankind for centuries, it is gravely insisted (accompanied by predictions of terrible consequences) that it is not our duty to have them executed, because, it is said, good character is not forfeited in this instance, and therefore, disqualification should not follow; to prove which, the acts of many English names in the last and present centuries are referred to, as also many in the United States, who have sanctioned the practice by being parties to duels, and who continued thereafter, equally distinguished members of society. Let us examine the matter.

It is true, as a part of the history of our species, that many men of strong minds, have equally strong passions, which are ill-controlled, and subject such men to grosser errors than others with fewer mental advantages; these are the men of worth that fight duels, having no guide but blind and reckless passion when aroused, regardless of their own lives or those of others—hence their conduct furnishes the worst possible evidence upon which to ground a rule for the government of society. This class of duellists are not less wicked than others we will name, but their standing renders it more difficult to punish them.

Another set of men fight duels, (or rather make a show towards it,) to gratify their vanity, by drawing upon themselves a little temporary notice, which their personal worth or good conduct cannot procure. These are always worthless coxcombs, equally destitute of bravery, virtue, or sense, whose feeble nerves would be shattered and prostrated at the sight of an enemy in the field of battle, who are ridiculous in every situation where courage or conduct is required. This class of duellists do little harm other than to disturb the community; they quarrel to make peace; or, if officious intermeddlers force them into a fight, are too much alarmed to hit, or perhaps see their antagonist. The affair is laughed at as a farce, and the parties turned over to the constable.

Many of this description challenge, because they know the party challenged will not fight; having a due regard for religion, the laws of his country, and his family. The infamy or worthlessness of the challenger generally is such as to disgrace any decent man to notice him. These pretenders to bravery and gentlemanship, are always absolute cowards; for no man will challenge another, knowing he either will not, or dare not fight, unless he be cowardly. The officers of our army at present dare not fight; therefore it is a disgrace for one officer to challenge another. The most distinguished man in the service lately refused to accept or reply to a challenge, from an officer of equal rank, because he feared his God, and the laws of his country; he has met his due reward, by having accorded to him the unlimited approbation of his countrymen.

Let it be once understood that the Bar of Tennesse *dare* not fight, and it will be deemed cowardly to challenge a member of it; and this court solemnly warns every lawyer, that if he violates the laws made to suppress duelling, we will strike him from the rolls of the court, upon the fact being made known to us. The truth is, such men are too often insolent and impudent bullies, who tyrannize over, and impose upon all orderly men about them; who literally dragoon society, by fear of personal violence, into silence and seeming acquiescence, with respect to their conduct. That such a counsellor is a disgrace, and serious incumbrance to any court where he is permitted to practice, all will admit; those who engage in duels, the statutes deem, and we will treat, as of this description.

Another class accept challenges, and even challenge and fight, for the very reason that they want true courage; they have not moral and independent firmness enough to disregard the giddy assertions of that idle part of the community, who say a man is a coward, because he refuses to fight; not

that such people have either belief or disbelief of what they say; they are too light minded to form any settled conclusion, and repeat idly as the parrot, what some revengeful neighbour has before said, who gratifies his malice by mixing gall with the cup of another. The pride, weak nerves, and morbid sensibility of such a man force him to the pistol's mouth of a ruthless and unprincipled antagonist, as feeble, trembling, and unresisting as the lamb to the shambles, and with almost an equal certainty of destruction, because he still more fears the detraction of the malicious and the gossip of the giddy. The same principle of human action often induces the delicate and sensitive female, with fear and trembling, to assent to see herself made a widow, and her helpless infants orphans, by the butchery of her husband in a duel. Any man who takes the life of another under such circumstances, (forced upon him by wicked design,) can be truly said to "have a heart regardless of all social order, and fatally bent upon mischief;" and he should suffer death for the crime, because he has bullied his antagonist into resistance, and then murdered him.

Nervous and timid men of the foregoing description, if they come off unslain, fail to obtain their object; society will not believe them brave. There is an instinct in our nature that mocks every art upon this subject; it tells us whether a man is, or is not, fearless; upon all, from the tottering infant to the savage bully, the same impression forces itself. The fearless man walks through life without assault, and without reproach on his bravery, from those worthy his notice, although he may continually have refused to fight duels. No man ever persuaded the world he was fearless, unless the fact was so. Should it be a reproach, that a weak and nervous man has not the courage of a lion? It is a reflection upon God and nature to require it.

It is said single combat is often the only redress that can be had for a personal injury; we apprehend those who hazard the assertion, not very deeply stricken in the moral code, and much better acquainted with their own passions than the human heart; they tell us wicked vengeance, and murderous crime, is *redress!* This is not the precept our Saviour taught, our religion inculcates, and our laws enjoin; malice, vengeance, and crime, have no place but in the catalogue of iniquity. If one respectable man says a harsh and injurious thing of another, it is almost uniformly in some moment of high excitement, in the bar or elsewhere; the result of instant and angry passion, of which the offending party in a few hours, when he becomes cool, is heartily ashamed; most willingly would he make reparation if he had an opportunity; but he cannot, nor will not, be bullied into it, by threats of punishment; nothing more or less than this is a challenge. Let the offended party wait until the excitement has passed off, and he will generally find half the sin resting upon himself: were the writer to judge from his own experience, this would be a small allowance. He should then go to the offender in a firm, serious, and just temper, and inquire of him the reason for the injury; he will then hear his own fault for half the excuse, the angry and excited passions of his neighbour for the other half; here the matter will end, almost as assuredly as that God is just. I ask every gray-headed man in American society, did this course ever fail you, with a man worthy of your notice?

But this requires more moral courage, and fearless firmness, than most men are masters of; they prop their doubtful courage and trembling nerves, by applying to some supposed friend, who often turns out to be one of those malicious whisperers, and agitators of duels, whose revengeful heart glories in seeing his species murder each other in cold blood; generally, in addition, having some secret revenge to gratify against the offender, for which reason he is but too often applied to. Here the cunning machinations of malice have fair room for action; a duel is of

course advised, as the only redress honour can allow of; every means is used to bring it on; every sinister trick and argument is employed to keep the principal firm to the desperate purpose, who surrenders his judgment and his life into the hands of wickedness, to be destroyed. Such agitators have cold and cruel hearts, dead to every moral sense or feeling of humanity; generally afraid to encounter danger themselves, in the field of battle, or even in a ridiculous duel, wherein certainly ten cowards engage to one brave man. Who ever heard of a brave and fearless man exciting and urging on another to a duel, to the destruction of himself, his poor unoffending wife, and helpless infants, without using all means possible to adjust it? No one. It is the working of cruelty, insidious cunning, and malice, under the seemly garb of friendship, that does this. Not such as these, but men of great moral worth, fearlessness and independence, should be applied to for advice and aid, who will generally settle the matter with a few words of advice to the parties—perhaps laugh at the trifle that set the passions in commotion; have some silly mistake explained, and end the matter. The brave man is always generous, feeling, and just; and others submit to his judgment with pleasure.

Such are duelling and its consequences; and the characters of the men who engage in the practice; which, if it does not involve wickedness and criminality, crime deserves no name, and morality no place in the human heart—they do not exist, if this be not a crime.

To restrain the blind and criminal passions, that drive to ruin the fearless and valuable man; to restrain the wicked vanity of the noisy coxcomb; and to protect from his misguided fears of giddy and idle ridicule, the physically weak and nervous man; have mankind generally, and Tennessee in particular, legislated to punish duelling.

Taking the petition for true, and how does the case of the defendant stand? By the laws of God, the laws of England, from the days of the Edwards; by the laws of Kentucky and Tennessee, and every civilized land, he is declared to have been guilty of wicked, and malicious murder, and a felon fled from justice. Is it possible, that any well balanced mind, can, for a moment, believe that a man, whom the law thus condemns, is a fit person to be an aider and adviser in the sanctuaries of justice?

We are told this is only a kind of *honourable* homicide! The law knows it as a wicked and wilful murder, and it is our duty to treat it as such—we are placed here, firmly and fearlessly to execute the laws of the land, not visionary codes of honour, framed to subserve the purposes of destruction.

The cause will be remanded to the Maury circuit court, for the proofs to be heard by that court; what they will be, we know not, having only examined the motion to quash: the competency of the proofs we give no opinion upon, nor their effect, further than the petition sets them forth: to wit, a true bill for murder, found in Simpson county, Kentucky; which, if proved by the record to be the fact, we think amply sufficient to authorize the circuit court to strike the defendant from the roll of attorneys, had no statute to suppress duelling ever passed in Tennessee; because the defendant stands charged with capital felony, and has, *prima facie*, forfeited his life. Were we to permit him to practise law, Tennessee would be offered as a sanctuary to all flying from justice elsewhere; those guilty of the highest crimes, would be our advisers and aiders to execute those laws, against which they had so grossly offended in a sister state. This would be a disgrace to justice, and cannot be permitted.

CONSTITUTIONAL QUESTIONS

DECIDED BY THE

SUPREME COURT OF THE UNITED STATES,

January term, 1828.

Philip Hickie, et al. *vs.* Alexander B. Starkie, et al.

This case came on for argument upon appeal on the equity side of the court from the supreme court of the county of Adams, in the state of Mississippi.

The object of the bill in the state court was to obtain a conveyance of a tract of land for which the accession of the appellees in 1791 had obtained an order of survey from the governor general of Louisiana, and had taken possession of and cultivated for some time. This tract he afterwards proposed to the governor general to exchange for another tract, but the bill alleged that the Spanish governor unjustly granted in 1794, part of the tract held by him, to the ancestor of the appellants, who entered upon it, and cultivated the same.

The forms of the Spanish laws requisite to obtain a title had been conformed to by the ancestor of the appellants, but had been neglected by the ancestor of the appellees. The appellees however claimed in their bill to have the land conveyed to them, inasmuch as they alleged the title of the ancestor of the appellants to have been acquired by collusion with the Spanish governor, who had forcibly dispossessed their ancestor. A feigned issue was directed, and the jury decided in favour of the appellees, whereupon a decree was entered in their favour by the supreme court.

The appellants then filed their petition for a writ of error to this court, suggesting that the title of their ancestor arose under "the articles of agreement and cession" between the U. S. and the state of Georgia, and that by the decree of the supreme court in this cause, that title has been overruled.

The following questions then arose: 1st, Whether the construction and effect of these articles were presented for the consideration of the court below, so that the title claimed under them was brought into question? 2d, Whether the appellant's title being a full and complete Spanish grant was confirmed by the articles of agreement and cession, and was in itself a valid and indefeasible grant of the land.

These questions were argued by Mr. Edward Livingston for the appellants, and Mr. McDuffie and Mr. Cox for the appellees.

Mr. Chief Justice Marshall delivered the opinion of the court.

This is a writ of error, to a decree pronounced in the court of the last resort, in the state of Mississippi, directing the plaintiffs in error, to convey to the defendants a certain tract of land, in the said proceedings mentioned. The plaintiffs in error allege, that their title was secured by the compact entered into between the United States and Georgia, for the cession of the country in which the land lies; and this decree is in violation of that compact. The defendants insist, that the compact between the United States and Georgia, was not called into question; and that the 25th section of the judicial act, does not give this court jurisdiction of the case.

In the construction of that section, the court has never required that the treaty, or act of congress, under which the party claims, who brings the final judgment of a state court into review before this court, should have been pleaded specially, or spread on the record. But it has always been deemed essential to the exercise of jurisdiction in such a case, that the record should show a complete title under the treaty or act of congress, and that the judgment of the court is in violation of that treaty or act. The condition in the cession act, on which the plaintiffs in error rely, is in these words: "That all persons, who, on the 27th day of October 1795, were actually settlers within the territory thus ceded, shall be confirmed in all the grants, legally and fully executed prior to that day, by the former British government of West Florida, or by the government of Spain."

The plaintiffs produce a grant, legally and fully executed; but to bring the case under the treaty, they must also prove, that the ancestor or person under whom they claim, was an actual settler, on the 27th October, 1795. The answer asserts, that the warrant of survey issued on the 7th day of February, 1793, and the survey made on the 20th July, in the same year, when possession was taken; and that the patent issued on the 3d April, 1794. James Williams deposes, that about the 3d December, 1795, he took possession of the tract of land in dispute, as overseer for James Mather the patentee, and understood from him, that he had gone to Natchez some time before, to apply for land in the part of the country where the tract in controversy lies. This is the testimony furnished by the record, to prove that James Mather, the grantee, was an actual settler, according to the requisition of the cession act of Georgia. In Henderson *vs.* Poindexter, 12 *Wheat.* 530, the term "actual settler," seems to have been understood as synonymous with the resident of the country. That case, however, did not require that the precise meaning of the term should be fixed, and the court is disposed to think, that a settlement made on the land by another person, who cultivated it for the proprietor would be sufficient; though the proprietor should not reside in person on the estate, or within the territory. Had the settlement proved by Williams, been made at the day required by the cession act, it would, we think, have satisfied the requisition of that act, and entitled the plaintiffs in error to the benefit of the condition. But it was not made until the 3d of December, 1795. We think then, that the plaintiffs in error have failed to prove, that the person under whom they claim, was an actual settler on the 27th day of October, 1795; and that the court has no jurisdiction of the cause.

The writ of error dismissed, it not appearing that this court has jurisdiction of the cause.

Sundry African slaves—The Governor of Georgia claimant appellant, *vs.* Juan Madrazo—The Governor of Georgia appellant, *vs.* sundry African slaves.—

These cases were brought before the court, upon appeal from the circuit court of the United States, for the district of Georgia. They arose out of the following circumstances: Juan Madrazo, a Spaniard, domiciliated at Havana, sent in 1817, the schooner Isabelita, belonging to him, on a slave voyage to the coast of Africa.

On her return with a cargo of slaves, she was captured by the Successor, a piratical cruiser, under the flag of Com. Aury—the said cruiser having been fitted out in the port of Baltimore, and manned and equipped in our waters. The prize and slaves were carried to Amelia Island, and there condemned by a pretended court of admiralty, instituted by Aury, and sold under its authority to William Bowen, who

brought the negroes into the territory of the Creek nation, within the limits of Georgia, where they were seized by a custom house officer, and delivered to an agent of the state government, pursuant to an act of the state legislature, passed December 1817, in conformity with the act of congress, 1807, prohibiting the importation of slaves into the United States.

The act of congress annulled the title of the importer to such negro, or person of colour imported, and declared that such person of colour should "remain subject to any regulation not contravening the provisions of this act, which the legislatures of the several states or territories at any time hereafter may make, for disposing of such negro, mulatto, or person of colour."

In pursuance of this act, the legislature of Georgia, in 1817, passed an act empowering the governor to appoint an agent to collect and receive all negroes or persons of colour which had been or might be condemned within the state, under the act of congress, and to convey them to Milledgeville, and place them under the immediate control of the governor. The 2d section authorized the governor to sell them in such manner as he may think most advantageous to the state. The 3d section directed that they might be delivered to the colonization society, on certain specified conditions, if applied for before the sale.

Under this act, part of these negroes were sold by the gov. of Georgia, and the proceeds, amounting to $38,000, paid into the state treasury. The colonization society applied for those remaining unsold, amounting to more than twenty. In May, 1820, the governor of Georgia filed an information in the district court of Georgia, stating the violation of the act of congress, and that the negroes were in his possession—that the colonization society had applied for them, and that he was desirous of complying with their application, as soon as he should be authorized to do so by the decree of the court.

In November, 1820, William Bowen filed his claim to the negroes, as his property, and denied that they had been imported in violation of the act of congress, but were seized in passing through the Creek nation, on their way to Florida. In February, 1821, Juan Madrazo filed his libel, alleging them to be his property, and that they were captured by the privateer Successor, fitted out in an American port, and commanded by an American—that they were condemned by an unauthorized tribunal—and also stating the material facts relative to their seizure, the sale of a portion, and the detention of the residue by the governor. The libel then denied that the laws of the United States had been violated, and prayed that admiralty process might issue to take possession of the slaves still unsold, and that the governor might be cited to show cause why the said negroes should not be restored to him, and the proceeds of those sold paid over to him.

A monition was thereupon issued to the governor of Georgia, who appeared and filed a claim in behalf of the state, in which he stated the facts above mentioned, and that the proceeds of the slaves sold had been paid into the state treasury, and were no longer under his control; and that the residue of the slaves had been demanded by the colonization society.

Process was also issued against the Africans, but was not executed.

When the causes were argued the district court dismissed the claim of Bowen, and the libel of Madrazo, and directed the slaves unsold to be delivered to the governor of Georgia, and the proceeds to remain in the state treasury.

Upon appeal to the circuit court, the decree dismissing the claim of Bowen was affirmed; but that dismissing the libel of Madrazo was reversed, and the slaves remaining unsold, and the proceeds of those sold, were decreed to be delivered to him.

From this decree both the governor of Georgia and William Bowen appealed. In the circuit court a motion was made in behalf of Madrazo, for

leave to renew the warrant for the property libelled; but by consent the following instrument was filed in lieu of an execution of the warrant.

Executive Department,
Milledgeville, May 15th, 1823.

The executive having been furnished by the deputy marshal with the copy of an order, passed by the circuit court of the United States, in relation to certain Africans, the title to which is a matter of controversy in said circuit court, and also in the superior court of the county of Baldwin, makes the following statement and acknowledgment, in satisfaction of said order and notice.

Juan Madrazo *vs.* Sundry Africans. } Libel in admiralty against sundry African negroes.

The governor of the state of Georgia acknowledges to hold sundry African negroes, now levied on, by virtue of sundry executions, by the sheriff of Baldwin county, subject to the order of the circuit court of the United States, for the district of Georgia; after the claim of said sheriff, or prior thereto, if the claim in the said circuit court shall be adjudged to have priority of the proceeding in the state court.

JOHN CLARK, *Governor.*

In the supreme court, Mr. Berrien appeared in behalf of the state of Georgia, and contended that the United States courts had no jurisdiction in the case, as it involved jurisdiction over the state of Georgia.

Mr. Wilde, in behalf of Madrazo, replied to Mr. Berrien.

William Bowen was not represented in the supreme court. Chief Justice Marshall delivered the opinion of the court, and after stating the facts in the case, he proceeded:

A question preliminary to the examination of the title to the Africans, which were the subject of these suits, and to the proceeds of those which were sold, has been made by the counsel for the state of Georgia. He contends, that this is essentially, and in form, a suit against the state of Georgia; and therefore was not cognizable in the district court of the United States.

The process which issued from the court of admiralty, not having been executed, the *res* was never in possession of that court. The libel of Madrazo, therefore, was not a proceeding against the thing, but a proceeding against the person for the thing. This appeal carried the cause into the circuit court, as it existed in the district court, when the decree was pronounced. It was a libel, demanding, personally, from the governor of Georgia, the Africans remaining unsold, and the proceeds of those that were sold, which proceeds had been paid into the treasury.

Pending this appeal, the governor filed a paper in the nature of a stipulation, consenting to hold the Africans claimed by the libel of Madrazo, subject to the decree of the circuit court, if it should be determined that the claim in the circuit court, had priority to sundry executions, levied on them by the sheriff of Baldwin county. Had this paper been filed in the district court, it would have been a substitute for the Africans themselves, and would, according to the course of the admiralty, have enabled that court to proceed in like manner as if its process had been served upon them. The libel would then have been *in rem*. Could this paper, when filed in the circuit court, produce the same effect on the cause?

We think it could not.

The paper in nature of a stipulation, is a mere substitute for the process of the court; and cannot, we think, be resorted to, where the process itself could not be issued according to law. The process could not issue legally in this case, because it would be the exercise of original jurisdiction in admiralty, which the circuit court does not possess.

This cause therefore remained in its character a libel against the person of the governor of Georgia, for the Africans in his possession, as governor,

and for the proceeds, in the treasury, of those which had been sold. Could the district court exercise jurisdiction in such a cause?

Previous to the adoption of the 11th amendment to the constitution, it was determined that the judicial power of the United States extended to a case in which a state was a party defendant. This principle was settled in the case of Chisholm *vs.* Georgia. 2 *Dal.* 419. In that case, the state appears to have been nominally a party on the record. In the case of Hollingsworth *as.* Virginia; also, in 3 *Dal.* 378, the state was nominally a party on the record. In the case of Georgia *vs.* Brailsford, 2 *Dal.* 402, the bill was filed by his excellency Edward Telfair, esq., governor and commander-in-chief, in and over the state of Georgia, in behalf of the said state. No objection was made to the jurisdiction of the court, and the case was considered as one in which the supreme court had original jurisdiction, because a state was a party. In the case of New York *vs.* Connecticut, 4 *Dal.* 3, both the states were nominally parties on the record. No question was raised in any of the cases respecting the style in which a state should sue or be sued; and the presumption is, that the actions were admitted to be properly brought. In the case of Georgia *vs.* Brailsford, the action is not in the name of the state, but it is brought by its chief magistrate in behalf of the state. The bill itself avows, that the state is the actor, by its governor.

There is, however, no case in which a state has been sued without making it nominally a defendant.

Fowler et al. *vs.* Lindsey et al. 3 *Dal.* 411, was a case in which an attempt was made to restrain proceedings in a cause depending in a circuit court, on the allegation that a controversy respecting soil and jurisdiction of two states, had occurred in it.

The court determined, that a state, not being a party on the record, nor directly interested, the circuit court ought to proceed in it. In the United States *vs.* Peters, the court laid down the principle, that although the claims of a state may be ultimately affected by the decision of a cause, yet if the state be not necessarily a defendant, the courts of the United States are bound to exercise jurisdiction.

In the case of Osbourne *vs.* the Bank of the United States, 9 *Wheat.* 738, this question was brought more directly before the court. It was argued, with equal zeal and talent, and decided on great deliberation. In that case the auditor and treasurer of the state were defendants, and the title of the state itself to the subject in contest was asserted. In that case the court said, "It may, we think, be laid down as a rule which admits of no exception, that in all cases where jurisdiction depends on the party, it is the party named in the record." The court added, "the state, not being a party on the record, and the court having jurisdiction over those who are parties on the record, the true question is not one of jurisdiction, but whether, in the exercise of its jurisdiction, the court ought to make a decree against the defendants; whether they are to be considered as having a real interest, or as being only nominal parties."

The information of the governor of Georgia professes to be filed on behalf of the state, and is, in the language of the bill, filed by the governor of Georgia on behalf of the state, against Brailsford.

If, therefore, the state was properly considered as a party in that case, it may be considered as a party in this.

The libel of Madrazo alleges that the slaves which he claims, "were delivered over to the government of the state of Georgia, pursuant to an act of the general assembly of the said state, carrying into effect an act of congress of the United States, in that case made and provided; a part of the said slaves sold, as permitted by said act of congress, and as directed by an act of the general assembly of the said state; and the proceeds paid into the treasury of the said state, amounting to thirty-eight thousand dollars, or more."

The governor appears, and files a

claim on behalf of the state, to the slaves remaining unsold, and to the proceeds of those which are sold. He states the slaves to be in possession of the executive, under the act of the legislature of Georgia, made to give effect to the act of congress on the subject of negroes, mulattoes, or people of colour, brought illegally into the United States; and the proceeds of those unsold to have been paid in the treasury, and to be no longer under his control.

The case made, in both the libel and claim, exhibits a demand for money actually in the treasury of the state, mixed up with its general funds, and for slaves in possession of the government. It is not alleged, nor is it the fact, that this money has been brought into the treasury, or these Africans into the possession of the executive, by any violation of an act of congress. The possession has been acquired, by means which it was lawful to employ.

The claim upon the governor, is as a governor: he is sued, not by his name, but by his title. The demand made upon him is not made personally, but officially.

The decree is pronounced, not against the person, but the officer, and appeared to have been pronounced against the successor of the original defendant, as the appeal bond was executed by a different governor from him who filed the information. In such a case, where the chief magistrate of a state is sued, not by his name, but by his style of office, and the claim made upon him is entirely in his official character, we think the state itself may be considered as a party on the record. If the state is not a party, there is no party against whom a decree can be made. No person in his natural capacity is brought before the court as defendant. This not being a proceeding against the thing, but against the person, a person capable of appearing as defendant, against whom a decree can be pronounced, must be a party to the cause before a decree can be regularly pronounced.

But were it to be admitted, that the governor could be considered as a defendant in his personal character, no case is made which justifies a decree against him personally. He has acted in obedience to a law of the state, made for the purpose of giving effect to an act of congress, and has done nothing in violation of any law of the United States.

The decree is not to be considered as made in a case in which the governor was a defendant, in his personal character; nor could a decree against him, in that character, be supported.

The decree cannot be sustained as against the state, because, if the 11th amendment to the constitution, does not extend to proceedings in admiralty, it was a case for the original jurisdiction of the supreme court. It cannot be sustained as a suit, prosecuted not against the state, but against the thing; because the thing was not in possession of the district court.

We are therefore of opinion, that there is error in so much of the decree of the circuit court, as directs that the said slaves libelled by Juan Madrazo, and the issue of the females now in the custody of the government of the state of Georgia, or the agent or agents of the said state, be restored to the said Madrazo, as the legal proprietor thereof, and that the proceeds of those slaves, who were sold by order of the governor, or the said state, be paid to the said Juan Madrazo, and that the same ought to be reversed; but that there is no error in so much of the said decree as dismisses the information of the governor of Georgia, and the claim of William Bowen.

Christian Breithaupt & al. vs. *the Bank of the State of Georgia.*

In this case, which was brought up on appeal from the Circuit Court for the district of Georgia, the only question was, whether the Circuit Court had jurisdiction of the cause. The complainants were citizens of the state of South Carolina, and the defendant was a body corporate, under an act of the Legislature of Georgia, but the citizenship of the individual corporators was not stated, although the bill averred that the President of the mother bank, and the President of the Branch Bank, were citizens of Georgia.

Mr. M'Duffie argued in support of the jurisdiction of the Court, and Mr. Berrien and Mr. Wilde against it. The Court decided, that it had not jurisdiction, the record not showing the defendants to be citizens of Georgia, and there being no distinct allegations that the stockholders were citizens of that state.

James D'Wolf vs. *David J. Rabaud & al.*

In this case, the Court decided, (Justice Story delivering the opinion,) that the Court could not in any case order a nonsuit, without the consent and acquiescence of the plaintiff. It also declared, that the question of the citizenship of the parties constituted no part of the issue upon the merits, but must be brought forward by a proper plea of abatement.

The American Insurance Company & al. vs. *David Canter.*

This case was an appeal in Admiralty from the Circuit Court of the United States for the District of South Carolina.

A libel was filed in the District Court, claiming certain bales of cotton, insured by the appellants, and wrecked on the coast of Florida, whence it was carried into Key West, and sold, without having been properly adjudicated upon.

The appellee filed his answer, claiming as a bona fide purchaser under a decree of a certain Court, consisting of a Notary and five jurors, created by an act of the Legislative Council of Florida, passed July 4th, 1823, which awarded 76 per cent. salvage to the salvors of the cargo.

The District Court declared the proceedings in the Court at Key West null; and, after deducting a salvage of 50 per cent., decreed restitution of such cotton as was identified by the libellants.

The Circuit Court reversed this decree, and decreed the cotton, with costs, to the appellee, on the ground that the proceedings at Key West were legal, and transferred the property to the purchaser.

Upon appeal to the Supreme Court, it was contended by Mr. Ogden, for the appellants, that the decision of the Circuit Court was erroneous, because the Court at Key West was not legally organized, and had not jurisdiction in the premises.

Mr. Webster and Mr. Whipple replied in behalf of the appellees.

Chief Justice Marshall delivered the opinion of the Court. After stating the facts, he proceeds:

The cause depends, mainly, on the question whether the property in the cargo saved, was changed by the sale at Key West. The conformity of that sale to the order under which it was made, has not been controverted. Its validity has been denied, on the ground that it was ordered by an incompetent tribunal.

The tribunal was constituted by an act of the territorial Legislature of Florida, passed on the 4th July, 1823, which is inserted in the record. That act purports to give the power which has been exercised, consequently the sale is valid, if the territorial Legislature was competent to enact the law.

The course which the argument has taken, will require, that, in deciding this question, the Court should take into view the relation in which Florida stands to the United States.

The constitution confers absolutely on the government of the Union, the powers of making war, and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty.

The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace. If it be ceded by the treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession, or on such as its new master shall impose. On such transfer of territory, it has never been held, that the relations of the inhabitants with each other undergo any change. Their relations with their former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory. The same act which transfers their country, transfers the allegiance of those who remain in it; and the law, which may be denominated political, is necessarily changed, although that which regulates the intercourse and general conduct of individuals, remains in force until altered by the newly created power of the state.

On the 2d of February, 1819, Spain ceded Florida to the United States. The 6th article of the treaty of cession contains the following provision—"The inhabitants of the territories which his Catholic Majesty cedes to the United States by this treaty, shall be incorporated in the Union of the United States, as soon as may be, consistent with the principles of the federal constitution, and admitted to the enjoyment of the privileges, rights, and immunities of the citizens of the United States."

This treaty is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights, and immunities, of the citizens of the United States. It is unnecessary to inquire, whether this is not their condition, independent of stipulation. They do not, however, participate in political power, they do not share in the government, till Florida shall become a state. In the mean time, Florida continues to be a territory of the United States, governed by virtue of that clause of the constitution which empowers Congress "to make all needful rules and regulations respecting the territory, or other property belonging to the United States."

Perhaps the power of governing a territory belonging to the United States, which has not, by becoming a state, acquired the means of self-government, may result, necessarily, from the facts, that it is not within the jurisdiction of any particular state, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, the pos-

session of it is unquestioned. In execution of it, Congress, in 1822, passed "An act for the establishment of a territorial government in Florida;" and, on the 3d of March, 1823, passed another act to amend the act of 1822. Under this act, the territorial legislature enacted the law now under consideration.

The 5th section of the act of 1823 creates a territorial legislature, which shall have legislative powers over all rightful objects of legislation; but no law shall be valid, which is inconsistent with the laws and constitution of the United States.

The 7th section enacts, "That the judicial power shall be vested in two Superior Courts, and in such inferior courts, and justices of the peace, as the Legislative Council of the territory may from time to time establish." After prescribing the place of cession, and the jurisdictional limits of each court, the act proceeds to say, "within its limits herein described, each court shall have jurisdiction in all criminal cases, and exclusive jurisdiction in all capital offences, and original jurisdiction in all civil cases of the value of one hundred dollars, arising under and cognizable by the laws of the territory, now in force therein, or which may, at any time, be enacted by the Legislative Council thereof."

The 8th section enacts, "That each of the said Superior Courts shall moreover have and exercise the same jurisdiction within its limits, in all cases arising under the laws and constitution of the United States, which, by an act to establish the judicial courts of the United States, approved the 24th of September, 1789, and an act in addition to the act, entitled an act to establish the judicial courts of the United States, approved the 2d of March, 1793, was vested in the court of Kentucky District."

The powers of the territorial legislature extend to all rightful objects of legislation, subject to the restriction, that their laws shall not be "inconsistent with the laws and constitution of the United States." As salvage is admitted to come within this description, the act is valid, unless it can be brought within the restriction.

The counsel for the libellants contend, that it is inconsistent with both the law and the constitution; that it is inconsistent with the provisions of the law, by which the territorial government was created, and with the emendatory act of March, 1823. It vests, they say, in an inferior tribunal, a jurisdiction which is, by those acts, vested exclusively in the Superior Courts of the territory.

This argument requires an attentive consideration of the sections which define the jurisdiction of the Superior Courts.

The 7th section of the act of 1823, vests the whole judicial power of the territory "in two Superior Courts, and in such inferior courts, and justices of the peace, as the Legislative Council of the territory may from time to time establish." This general grant is common to the superior and inferior courts, and their jurisdiction is concurrent, except so far as it may be made exclusive in either, by other provisions of the statute. The jurisdiction of the Superior Courts is declared to be exclusive over capital offences; on every other question over which those courts may take cognizance by virtue of this section, concurrent jurisdiction may be given to the inferior courts. Among these subjects, are "all civil cases arising under and cognizable by the laws of the territory, now in force therein, or which may at any time be enacted by the Legislative Council thereof."

It has been already stated, that all the laws which were in force in Florida while a province of Spain, those excepted which were political in their character, which concerned the relations between the people and their sovereign, remained in force until altered by the government of the United States. Congress recognises this principle, by using the words "laws of the territory now in force

therein." No laws could then have been in force, but those enacted by the Spanish government. If among these, a law existed on the subject of salvage, and it is scarcely possible there should not have been such a law, jurisdiction over cases arising under it, was conferred on the superior courts, but that jurisdiction was not exclusive. A territorial act, conferring jurisdiction over the same cases on an inferior court, would not have been inconsistent with this section.

The 8th section extends the jurisdiction of the superior courts, in terms which admit of more doubt. The words are, "That each of the said superior courts shall, moreover, have and exercise the same jurisdiction, within its limits, in all cases arising under the laws and constitution of the United States, which, by an act to establish the judicial courts of the United States, was vested in the court of the Kentucky district."

The 11th section of the act declares, "That the laws of the United States, relating to the revenue and its collection, and all other public acts of the United States, not inconsistent or repugnant to this act, shall extend to, and have full force and effect, in the territory aforesaid."

The laws which are extended to the territory by this section, were either for the punishment of crime, or for civil purposes. Jurisdiction is given in all criminal cases, by the 7th section; but in civil cases, that section gives jurisdiction only in those which arise under and are cognizable by the laws of the territory; consequently, all civil cases arising under the laws which are extended to the territory by the 11th section, are cognizable in the territorial courts, by virtue of the 8th section; and, in those cases, the superior courts may exercise the same jurisdiction, as is exercised by the court for the Kentucky district.

The question suggested by this view of the subject, on which the case under consideration must depend, is this:

Is the admiralty jurisdiction of the district courts of the United States vested in the superior courts of Florida, under the words of the 8th section, declaring that each of the said courts "shall moreover have and exercise the same jurisdiction within its limits, in all cases arising under the laws and constitution of the United States," which was vested in the courts of the Kentucky district?

It is observable, that this clause does not confer on the territorial courts all the jurisdiction which is vested in the court of the Kentucky district, but that part of it only which applies to "cases arising under the laws and constitution of the United States." Is a case of admiralty of this description?

The constitution and laws of the United States, give jurisdiction to the district courts over all cases in admiralty; but jurisdiction over the case, does not constitute the case itself. We are therefore to inquire, whether cases in admiralty, and cases arising under the laws and constitution of the United States, are identical.

If we have recourse to that pure fountain from which all the jurisdiction of the federal courts is derived, we find language employed which cannot well be misunderstood. The constitution declares, that "the judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, or other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction."

The constitution certainly contemplates these as three distinct classes of cases; and if they are distinct, the grant of jurisdiction over one of them, does not confer jurisdiction over either of the other two. The discrimination made between them, in the constitution, is, we think, conclusive against their identity. If it were not so—if this were a point open to inquiry, it would be difficult to maintain the proposition that they are the same. A

case in admiralty does not, in fact, arise under the constitution or laws of the United States. These cases are as old as navigation itself; and the law, admiralty and maritime, as it has existed for ages, is applied by our courts to the cases as they arise. It is not, then, to the 8th section of the territorial law, that we are to look for the grant of admiralty and maritime jurisdiction, to the territorial courts. Consequently, if that jurisdiction is exclusive, it is not made so by the reference to the district court of Kentucky.

It has been contended, that by the constitution, the judicial power of the United States extends to all cases of admiralty and maritime jurisdiction; and that the whole of this judicial power must be vested "in one supreme court, and in such inferior courts as congress shall from time to time ordain and establish." Hence it has been argued, that congress cannot vest admiralty jurisdiction in courts created by the territorial legislature.

We have only to pursue this subject one step further, to perceive that this provision of the constitution does not apply to it. The next sentence declares, that "the judges, both of the supreme and inferior courts, shall hold their offices during good behaviour." The judges of the superior courts of Florida hold their offices for four years. These courts, then, are not constitutional courts, in which the judicial power conferred by the constitution on the general government, can be deposited. They are incapable of receiving it. They are legislative courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause which enables congress to make all needful rules and regulations, respecting the territory belonging to the United States. The jurisdiction with which they are invested, is not a part of that judicial power which is defined in the 3d article of the constitution, but is conferred by congress, in the execution of those general powers which that body possesses over the territories of the United States. Although admiralty jurisdiction can be exercised in the states in those courts, only, which are established in pursuance of the 3d article of the constitution; the same limitation does not extend to the territories. In legislating for them, congress exercises the combined powers of the general, and of a state government.

We think, then, that the act of the territorial legislature, erecting the court by whose decree the cargo of the Point a Petre was sold, is not "inconsistent with the laws and constitution of the United States," and is valid. Consequently, the sale made in pursuance of it, changed the property, and the decree of the circuit court, awarding restitution of the property to the claimant, ought to be affirmed, with costs.

Humphrey Fullerton & al. vs. *the Bank of the United States.*

In this case, a question arose as to the admissibility of certain testimony in the Circuit Court of the United States, under an act of the Ohio legislature of February 18th, 1820, of the following description:

The 8th section of the act provides, "That when any sum of money due and owing to any bank or banker, shall be secured by endorsements on the bill, note, or obligation for the same, it shall be lawful for such bank or banker to bring a joint action against all the drawers or endorsers, in which action the plaintiff or plaintiffs may declare against the defendants jointly for money lent and advanced, and may obtain a joint judgment and execution for the amount found to be due; and each defendant may make the same separate defence against such action, either by plea or upon trial, that he

could have made against a separate action; and if in the case herein provided for, the bank or banker shall institute separate action against drawers and endorsers, such bank or bankers shall recover no costs. *Provided always*, that in all suits or actions prosecuted by a bank or banker, or persons claiming as their assignees or under them in any way for their use or benefit, the sheriff, upon any execution in his hands in favour of such bank or banker, their or his assignee as aforesaid, shall receive the note or notes of such bank or banker, from the defendant, in discharge of the judgment; and if such bank or banker, their or his assignee or other person suing in trust for the use of such bank or banker, shall refuse to receive such note from the sheriff, the sheriff shall not be liable to any proceedings whatever at the suit or upon the complaint of the bank or banker, their or his assignee as aforesaid."

Mr. Leonard argued the cause in behalf of the plaintiffs, and Mr. Sergeant for the defendants in error.

Mr. Justice Johnson delivered the opinion of the Court, from which we extract the following—being all which relates to the admissibility of the evidence.

The errors assigned arise upon various bills of exception, the first of which was taken to the evidence offered to maintain an action, in these words, "The plaintiff, in support of his action, offered in evidence the following promissory note, drawn by Isaac Cook, and endorsed by Humphrey Fullerton, John Waddle, and John Carlisle."

"*Cincinnati, February* 1*st*, 1820.

$4000

Sixty days after date, I promise to pay John Carlisle, or order, at the office of discount and deposit of the bank of the U. States at Cincinnati, four thousand dollars, for value received.

(Signed) Isaac Cook.

Endorsed—*John Carlisle, John Waddle, Humphrey Fullerton.*"

"To the introduction of this evidence, the defendant, by his counsel, objected, as evidence of a several contract of the drawer and each of the endorsers on the note, and not of any joint undertaking or liability of the defendants, which objection was overruled by the court, and the note permitted to be read in evidence, under the act of the general assembly of Ohio, entitled, 'An act to regulate judicial proceedings, where bank and bankers are parties, and to prohibit the issuing of bank bills of certain descriptions,' passed 18th of February, 1820, to which decision the counsel excepted."

Cook, it appears, was originally made a party defendant to the action, but died pending the suit; the plaintiff suggested his death on the record, and went to trial against the remaining three defendants.

In order to understand the bearing which the instruction moved for has upon the cause, it is necessary to remark, that the state of Ohio was not received into the Union until 1802; so that the process act of 1792, which is expressly confined in its operation to the day of its passage, in adopting the practice of the state courts into the courts of the United States, could have no operation in that state. But the district court of the United States, established in the state in 1803, was vested with all the powers and jurisdiction of the district court of Kentucky, which exercised full circuit court jurisdiction, with power to create a practice for its own government.

The district court of Ohio, it appears, did not create a system for itself, but finding one established in the state, in the true spirit of the policy pursued by the United States, proceeded to administer justice according to the practice of the state courts; or, in effect, adopted by a single rule, the state system of practice, in the same mode in which this court, at an early period, adopted the practice of the King's Bench in England. So that when the seventh circuit was established, in the year 1807, the judge of this court, who was assigned to that circuit, found the practice of the state

courts adopted in fact into the circuit court of the United States.

It has not been deemed necessary to make any material alterations since; but as far as it was found practicable and convenient, the state practice has, by a uniform understanding, been pursued by that court without having passed any positive rules upon the subject. The act of the 18th February, 1820, alluded to in the bill of exceptions, was a very wise and benevolent law, calculated, principally, to relieve the parties to promissory notes from accumulated expenses; its salutary effects produced its immediate adoption into the practice of the circuit court of the U. States; and from that time, to the present, in innumerable instances, suits have been there prosecuted under it. The alteration in practice (properly so called) produced by the operation of this act, was very inconsiderable, since it only requires notice to be given of the cause of action, by endorsing it on the writ, and filing it with the declaration, after which the defendants were at liberty to manage their defence, as if the note had been formally declared upon in the usual manner.

It is not contended that a practice, as such, can only be sustained by written rules; such must be the extent to which the argument goes, or certainly it would not be supposed, that a party pursuing a former mode of proceeding, sanctioned by the most solemn acts of the court, through the course of eight years, is now to be surprised and turned out of court, upon a ground which has no bearing upon the merits.

But we are decidedly of opinion, the objection cannot be maintained. Written rules are unquestionably to be preferred, because their commencement, and their action, and their meaning, are most conveniently determined; but what want of certainty can there be, where a court, by long acquiescence, has established it to be the law of that court, that the state practice shall be their practice, as far as they have the means of carrying it into effect, or until deviated from by positive rules of their own making. Such we understand has been the course of the United States court in Ohio, for twenty-five years past. The practice may have begun and probably did begin in a mistaken construction of process act, and then it partakes of the authority of adjudication. But there was a higher motive for adopting the provisions of this law, into the practice of that court; and this bill of exceptions brings up one of those difficult questions, which must often occur in a court in which the remedy is prescribed by one sovereign, and the law of the contract by another. It is not easy to draw the line between the remedy and the right, where the remedy constitutes so important a part of the right; nor is it easy to reduce into practice the exercise of a plenary power over contracts, without the right to declare by what evidence contracts shall be judicially established. Suppose the state of Ohio had declared that the undertaking of the drawer and endorser of a note, shall be joint, and not several or contingent; and that such note shall be good evidence to maintain an action for money lent and advanced: would not this become a law of the contract? Where then would be the objection to its being acted upon in the courts of the United States? Would it have been prudent or respectful, or even legal, to have excluded from all operation in the courts of the United States, an act which had so important a bearing upon the law of contracts, as that now under consideration? An act in its provisions so salutary to the citizen, and which, in the daily administration of justice in the state courts would not have been called upon otherwise than as a law of the particular contract; a law, which as to promissory notes introduced an exception into the law of evidence, and of actions. It is true, the act, in some of its provisions, has inseparably connected the mode of proceeding, with the right of recovery. But what is the course of prudence and duty, where these cases of difficult distribution, as to power

and right, present themselves? It is to yield rather than encroach; the duty is reciprocal, and will, no doubt, be met in the spirit of moderation and comity. In the conflicts of power and opinion, inseparable from our very peculiar relations, cases may occur, in which the maintenance of principle, and the administration of justice according to its innate and inseparable attributes, may require a different course; and when such cases do occur, our courts must do their duty; but until then, it is administering justice in the true spirit of the constitution and laws of the United States, to conform, as nearly as practicable, to the administration of justice in the courts of the state.

In the present instance, the act was conceived in the true spirit of distributive justice; violated no principle; was easily introduced into the practice of the courts of the United States; has been there acted upon through a period of eight years; and has been properly treated as a part of the law of that Court. But, it is contended, that it was improperly applied to the present case, because the note bears date prior to the passage of the law; and this certainly presents a question which is always to be approached with due precaution, to wit, the extent of legislative power over existing contracts.

But what right is violated, what hardship or injury produced, by the operation of this act? It was passed for the relief of the defendant, and is effectual in relieving him from a weight of costs, since it gives to the plaintiff no more than the costs of a single suit, if he should elect to bring several actions against drawer and endorser. Nor does it subject the defendants to any inconvenience, from a joint action; since it secures to each defendant, every privilege of pleading and defence, of which he could avail himself, if severally sued. The circuit court has incorporated the action, with all its incidents, into its course of practice; and having full power by law to adopt it, we see no legal objection to its doing so, in the prosecution of that system, upon which it has always acted. It cannot be contended that the liabilities of the defendants, under their contract, have been increased, or even varied; and as to change, in the mere form of the remedy, the doctrine cannot be maintained, that this is forbidden to the legislative power or to the tribunal itself, when vested with full power to regulate its own practice.

Judgment affirmed with costs.

Thompson Wilson & al. vs. *The Black-Bird Creek Marsh Company.*

This was on a writ of error, from the High Court of Errors and Appeals of the state of Delaware. The defendants were incorporated by an act of the legislature passed in 1822, and the owners of the low grounds lying on both sides of Black-Bird Creek, between Mathew's landing and the river Delaware, were authorized to construct a dam across the creek, wherever a majority of them chose, and also to bank the low grounds, &c. The company afterwards proceeded to erect a dam in the creek, obstructing the navigation, and also to embank the creek.

The plaintiffs in error, being owners of a sloop called the Sally, of 95 tons, regularly licensed and enrolled, broke, and injured the dam, for which an action of trespass, vi et armis, was instituted against them in the Supreme Court of Delaware.

The declaration being filed, the defendants below pleaded that the place where the trespass was committed was a part of the said creek: it being a public and common navigable creek, in the nature of a highway, in which the tides have always flowed and reflowed, and where the citizens of Delaware, and of all the United States, had a right to navigate, and to pass and repass at pleasure. It then aver-

red the bank and dam to be wrongfully erected, so that without pulling up and destroying the piles, &c., the said defendants could not pass with the said sloop, along the said creek, and that the said defendants, in order to remove the said obstructions, pulled up, &c. as in the declaration mentioned, doing no unnecessary damage, &c.

To this plea the plaintiffs below demurred, and the court sustained the demurrer. This judgment was affirmed in the Court of Appeals, and the record remanded for assessment of damages. Final judgment was entered on the verdict, and it was again carried to the Court of Appeals where it was affirmed, and the cause was now brought before this court for review.

The cause was argued on the part of the plantiffs in error, by Mr. Coxe, and by the Attorney General, for the defendants.

Chief Justice Marshall delivered the opinion of the court.

The defendants in error deny the jurisdiction of this court, because, they say, the record does not show that the constitutionality of the act of the legislature, under which the plaintiff claimed to support his action, was drawn into question.

Undoubtedly the plea might have stated in terms that the act, so far as it authorized a dam across the creek, was repugnant to the constitution of the United States; and it might have been safer, it might have avoided any question respecting jurisdiction, so to frame it. But we think it impossible to doubt that the constitutionality of the act was the question, and the only question, which could have been discussed in the state court. That question must have been discussed and decided.

The plaintiffs sustain their right to build a dam across the creek by the act of the assembly. Their declaration is founded upon that act. The injury of which they complain is to a right given by it. They do not claim for themselves any right independent of it. They rely entirely upon the act of assembly.

The plea does not controvert the existence of the act, but denies its capacity to authorize the construction of a dam across a navigable stream, in which the tide ebbs and flows; and in which there was, and of right ought to have been, a certain common and public way in the nature of a highway. This plea draws nothing into question but the validity of the act; and the judgment of the court must have been in favour of its validity. Its consistency with, or repugnancy to the constitution of the United States, necessarily arises upon these pleadings, and must have been determined. This court has repeatedly decided in favour of its jurisdiction in such a case. Martin *vs.* Hunter's lessee, Miller *vs.* Nicholls, and Williams *vs.* Norris, are expressly in point. They establish, as far as precedents can establish any thing, that is not necessary to state in terms on the record, that the constitution or a law of the United States was drawn in question. It is sufficient to bring the case within the provisions of the 25th section of the judicial act, if the record shows, that the constitution, or a law, or a treaty of the United States, must have been misconstrued, or the decision could not be made. Or, as in this case, that the constitutionality of a state law was questioned, and the decision has been in favour of the party claiming under such law.

The jurisdiction of the Court being established, the more doubtful question is to be considered, whether the act incorporating the Black-Bird Creek Marsh Company is repugnant to the constitution, so far as it authorizes a dam across the creek. The plea states the creek to be navigable, in the nature of a highway, through which the tide ebbs and flows.

The act of assembly by which the plaintiffs were authorized to construct their dam, shows plainly that this is one of those many creeks, passing through a deep level marsh adjoining the Delaware, up which the tide flows for some distance. The value of the property on its banks must be en-

hanced by excluding the water from the marsh, and the health of the inhabitants probably improved. Measures calculated to produce these objects, provided they do not come into collision with the powers of the general government, are undoubtedly within those which are reserved to the states. But the measure authorized by this act stops a navigable creek, and must be supposed to abridge the rights of those who have been accustomed to use it. But this abridgment, unless it comes in conflict with the constitution or a law of the United States, is an affair between the government of Delaware and its citizens, of which this court can take no cognizance.

The counsel for the plaintiffs in error insist that it comes in conflict with the power of the United States "to regulate commerce with foreign nations and among the several states."

If congress had passed any act which bore upon the case; any act in execution of the power to regulate commerce, the object of which was to control state legislation over those small navigable creeks into which the tide flows, and which abound throughout the lower country of the middle and southern states; we should feel not much difficulty in saying that a state law coming in conflict with such act would be void. But congress has passed no such act. The repugnancy of the law of Delaware to the constitution is placed entirely on its repugnancy to the power to regulate commerce with foreign nations and among the several states; a power which has not been so exercised as to affect the question.

We do not think that the act empowering the Black-Bird Creek Marsh Company to place a dam across the creek, can, under all the circumstances of the case, be considered as repugnant to the power to regulate commerce in its dormant state, or as being in conflict with any law passed on the subject.

There is no error, and the judgment is affirmed.

James Foster & al. vs. *David Neilson.*

The facts in this cause are so particularly stated, in the opinion of the court, as to render any preliminary statement unnecessary.

The case was argued by Mr. Coxe and Mr. Webster for the plaintiffs, and by Mr. Jones for the defendants.

Chief Justice Marshall delivered the opinion of the court.

This suit was brought by the plaintiffs in error, in the court of the United States for the eastern district of Louisiana, to recover a tract of land lying in that district, about thirty miles east of the Mississippi, and in the possession of the defendant. The plaintiffs claimed under a grant for 40,000 arpents of land, made by the Spanish governor, on the 2d of January, 1804, to Jayme Joydra, and ratified by the king of Spain on the 29th of May, 1804. The petition and order of survey are dated in September, 1803, and the return of the survey itself was made on the 27th of October in the same year. The defendant excepted to the petition of the plaintiffs, alleging that it does not show a title on which they can recover; that the territory, within which the land claimed is situated, had been ceded, before the grant, to France, and by France to the United States; and that the grant is void, being made by persons who had no authority to make it. The court sustained the exception, and dismissed the petition. The cause is brought before this court by a writ of error.

The case presents this very intricate, and, at one time very interesting question: To whom did the country between the Iberville and the Perdido rightfully belong, when the title now asserted by the plaintiffs was acquired?

discussed with great talent and research, by the government of the United States and that of Spain. The United States have perseveringly and earnestly insisted, that by the treaty of St. Ildefonso, made on the 1st of October, in the year 1800, Spain ceded the disputed territory as part of Louisiana to France; and that France, by the treaty of Paris, signed on the 30th of April, 1803, and ratified on the 21st of October, in the same year, ceded it to the United States. Spain has with equal perseverance and earnestness maintained, that her cession to France comprehended that territory only which was at that time denominated Louisiana, consisting of the island of New Orleans, and the country she received from France west of the Mississippi.

Without tracing the title of France to its origin, we may state with confidence that at the commencement of the war of 1756, she was the undisputed possessor of the province of Louisiana, lying on both sides the Mississippi, and extending eastward beyond the bay of Mobile. Spain was at the same time in possession of Florida; and it is understood that the river Perdido separated the two provinces from each other.

Such was the state of possession and title at the treaty of Paris, concluded between Great Britain, France, and Spain, on the 10th day of February, 1763. By that treaty, France ceded to Great Britain the river and port of the Mobile, and all her possessions on the left side of the river Mississippi, except the town of New-Orleans and the island on which it is situated: and by the same treaty Spain ceded Florida to Great Britain. The residue of Louisiana was ceded by France to Spain, in a separate and secret treaty between those two powers. The king of Great Britain being thus the acknowledged sovereign of the whole country east of the Mississippi, except the island of New-Orleans, divided his late acquisition in the south into two provinces, East and West Florida. The latter comprehended so much of the country ceded by France as lay south of the 31st degree of north latitude, and a part of that ceded by Spain.

By a treaty of peace between Great Britain and Spain, signed at Versailles on the 3d of September, 1783, Great Britain ceded East and West Florida to Spain: and those provinces continued to be known and governed by those names, as long as they remained in the possession and under the dominion of his catholic majesty.

On the 1st of October, in the year 1800, a secret treaty was concluded between France and Spain, at St. Ildefonso, the third article of which is in these words: "His catholic majesty promises and engages on his part to retrocede to the French republic, six months after the full and entire execution of the conditions and stipulations relative to his royal highness the duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and the other states."

The treaty of the 30th of April, 1803, by which the United States acquired Louisiana, after reciting this article, proceeds to state, that "the first consul of the French Republic doth hereby cede to the United States, in the name of the French republic, forever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French republic, in virtue of the above mentioned treaty concluded with his catholic majesty." The 4th article stipulates, that there shall be sent by the government of France a commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of his ca-

tholic majesty the said country, and its dependencies, in the name of the French republic, if it has not been already done, as to transmit it in the name of the French republic to the commissary or agent of the United States."

On the 30th of November, 1803, Peter Clement Laussatt, colonial prefect and commissioner of the French republic, authorized by full powers dated the 6th of June, 1803, to receive the surrender of the province of Louisiana, presented those powers to Don Manuel Salcedo, governor of Louisiana and West Florida, and to the marquis de Casa Calvo, commissioners on the part of Spain, together with full powers to them from his catholic majesty to make the surrender. These full powers were dated at Barcelona the 15th of October, 1802. The act of surrender declares, that in virtue of these full powers, the Spanish commissioners, Don Manuel Salcedo and the marquis de Casa Calvo, "put from this moment the said French commissioner, the citizen Laussatt, in possession of the colony of Louisiana and of its dependencies, as also of the town and island of New-Orleans, in the same extent which they now have, and which they had in the hands of France when she ceded them to the royal crown of Spain, and such as they should be after the treaties subsequently entered into between the states of his catholic majesty and those of other powers."

The following is an extract from the order of the king of Spain referred to by the commissioners in the act of delivery. "Don Carlos, by the grace of God," &c. "Deeming it convenient to retrocede to the French republic the colony and province of Louisiana, I order you, as soon as the present order shall be presented to you by general Victor, or other officer duly authorized by the French republic, to take charge of said delivery; you will put him in possession of the colony of Louisiana and its dependencies, as also of the city and island of New-Orleans, with the same extent that it now has, that it had in the hands of France when she ceded it to my royal crown, and such as it ought to be after the treaties which have successively taken place between my states and those of other powers."

Previous to the arrival of the French commissioner, the governor of the provinces of Louisiana and West Florida, and the marquis de Casa Calvo, had issued their proclamation, dated the 18th of May, 1803; in which they say, "his majesty having before his eyes the obligations imposed by the treaties, and desirous of avoiding any disputes that might arise, has deigned to resolve that the delivery of the colony and island of New Orleans, which is to be made to the general of division Victor, or such other officer as may be legally authorized by the government of the French republic, shall be executed on the same terms that France ceded it to his majesty; in virtue of which, the limits of both shores of the river St. Louis or Mississippi, shall remain as they were irrevocably fixed by the 7th article of the definitive treaty of peace, concluded at Paris the 10th of February, 1763, according to which the settlements from the river Manshac or Iberville, to the line which separates the American territory from the dominions of the king, remain in possession of Spain, and annexed to West Florida."

On the 21st of October 1803, congress passed an act to enable the president to take possession of the territory ceded by France to the United States: in pursuance of which commissioners were appointed, to whom monsieur Laussatt, the commissioner of the French republic, surrendered New-Orleans and the province of Louisiana on the 20th of December, 1803. The surrender was made in general terms; but no actual possession was taken of the territory lying east of New-Orleans. The government of the United States, however, soon manifested the opinion that the whole country originally held by France, and belonging to Spain when the treaty of St. Ildefonso was con-

cluded, was by that treaty retroceded to France.

On the 24th of February, 1804. congress passed an act for laying and collecting duties within the ceded territories, which authorized the president, whenever he should deem it expedient, to erect the shores, &c. of the bay and river Mobile, and of the other rivers, creeks, &c. emptying into the gulf of Mexico east of the said river Mobile, and west thereof to the Pascagoula inclusive, into a separate district, and to establish a port of entry and delivery therein. The port established in pursuance of this act was at fort Stoddert, within the acknowledged jurisdiction of the United States; and this circumstance appears to have been offered as a sufficient answer to the subsequent remonstrances of Spain against the measure. It must be considered, not as acting on the territory, but as indicating the American exposition of the treaty, and exhibiting the claim its government intended to assert.

In the same session, on the 26th of March, 1804, congress passed an act erecting Louisiana into two territories. This act declares that the country ceded by France to the United States south of the Mississippi territory, and south of an east and west line, to commence on the Mississippi river at the 33d degree of north latitude, and run west to the western boundary of the cession, shall constitute a territory under the name of the territory of Orleans. Now the Mississippi territory extended to the 31st degree of north latitude, and the country south of that territory was necessarily the country which Spain held as West Florida; but still its constituting a part of the territory of Orleans depends on the fact that it was a part of the country ceded by France to the United States. No practicul application of the laws of the United States to this part of the territory was attempted, nor could be made, while the country remained in the actual possession of a foreign power.

The 14th section enacts, "that all grants for lands within the territories ceded by the French republic to the United States by the treaty of the 30th of April, 1803, the title whereof was at the date of the treaty of St. Ildefonso in the crown, government, or nation of Spain, and every act and proceeding subsequent thereto of whatsoever nature, towards the obtaining any grant, title or claim to such lands, and under whatsoever authority transacted or pretended, be, and the same are hereby declared to be, and to have been from the beginning, null, void, and of no effect in law or equity." A proviso excepts the titles of actual settlers acquired before the 20th of December, 1803, from the operation of this section. It was obviously intended to act on all grants made by Spain after her retrocession of Louisiana to France, and, without deciding on the extent of that retrocession, to put the titles which might be thus acquired through the whole territory, whatever might be its extent, completely under the control of the American government.

The president was authorized to appoint registers or recorders of lands acquired under the Spanish and French governments, and boards of commissioners, who should receive all claims to lands, and hear and determine in a summary way all matters respecting such claims. Their proceedings were to be reported to the secretary of the treasury, to be laid before congress for the final decision of that body.

Previous to the acquisition of Louisiana, the ministers of the United States had been instructed to endeavour to obtain the Floridas from Spain. After that acquisition, this object was still pursued and the friendly aid of the French government towards its attainment was requested. On the suggestion of Mr. Talleyrand that the time was unfavourable, the design was suspended. The government of the United States, however, soon resumed its purpose; and the settlement of the boundaries of Louisiana was blended with the purchase of

the Floridas, and the adjustment of heavy claims made by the United States for American property, condemned in the ports of Spain during the war which was terminated by the treaty of Amiens.

On his way to Madrid, Mr. Monroe, who was empowered in conjunction with Mr. Pinckney, the American minister at the court of his Catholic majesty, to conduct the negotiation, passed through Paris; and addressed a letter to the minister of exterior relations, in which he detailed the objects of his mission, and his views respecting the boundaries of Louisiana. In his answer to this letter, dated the 21st of December, 1804, Mr. Talleyrand declared, in decided terms, that by the treaty of St. Ildefonso, Spain retroceded to France no part of the territory east of the Iberville which had been held and known as West Florida; and that in all the negotiations between the two governments, Spain had constantly refused to cede any part of the Floridas, even from the Mississippi to the Mobile. He added, that he was authorized by his imperial majesty to say, that at the beginning of the year 1802, general Bournonville had been charged to open a new negotiation with Spain for the acquisition of the Floridas; but this project had not been followed by a treaty.

Had France and Spain agreed upon the boundaries of the retroceded territory before Louisiana was acquired by the United States, that agreement would undoubtedly have ascertained its limits. But the declarations of France made after parting with the province cannot be admitted as conclusive. In questions of this character, political considerations have too much influence over the conduct of nations, to permit their declarations to decide the course of an independent government in a matter vitally interesting to itself.

Soon after the arrival of Mr. Monroe at his place of destination, the negotiations commenced at Aranjuez. Every word in that article of the treaty of St. Ildefonso which ceded Louisiana to France, was scanned by the ministers on both sides with all the critical acumen which talents and zeal could bring into their service. Every argument drawn from collateral circumstances, connected with the subject, which could be supposed to elucidate it, was exhausted. No advance towards an arrangement was made, and the negotiation terminated, leaving each party firm in his original opinion and purpose. Each persevered in maintaining the construction with which he had commenced. The discussion has since been resumed between the two nations, with as much ability, and with as little success. The question has been again argued at this bar, with the same talent and research which it has uniformly called forth. Every topic which relates to it has been completely exhausted; and the Court by reasoning on the subject could only repeat what is familiar to all.

We shall say only, that the language of the article may admit of either construction, and it is scarcely possible to consider the arguments on either side, without believing that they proceed from a conviction of their truth. The phrase on which the controversy mainly depends, that Spain retrocedes Louisiana with the same extent that it had when France possessed it, might so readily have been expressed in plain language, that it is difficult to resist the persuasion that the ambiguity was intentional. Had Louisiana been retroceded with the same extent that it had when France ceded it to Spain, or with the same extent that it had before the cession of any part of it to England, no controversy respecting its limits could have arisen. Had the parties concurred in their intention, a plain mode of expressing that intention would have presented itself to them. But Spain has always manifested infinite repugnance to the surrender of territory, and was probably unwilling to give back more than she had received. The introduction of ambiguous phrases into the treaty, which power might afterwards con-

strue according to circumstances, was a measure which the strong and the politic might not be disinclined to employ.

However this may be, it is, we think, incontestible, that the American construction of the article, if not entirely free from question, is supported by arguments of great strength, which cannot be easily confuted.

In a controversy between two nations concerning national boundary, it is scarcely possible that the courts of either should refuse to abide by the measures adopted by its own government. There being no common tribunal to decide between them, each determines for itself on its own rights, and if they cannot adjust their differences peaceably, the right remains with the strongest. The judiciary is not that department of the government, to which the assertion of its interests against foreign powers is confided; and its duty commonly is to decide upon individual rights, according to those principles which the political departments of the nation have established If the course of the nation has been a plain one, its courts would hesitate to pronounce it erroneous.

We think, then, however individual judges might construe the treaty of St. Ildefonso, it is the province of the court to conform its decisions to the will of the legislature, if that will has been clearly expressed.

The convulsed state of European Spain affected her influence over her colonies; and a degree of disorder prevailed in the Floridas, at which the United States could not look with indifference. In October, 1810, the president issued his proclamation, directing the governor of the Orleans territory to take possession of the country as far east as the Perdido, and to hold it for the United States. This measure was avowedly intended as an assertion of the title of the United States; but as an assertion, which was rendered necessary in order to avoid evils which might contravene the wishes of both parties, and which would still leave the territory "a subject of fair and friendly negotiation and adjustment."

In April, 1812. congress passed "an act to enlarge the limits of the state of Louisiana." This act describes lines which comprehend the land in controversy, and declares that the country included within them shall become and form a part of the state of Louisiana.

In May of the same year, another act was passed, annexing the residue of the country west of the Perdido to the Mississippi territory.

And in February, 1813, the president was authorized "to occupy and hold all that tract of country called West Florida, which lies west of the river Perdido, not now in possession of the United States."

On the third of March, 1817, congress erected that part of Florida which had been annexed to the Mississippi territory, into a separate territory, called Alabama.

The powers of government were extended to, and exercised in those parts of West Florida which composed a part of Louisiana and Mississippi, respectively; and a separate government was erected in Alabama. *U. S. L.* c. 4. 409.

In March, 1819, "congress passed an act to enable the people of Alabama to form a constitution and state government." And in December, 1819, she was admitted into the union, and declared one of the United States of America. The treaty of amity, settlement and limits, between the United States and Spain, was signed at Washington on the 22d day of February, 1819, but was not ratified by Spain till the 24th day of October, 1820; nor by the United States, until the 22d day of February, 1821. So that Alabama was admitted into the union as an independent state, in virtue of the title acquired by the United States to her territory under the treaty of April, 1803.

After these acts of sovereign power over the territory in dispute, asserting the American construction of the treaty by which the government claims it, to maintain the opposite construc-

tion in its own courts would certainly be an anomaly in the history and practice of nations. If those departments which are intrusted with the foreign intercourse of the nation, which assert and maintain its interests against foreign powers, have unequivocally asserted its rights of dominion over a country of which it is in possession, and which it claims under a treaty; if the legislature has acted on the construction thus asserted, it is not in its own courts that this construction is to be denied. A question like this respecting the boundaries of nations, is, as has been truly said, more a political than a legal question; and in its discussion, the courts of every country must respect the pronounced will of the legislature. Had this suit been instituted immediately after the passage of the act for extending the bounds of Louisiana, could the Spanish construction of the treaty of St. Ildefonso have been maintained? Could the plaintiff have insisted that the land did not lie in Louisiana, but in West Florida; that the occupation of the country by the United States was wrongful; and that his title under a Spanish grant must prevail, because the acts of congress on the subject were founded on a misconstruction of the treaty? If it be said, that this statement does not present the question fairly, because a plaintiff admits the authority of the court, let the parties be changed. If the Spanish grantee had obtained possession so as to be the defendant, would a court of the United States maintain his title under a Spanish grant, made subsequent to the acquisition of Louisiana, singly on the principle that the Spanish construction of the treaty of St. Ildefonso was right, and the American construction wrong? Such a decision would, we think, have subverted those principles which govern the relations between the legislative and judicial departments, and mark the limits of each.

If the rights of the parties are in any degree changed, that change must be produced by the subsequent arrangements made between the two governments.

A "treaty of amity, settlement, and limits, between the United States of America and the king of Spain," was signed at Washington on the 22d day of February, 1819. By the 2d article "his catholic majesty cedes to the United States in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida."

The 8th article stipulates, that "all the grants of land made before the 24th of January, 1818, by his catholic majesty, or by his lawful authorities, in the said territories ceded by his majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of his catholic majesty."

The court will not attempt to conceal the difficulty which is created by these articles.

It is well known that Spain had uniformly maintained her construction of the treaty of St. Ildefonso.—His catholic majesty had perseveringly insisted that no part of West Florida had been ceded by that treaty, and that the whole country which had been known by that name still belonged to him. It is then a fair inference from the language of the treaty, that he did not mean to retrace his steps, and relinquish his pretensions; but to cede on a sufficient consideration all that he had claimed as his; and consequently, by the 8th article, to stipulate for the confirmation of all those grants which he had made while the title remained in him.

But the United States had uniformly denied the title set up by the crown of Spain; had insisted that a part of West Florida had been transferred to France by the treaty of St. Ildefonso, and ceded to the United States by the treaty of April, 1803; had asserted this construction by taking actual possession of the country; and had extended

its legislation over it. The United States, therefore, cannot be understood to have admitted that this country belonged to his catholic majesty, or that it passed from him to them by this article. Had his catholic majesty ceded to the United States "all the territories situated to the eastward of the Mississippi known by the name of East and West Florida," omitting the words "which belong to him," the United States in receiving this cession, might have sanctioned the right to make it, and might have been bound to consider the 8th article as co-extensive with the second. The stipulation of the 8th article might have been construed to be an admission that West Florida to its full extent was ceded by this treaty.

But the insertion of these words materially affects the construction of the article. They cannot be rejected as surplusage. They have a plain meaning, and that meaning can be no other than to limit the extent of the cession. We cannot say they were inserted carelessly or unadvisedly, and must understand them according to their obvious import.

It is not improbable that terms were selected which might not compromise the dignity of either government, and which each might understand, consistently with its former pretensions. But if a court of the United States would have been bound, under the state of things existing at the signature of the treaty, to consider the territory then composing a part of the state of Louisiana as rightfully belonging to the United States, it would be difficult to construe this article into an admission that it belonged rightfully to his catholic majesty.

The 6th article of the treaty may be considered in connexion with the second. The 6th stipulates "that the inhabitants of the territories which his catholic majesty cedes to the United States by this treaty, shall be incorporated in the union of the United States, as soon as may be consistent with the principles of the federal constitution."

This article according to its obvious import, extends to the whole territory which was ceded. The stipulation for the incorporation of the inhabitants of the ceded territory into the union, is co-extensive with the cession. But the country in which the land in controversy lies, was already incorporated into the union. It composed a part of the state of Louisiana, which was already a member of the American confederacy.

A part of West Florida lay east of the Perdido: and to that the right of his catholic majesty was acknowledged. There was then an ample subject on which the words of the cession might operate, without discarding those which limit its general expressions.

Such is the construction which the Court would put on the treaties by which the United States have acquired the country east of New-Orleans. But an explanation of the 8th article seems to have been given by the parties, which may vary this construction.

It was discovered that three large grants, which had been supposed, at the signature of the treaty, to have been made subsequent to the 24th of January, 1818, bore a date anterior to that period. Considering these grants as fraudulent, the United States insisted on an express declaration annulling them. This demand was resisted by Spain; and the ratification of the treaty was for some time suspended. At length his catholic majesty yielded, and the following clause was introduced into his ratification: "Desirous at the same time of avoiding any doubt or ambiguity concerning the meaning of the 8th article of the treaty, in respect to the date which is pointed out in it, as the period for the confirmation of the grants of lands in the Floridas made by me, or by the competent authorities in my royal name, which point of date was fixed in the positive understanding of the three grants of land made in favour of the duke of Alagon, the count of Punon Rostro, and Don Pedro de Vargas, being annulled by its tenor; I think it proper to declare, that the said three grants

have remained and do remain entirely annulled and invalid; and that neither the three individuals mentioned, nor those who may have title or interest through them, can avail themselves of the said grants at any time or in any manner; under which explicit declaration, the said 8th article is to be understood as ratified." One of these grants, that to Vargas, lies west of the Perdido.

It has been argued, and with great force, that this explanation forms a part of the article. It may be considered as if introduced into it as a proviso or exception to the stipulation, in favour of grants anterior to the 24th of January, 1818. The article may be understood as if it had been written, that "all the grants of land made before the 24th of January, 1818, by his catholic majesty or his lawful authorities in the said territories, ceded by his majesty to the United States, (except those made to the duke of Alagon, the count of Punon Rostro and Don Pedro de Vargas,) shall be ratified and confirmed, &c."

Had this been the form of the original article, it would be difficult to resist the construction that the excepted grants were withdrawn from it by the exception, and would otherwise have been within its provisions. Consequently, that all other fair grants within the time specified, were as obligatory on the United States, as on his catholic majesty.

One other judge and myself are inclined to adopt this opinion. The majority of the court, however, think differently. They suppose that these three large grants being made about the same time, under circumstances strongly indicative of unfairness, and two of them lying east of the Perdido, might be objected to on the ground of fraud common to them all: without implying any opinion that one of them, which was for lands lying within the United States, and most probably in part sold by the government, could have been otherwise confirmed. The government might well insist on closing all future controversy relating to these grants, which might so materially interfere with its own rights and policy in its future disposition of the ceded lands; and not allow them to become the subject of judicial investigation; while other grants, though deemed by it to be invalid, might be left to the ordinary course of the law. The form of the ratification ought not, in their opinion, to change the natural construction of the words of the 8th article, or extend them to embrace grants not otherwise intended to be confirmed by it. An extreme solicitude to provide against injury or inconvenience, from the known existence of such large grants, by insisting upon a declaration of their absolute nullity, can in their opinion furnish no satisfactory proof that the government meant to recognise the small grants as valid, which in every previous act and struggle it had proclaimed to be void, as being for lands within the American territory.

Whatever difference may exist respecting the effect of the ratification, in whatever sense it may be understood, we think the sound construction of the eighth article will not enable this court to apply its provisions to the present case. The words of the article are, that "all the grants of land made before the 24th of January, 1818, by his catholic majesty, &c. shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of his catholic majesty." Do these words act directly on the grants, so as to give validity to those not otherwise valid; or do they pledge the faith of the United States to pass acts which shall ratify and confirm them?

A treaty is in its nature a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infra-territorial; but is carried into execution by the sovereign power of the respective parties to the instrument.

In the United States a different prin-

ciple is established. Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract, before it can become a rule for the court.

The article under consideration does not declare that all the grants made by his catholic majesty before the 24th of January, 1818, shall be valid to the same extent as if the ceded territories had remained under his dominion. It does not say that those grants are hereby confirmed. Had such been its language, it would have acted directly on the subject, and would have repealed those acts of congress which were repugnant to it; but its language is, that those grants shall be ratified and confirmed to the persons in possession, &c. By whom shall they be ratified and confirmed? This seems to be the language of contract; and if it is, the ratification and confirmation which are promised must be the act of the legislature. Until such act shall be passed, the court is not at liberty to disregard the existing laws on the subject. Congress appears to have understood this article as it is understood by the court. Boards of commissioners have been appointed for East and West Florida, to receive claims for lands; and on their reports titles to lands not exceeding acres have been confirmed, and to a very large amount. On the 23d of May, 1828, an act was passed supplementary to the several acts providing for the setment and confirmation of private land claims in Florida; the 6th section of which enacts, that all claims to land within the territory of Florida, embraced by the treaty between Spain and the United States of the 22d of February, 1819, which shall not be decided and finally settled under the foregoing provisions of this act, containing a greater quantity of land than the commissioners were authorized to decide, and which have not been reported as antedated or forged, &c., shall be received and adjudicated by the judge of the superior court of the district within which the land lies, upon the petition of the claimant," &c. Provided, that nothing in this section shall be construed to enable the judges to take cognizance of any claim annulled by the said treaty, or the decree ratifying the same by the king of Spain, nor any claim not presented to the commissioners or register and receiver. An appeal is allowed from the decision of the judge of the district to this court. No such act of confirmation has been extended to grants for lands lying west of the Perdido.

The act of 1804, erecting Louisiana into two territories, has been already mentioned. It annuls all grants for lands in the ceded territories, the title whereof was at the date of the treaty of St. Ildefonso in the crown of Spain. The grant in controversy is not brought within any of the exceptions from the enacting clause.

The legislature has passed many subsequent acts previous to the treaty of 1819, the object of which was to adjust the titles to lands in the country acquired by the treaty of 1803.

They cautiously confirm to residents all incomplete titles to lands, for which a warrant or order of survey had been obtained previous to the 1st of October, 1800.

An act, passed in April, 1814, confirms incomplete titles to lands in the state of Louisiana, for which a warrant or order of survey had been granted prior to the 20th of December, 1803, where the claimant or the person under whom he claims was a resident of the province of Louisiana on that day, or at the date of the concession, warrant, or order of survey; and were the tract does not exceed 640 acres. This act extends to those cases only which had been reported by the

board of commissioners; and annexes to the confirmation several conditions, which it is unnecessary to review, because the plaintiff does not claim to come within the provisions of the act.

On the 3d of March, 1819, congress passed an act confirming all complete grants to land from the Spanish government, contained in the reports made by the commissioners appointed by the president for the purpose of adjusting titles which had been deemed valid by the commissioners; and also all the claims reported as aforesaid, founded on any order of survey, requete, permission to settle, or any written evidence of claim derived from the Spanish authorities, which ought in the opinion of the commissioners to be confirmed; and which by the said reports appear to be derived from the Spanish government before the 20th day of December, 1803, and the land claimed to have been cultivated or inhabited on or before that day.

Though the order of survey in this case was granted before the 20th of December, 1803, the plaintiff does not bring himself within this act.

Subsequent acts have passed in 1820, 1822, and 1826, but they only confirm claims approved by the commissioners, among which the plaintiff does not allege his to have been placed.

Congress has reserved to itself the supervision of the titles reported by its commissioners, and has confirmed those which the commissioners have approved, but has passed no law, withdrawing grants generally for lands west of the Perdido from the operation of the 14th section of the act of 1804, or repealing that section.

We are of opinion, then, that the court committed no error in dismissing the petition of the plaintiff, and that the judgment ought to be affirmed with costs.

This cause came on to be heard on the transcript of the record from the district court of the United States for the eastern district of Louisiana, and was argued by counsel; on consideration whereof, this court is of opinion that the said district court committed no error in dismissing the petition of the plaintiffs; therefore it is considered, ordered and adjudged by this court, that the judgment of the said district court in this cause be, and the same is hereby affirmed with costs.

The Bank of Kentucky vs. *John Wister & al.*

In this case the question arose, whether the jurisdiction of the United States courts was taken away by the state's being the sole proprietor of the stock of the bank.

Mr. Nicholas, for the plaintiffs, insisted that the state was virtually the party on the record, and that the judgment of the court would operate directly on the state in its sovereign capacity.

Mr. Caswell replied for the defendants.

Mr. Justice Johnson delivered the opinion of the court, from which the following is extracted, as being all which relates to the above question.

The defendants here were plaintiffs in the court below, in an action for money had and received, instituted to recover the amount of a deposite made in the bank of the commonwealth of Kentucky.

The defendants pleaded to the jurisdiction, on the ground that the state of Kentucky was sole proprietor of the stock of the bank, for which reason it was insisted that the suit was virtually against the sovereign state. To this plea the plaintiffs demurred, and the circuit court of Kentucky having decided in favour of its jurisdiction, that decision is made the first ground of error in the present suit.

But this court is of opinion that the question is no longer open here. The

case of the United States Bank *vs.* the Planters' Bank of Georgia, 9 *Wheaton*, 904, was a much stronger case for the defendants than the present; for there, the state of Georgia was not only a proprietor but a corporator. Here the state is not a corporator, since by the terms of the act incorporating this bank, *Kentucky acts of* 1820, page 55, sec. 2, "the president and directors" alone constitute the body corporate, the metaphysical person liable to suit. Hence, by the laws of the state itself, it is excluded from the character of a party in the sense of the law when speaking of a body corporate.

On the subject of an interest in the stock of a bank, the language of this court, in the case cited, is this: "It is, we think, a sound principle, that when a government becomes a partner in any trading company, it devests itself, so far as it concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted. Thus, many states of the union which have an interest in banks, are not suable even in their own courts, yet they never exempt the corporation from being sued. The state of Georgia, by giving to the bank the capacity to sue and be sued, voluntarily strips itself of its sovereign character, so far as respects the transactions of the bank, and waives all privileges of that character. As a member of a corporation, a government never exercises its sovereignty. It acts merely as a corporator, and exercises no other power in the management of the affairs of the corporation, than are expressly given by the incorporating act."

To which it may be added, that if a state did exercise any other power in or over a bank, or impart to it its sovereign attributes, it would be hardly possible to distinguish the issue of the paper of such banks from a direct issue of bills of credit; which violation of the constitution, no doubt the state here intended to avoid.

John F. Satterlee vs. *Elizabeth Matthewson.*

Mr. Price, and Mr. Sergeant for the plaintiff, Mr. Sutherland and Mr. Peters for the defendant.

Mr. Justice Washington delivered the opinion of the court.

This is a writ of error to the supreme court of Pennsylvania. An ejectment was commenced by the defendant in error in the court of common pleas against Elisha Satterlee, to recover the land in controversy, and upon the motion of the plaintiff in error, he has admitted as her landlord, a defendant to the suit. The plaintiff, at the trial, set up a title under a warrant dated the 10th of January, 1812, founded upon an improvement in the year 1785, which it was admitted was under a Connecticut title, and a patent bearing date the 19th of February, 1813.

The defendant claimed title under a patent issued to Wharton in the year 1781, and a conveyance by him to John F. Satterlee in April, 1812. It was contended on the part of the plaintiff, that admitting the defendant's title to be the oldest and the best, yet he was stopped from setting it up in that suit, as it appeared in evidence that he had come into possession as tenant to the plaintiff some time in the year 1790. The courts of common pleas decided in favour of the plaintiff, upon the ground just stated, and judgment was accordingly rendered for her Upon a writ of error to the supreme court of that state, that court decided, in June, 1825, 13 *Serge. & Rawle*, 133 that by the settled law of Pennsylvania, the relation of landlord and tenant could not subsist under a Connecticut

title; upon which ground the judgment was reversed, and a venire facias de novo was awarded.

On the 8th of April, 1826, and before the second trial of this cause took place, the legislature of that state passed a law in substance as follows, viz. "that the relation of landlord and tenant shall exist, and be held as fully and effectually between Connecticut settlers and Pennsylvania claimants, as between other citizens of this commonwealth, on the trial of any cause now pending, or hereafter to be brought, within this commonwealth, any law or usage to the contrary notwithstanding."

Upon the retrial of this cause in the inferior court in May, 1826, evidence was given conducing to prove, that the land in dispute was purchased of Wharton by Elisha Satterlee, the father of John F. Satterlee, and that by his direction the conveyance was made to the son. It further appeared in evidence, that the son brought an ejectment against his father in the year 1813, and by some contrivance between those parties, alleged by the plaintiff below to be merely colourable and fraudulent, for the purpose of depriving her of her possession, obtained a judgment and execution thereon, under which the possession was delivered to the plaintiff in that suit, who immediately afterwards leased the premises to the father for two lives, at a rent of one dollar per annum. The fairness of the transactions was made a question on the trial, and it was asserted by the plaintiff that, notwithstanding the eviction of Elisha Satterlee under the above proceedings, he still continued to be her tenant.

The judge, after noticing in his charge the decision of the supreme court in 1825, and the act of assembly before recited, stated to the jury the general principle of law, which prevents a tenant from controverting the title of his landlord by showing it to be defective, the exception to that principle where the landlord claims under a Connecticut title, as laid down by the above decision, and the effect of the act of assembly upon that decision, which act he pronounced to be binding on the court. He therefore concluded, and so charged the jury, that if they should be satisfied from the evidence, that the transactions between the two Satterlees before mentioned, were bona fide, and that John F. Satterlee was the actual purchaser of the land, then the defendants might set up the eviction as a bar to the plaintiff's recovery as landlord. But that if the jury should be satisfied that those transactions were collusive, and that Elisha Satterlee was in fact the real purchaser, and the name of his son inserted in the deed for the fraudulent purpose of destroying the right of the plaintiff as landlord; then the merely claiming under a Connecticut title, would not deprive her of her right to recover in that suit.

To this charge, of which the substance only has been stated, an exception was taken, and the whole of it is spread upon the record. The jury found a verdict for the plaintiff; and judgment being rendered for her, the cause was again taken to the supreme court by a writ of error.

The only question which occurs in this cause, which it is competent to this court to decide, is, whether the statute of Pennsylvania which has been mentioned of the 8th of April, 1826, is or is not objectionable, on the ground of its repugnancy to the constitution of the United States? But before this inquiry is gone into, it will be proper to dispose of a preliminary objection made to the jurisdiction of this court, upon the ground that there is nothing apparent on this record to raise that question, or otherwise to bring this case within any of the provisions of the 25th section of the judiciary act of 1789.

Questions of this nature have frequently occurred in this court, and have given occasion for a critical examination of the above section, which has resulted in the adoption of certain principles of construction applicable to it, by which the objection now to be considered may, without much difficulty, be decided. 2 *Wheaton*, 363. 4 *Wheaton*, 311. 12 *Wheaton*,

117. One of those principles is, that if it sufficiently appear from the record itself, that the repugnancy of a statute of a state to the constitution of the United States, was drawn into question, or that that question was applicable to the case, this court has jurisdiction of the cause under the section of the act referred to; although the record should not, in terms, state a misconstruction of the constitution of the United States, or that the repugnancy of the statute of the state to any part of that constitution was drawn into question.

Now it is manifest from this record, not only that the constitutionality of the statute of the 8th of April, 1826, was drawn into question, and was applicable to the case, but that it was so applied by the judge, and formed the basis of his opinion to the jury, that they should find in favour of the plaintiff, if in other respects she was entitled to a verdict. It is equally manifest that the right of the plaintiff to recover in that action depended on that statute; the effect of which was to change the law, as the supreme court had decided it to be in this very case in the year 1825. 13 *S. & R.* 133.

That the charge of the judge forms a part of this record is unquestionable. It was made so by the bill of exception, and would have been so without it, under the statute of the 24th of February, 1806, of that state; which directs, that in all cases in which the opinion of the court shall be delivered, if either party require it, it is made the duty of the judges to reduce the opinion, with their reasons therefor, to writing, and to file the same of record in the cause. In the case of Downing *vs.* Baldwin, 1 *Serg. & Rawle*, 298, it was decided by the supreme court of Pennsylvania, that the opinion so filed becomes part of the record, and that any error in it may be taken advantage of on a writ of error without a bill of exceptions.

It will be sufficient to add that this opinion of the court of common pleas was, upon a writ of error, adopted and affirmed by the supreme court; and it is *the judgment* of that court upon the point so decided by the inferior court, and not the *reasoning of the judges* upon it, which this court is now called upon to revise.

We come now to the main question in this cause. Is the act which is objected to, repugnant to any provision of the constitution of the United States? It is alleged to be so by the counsel for the plaintiff in error, for a variety of reasons; and particularly, because it impairs the obligation of the contract between the state of Pennsylvania and the plaintiff, who claims title under her grant to Wharton, as well as of the contract between Satterlee and Matthewson; because it creates a contract between parties where none previously existed, by rendering that a binding contract which the law of the land had declared to be invalid; and because it operates to devest and destroy the vested rights of the plaintiff. Another objection relied upon is, that in passing the act in question, the legislature exercised those functions which belong exclusively to the juidicial branch of the government.

Let these objections be considered. The grant to Wharton bestowed upon him a fee simple estate in the land granted, together with all the rights, privileges and advantages which, by the laws of Pennsylvania, that instrument might legally pass. Were any of those rights, which it is admitted vested in his vendee or alienee, disturbed, or impaired by the act under consideration? It does not appear from the record, or even from the reasoning of the judges of either court, that they were in any instance denied, or even drawn into question. Before Satterlee became entitled to any part of the land in dispute under Wharton, he had voluntarily entered into a contract with Matthewson, by which he became his tenant, under a stipulation that either of the parties might put an end to the tenancy at the termination of any one year. Under this new contract, which, if it was ever valid, was still subsisting and in full force at the time when Satterlee acquired the title of Wharton, he exposed himself to the

operation of a certain principle of the common law, which estopped him from controverting the title of his landlord, by setting up a better title to the land in himself, or one outstanding in some third person.

It is true that the supreme court of the state decided, in the year 1825, that this contract, being entered into with a person claiming under a Connecticut title, was void; so that the principle of law which has been mentioned did not apply to it. But the legislature afterwards declared by the act under examination, that contracts of that nature were valid, and that the relation of landlord and tenant should exist, and be held effectual, as well in contracts of that description, as in those between other citizens of the state.

Now this law may be censured, as it has been, as an unwise and unjust exercise of legislative power; as retrospective in its operation; as the exercise, by the legislature, of a judicial function; and as creating a contract between parties where none previously existed. All this may be admitted; but the question which we are now considering is, does it impair the obligation of the contract between the state and Wharton, or his alienee? Both the decision of the supreme court in 1825, and this act, operate, not upon that contract, but upon the subsequent contract between Satterlee and Matthewson. No question arose, or was decided, to disparage the title of Wharton, or of Satterlee as his vendee. So far from it, that the judge stated in his charge to the jury, that if the transactions between John F. Satterlee and Elisha Satterlee were fair, then the elder title of the defendant must prevail, and he would be entitled to a verdict.

We are then to inquire, whether the obligation of the contract between Satterlee and Matthewson was impaired by this statute? The objections urged at the bar, and the arguments in support of them, apply to that contract, if to either. It is that contract which the act declared to be valid, in opposition to the decision of the supreme court; and admitting the correctness of that decision, it is not easy to perceive how a law which gives validity to a void contract, can be said to impair the obligation of that contract. Should a statute declare, contrary to the general principles of law, that contracts founded upon an illegal or immoral consideration, whether in existence at the time of passing the statute, or which might hereafter be entered into, should nevertheless be valid and binding upon the parties; all would admit the retrospective character of such an enactment, and that the effect of it was to create a contract between parties where none had previously existed. But it surely cannot be contended, that to create a contract, and to destroy or impair one, mean the same thing.

If the effect of the statute in question, be not to impair the obligation of either of those contracts, and none other appear upon this record, is there any other part of the constitution of the United States to which it is repugnant? It is said to be retrospective. Be it so; but retrospective laws which do not impair the obligation of contracts, or partake of the character of ex post facto laws, are not condemned or forbidden by any part of that instrument.

All the other objections which have been made to this statute, admit of the same answer. There is nothing in the constitution of United States, which forbids the legislature of a state to exercise judicial functions. The case of Ogden *vs.* Blackledge came into this court from the *circuit court* of the United States, and not from the supreme court of North Carolina; and the question, whether the act of 1799, which partook of a judicial character, was repugnant to the constitution of the United States, did not arise, and consequently was not decided. It may safely be affirmed, that no case has ever been decided in this court, upon a writ of error to a state court, which affords the slightest countenance to this objection.

The objection, however, which was most pressed upon the court, and relied upon by the counsel for the plaintiff in error, was, that the effect of this act was to devest rights which were vested by law in Satterlee. There is certainly no part of the constitution of the United States which applies to a state law of this description; nor are we aware of any decision of this, or of any circuit court, which has condemned such a law upon this ground, provided its effect be not to impair the obligation of a contract; and it has been shown, that the act in question has no such effect upon either of the contracts which have been before mentioned.

In the case of Fletcher *vs.* Peck, it was stated by the chief justice, that it might well be doubted, whether the nature of society and of government do not prescribe some limits to the legislative power; and he asks, "if any be prescribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation?" It is no where intimated in that opinion, that a state statute, which devests a vested right, is regugnant to the *constitution of the United States;* and the case in which that opinion was pronounced, was removed into this court by writ of error, not from the supreme court of a state, but from a circuit court.

The strong expressions of the court upon this point, in the cases of Vanhorne's lessee *vs.* Dorance, and The Society for the Propagation of the Gospel *vs.* Wheeler, were founded expressly on the constitution of the respective states in which those cases were tried.

We do not mean in any respect to impugn the correctness of the sentiments expressed in those cases, or to question the correctness of a circuit court, sitting to administer the laws of a state, in giving to the constitution of that state a paramount authority over a legislative act passed in violation of it. We intend to decide no more than that the statute objected to in this case is not repugnant to the *constitution of the United States*, and that unless it be so, this court has no authority, under the 25th section of the judiciary act, to re-examine and to reverse the judgment of the supreme court of Pennsylvania in the present case.

That judgment, therefore, must be affirmed with costs.

Plowden Weston & al. vs. *the City Council of Charleston.*

This was a writ of error to the Constitutional Court of South Carolina.

On the 20th of February, 1823, an ordinance was passed by the City Council of Charleston, providing "that the following species of property, owned and possessed within the limits of the city of Charleston, shall be subject to taxation in the manner, and at the rate, and conformably to the provisions hereinafter specified; that is to say, all personal estate, consisting of bonds, notes, insurance stock, six and seven per cent. stock of the United States, or other obligations upon which interest has been or will be received during the year, over and above the interest which has been paid, (funded stock of this state, and stock of the incorporated banks of this state and the United States bank excepted,) twenty-five cents upon every hundred dollars."

A prohibition was granted, upon the suggestion of the plaintiffs, by the Court of Common Pleas for the Charleston district, restraining the City Council from levying this tax on the six and seven per cent. United States stock, on the ground that the ordinance, so far as it imposed a tax on United States stock, was unconstitutional.

This prohibition was reversed by the Constitutional Court of the state, by a majority of the judges (four being in

favour of the constitutionality of the ordinance, and three against it. From this decision, the relators appealed to the Supreme Court of the United States.

Mr. Hayne for the plaintiffs. Mr. Crugar and Mr. Legare for the defendants.

Chief Justice Marshall delivered the opinion of the court.

This case was argued on its merits at a preceding term; but a doubt having arisen with the court respecting its jurisdiction in cases of prohibition, that doubt was suggested to the bar, and a re-argument was requested. It has been re-argued at this term.

The power of this court to revise the judgments of a state tribunal, depends on the 25th section of the judicial act. That section enacts, "that a final judgment or decree in any suit in the highest court of law or equity of a state in which a decision in the suit could be had," "where is drawn in question the validity of a statute or of an authority exercised under any state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favour of such their validity," "may be re-examined and reversed or affirmed in the Supreme Court of the United States."

In this case, the city ordinance of Charleston is the exercise of an "authority under the state of South Carolina," "the validity of which has been drawn in question on the ground of its being repugnant to the constitution," and "the decision is in favour of its validity." The question, therefore, which was decided by the constitutional court, is the very question on which the revising power of this tribunal is to be exercised, and the only inquiry is, whether it has been decided in a case described in the section which authorizes the writ of error that has been awarded. Is a writ of prohibition a suit?

The term is certainly a very comprehensive one, and is understood to apply to any proceeding in a court of justice, by which an individual pursues that remedy in a court of justice, which the law affords him. The modes of proceeding may be various, but if a right is litigated between parties in a court of justice, the proceeding by which the decision of the court is sought, is a suit. The question between the parties, is precisely the same as it would have been in a writ of replevin, or in an action of trespass. The constitutionality of the ordinance is contested; the party aggrieved by it applies to a court; and at his suggestion, a writ of prohibition, the appropriate remedy, is issued. The opposite party appeals; and, in the highest court, the judgment is reversed, and judgment given for the defendant. This judgment was, we think, rendered in a suit.

We think also that it was a final judgment, in the sense in which that term is used in the 25th section of the judicial act. If it were applicable to those judgments and decrees only in which the right was finally decided, and could never again be litigated between the parties, the provisions of the section would be confined within much narrower limits than the words import, or than congress could have intended. Judgments in actions of ejectment, and decrees in chancery dismissing a bill without prejudice, however deeply they might affect rights protected by the constitution, laws, or treaties of the United States, would not be subject to the revision of this court. A prohibition might issue, restraining a collector from collecting duties, and this court would not revise and correct the judgment. The word "final" must be understood, in the section under consideration, as applying to all judgments and decrees which determine the particular cause.

We think, then, that the writ of error has brought the cause properly before this court.

This brings us to the main question. Is the stock issued for loans made to the government of the United States liable to be taxed by states and corporations?

Congress has power "to borrow

money on the credit of the United States." The stock it issues is the evidence of a debt created by the exercise of this power. The tax in question is a tax upon the contract subsisting between the government and the individual. It bears directly upon that contract, while subsisting and in full force. The power operates upon the contract the instant it is framed, and must imply a right to affect that contract.

If the states and corporations throughout the Union, possess the power to tax a contract for the loan of money, what shall arrest this principle in its application to every other contract? What measure can government adopt which will not be exposed to its influence?

But it is unnecessary to pursue this principle through its diversified application to all the contracts, and to the various operations of government. No one can be selected which is of more vital interest to the community than this of borrowing money on the credit of the United States. No power has been conferred by the American people on their government, the free and unburthened exercise of which more deeply affects every member of our republic. In war, when the honour, the safety, the independence of the nation are to be defended, when all its resources are to be strained to the utmost, credit must be brought in aid of taxation, and the abundant revenue of peace and prosperity must be anticipated to supply the exigences, the urgent demands of the moment. The people, for objects the most important which can occur in the progress of nations, have empowered their government to make these anticipations, "to borrow money on the credit of the United States." Can any thing be more dangerous, or more injurious, than the admission of a principle which authorizes every state and every corporation in the Union which possesses the right of taxation, to burthen the exercise of this power at their discretion?

If the right to impose the tax exists, it is a right which, in its nature, acknowledges no limits. It may be carried to any extent within the jurisdiction of the state or corporation which imposes it, which the will of each state and corporation may prescribe. A power which is given by the whole American people for their common good, which is to be exercised at the most critical periods for the most important purposes, on the free exercise of which the interests certainly, perhaps the liberty of the whole may depend; may be burthened, impeded, if not arrested, by any of the organized parts of the confederacy.

In a society formed like ours, with one supreme government for national purposes, and numerous state governments for other purposes; in many respects independent, and in the uncontrolled exercise of many important powers, occasional interferences ought not to surprise us. The power of taxation is one of the most essential to a state, and one of the most extensive in its operation. The attempt to maintain a rule which shall limit its exercise, is undoubtedly among the most delicate and difficult duties which can devolve on those whose province it is to expound the supreme law of the land, in its application to the cases of individuals. This duty has more than once devolved on this court. In the performance of it, we have considered it as a necessary consequence, from the supremacy of the government of the whole, that its action, in the exercise of its legitimate powers, should be free and unembarrassed by any conflicting powers in the possession of its parts; that the powers of a state cannot rightfully be so exercised as to impede and obstruct the free course of those measures which the government of the states united may rightfully adopt.

This subject was brought before the court in the case of M'Cullough *vs* the state of Maryland, when it was thoroughly argued and deliberately considered. The question decided in that case bears a near resemblance to that which is involved in this. It was

discussed at the bar in all its relations, and examined by the court with its utmost attention. We will not repeat the reasoning which conducted us to the conclusion thus formed; but that conclusion was, that "all subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are upon the soundest principles exempt from taxation." "The sovereignty of a state extends to every thing which exists by its own authority, or is introduced by its permission;" but not "to those means which are employed by congress to carry into execution powers conferred on that body by the people of the United States." "The attempt to use" the power of taxation "on the means employed by the government of the Union, in pursuance of the constitution, is itself an abuse, because it is the usurpation of a power which the people of a single state cannot give."

The court said in that case, that "the states have no power by taxation or otherwise, to retard, impede, burthen, or in any manner control the operation of the constitutional laws enacted by congress, to carry into execution the powers vested in the general government."

We retain the opinions which were then expressed. A contract made by the government in the exercise of its power, to borrow money on the credit of the United States, is undoubtedly independent of the will of any state in which the individual who lends may reside, and is undoubtedly an operation essential to the important objects for which the government was created. It ought, therefore, on the principles settled in the case of M'Cullough *vs.* The State of Maryland, to be exempt from state taxation, and consequently from being taxed by corporations deriving their power from states

It is admitted that the power of the government to borrow money cannot be directly opposed, and that any law directly obstructing its operation would be void; but, a distinction is taken between direct opposition and those measures which may consequently affect it; that is, that a law, prohibiting loans to the United States, would be void; but a tax on them, to any amount, is allowable.

It is, we think, impossible not to perceive the intimate connexion which exists between these two modes of acting on the subject.

It is not the want of original power in an independent sovereign state, to prohibit loans to a foreign government, which restrains the legislature from direct opposition to those made by the United States. The restraint is imposed by our constitution. The American people have conferred the power of borrowing money on their government, and by making that government supreme, have shielded its action in the exercise of this power, from the action of the local governments. The grant of the power is incompatible with a restraining or controlling power, and the declaration of supremacy is a declaration that no such restraining or controlling power shall be exercised.

The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burthen on the operations of government. It may be carried to an extent which shall arrest them entirely.

It is admitted by the counsel for the defendants, that the power to tax stock must affect the terms on which loans will be made; but this objection, it is said, has no more weight, when urged against the application of an acknowledged power to government stock, than if urged against its application to lands sold by the United States.

The distinction is, we think, apparent. When lands are sold, no connexion remains between the purchaser and the government. The lands purchased become a part of the mass of property in the country, with no implied exemption from common bur-

thens. All lands are derived from the general or particular government, and all lands are subject to taxation.—Lands sold are in the condition of money borrowed and re-paid. Its liability to taxation, in any form it may then assume, is not questioned. The connexion between the borrower and the lender is dissolved. It is no burthen on loans, it is no impediment to the power of borrowing, that the money, when repaid, loses its exemption from taxation. But a tax upon debts due from the government, stands, we think, on very different principles from a tax on lands which the government has sold.

"The Federalist" has been quoted in the argument. and an eloquent and well merited eulogy has been bestowed on the great statesman who is supposed to be the author of the number from which the quotation was made. This high authority was also relied upon in the case of M'Cullough *vs.* The State of Maryland, and was considered by the court. Without repeating what was then said, we refer to it as exhibiting our view of the sentiments expressed on this subject by the authors of that work.

It has been supposed that a tax on stock comes within the exceptions stated in the case of M,Cullough *vs.* The State of Maryland. We do not think so. The bank of the United States is an instrument essential to the fiscal operations of the government, and the power which might be exercised to its destruction was denied. But property acquired by that corporation in a state was supposed to be placed in the same condition with property acquired by an individual.

The tax on government stock is thought by this court to be a tax on the contract, a tax on the power to borrow money on the credit of the United States, and consequently to be repugnant to the constitution.

We are, therefore, of opinion that the judgment of the constitutional court of the state of South Carolina, reversing the order made by the court of common pleas, awarding a prohibition to the city council of Charleston, to restrain them from levying a tax imposed on six and seven per cent. stock of the United States, under an ordinance to raise supplies to the use of the city of Charleston for the year 1823, is erroneous in this; that the said constitutional court adjudged that the said ordinance was not repugnant to the constitution of the U. States; whereas, this court is of opinion that such repugnancy does exist. We are, therefore, of opinion, that the said judgment ought to be reversed and annulled, and the cause remanded to the constitutional court for the state of South Carolina, that farther proceedings may be had therein according to law.

Justices Johnson and Thompson dissenting.

William S. Buckner vs. *Finley & Van Lear.*

This action was commenced in the Circuit Court for the Maryland district, on a bill of exchange, drawn by the defendants at Baltimore. in favour of Rosewell L. Colt, or order, of Baltimore, and endorsed to the plaintiff, a citizen of New-York.

Judgment was confessed for the amount of the bill, subject to the opinion of the court on this objection, that the bill was an inland and not a foreign bill of exchange, and consequently could not be transferred by the payee, a citizen of the same state with the drawer, so as to give cognizance to the Circuit Court of the claim.

Mr. David Hoffman appeared in behalf of the defendants.

Justice Washington delivered the opinion of the court.

This is an action of assumpsit, founded on a bill of exchange drawn at Baltimore, in the state of Maryland, upon Stephen Dever at New-

Orleans, in favour of R. L. Colt, a citizen of Maryland, who endorsed the same to the plaintiff, a citizen of New-York. The action was brought in the circuit court of the United States for the district of Maryland; and upon a case agreed, stating the above facts, the judges of that court were divided in opinion, whether they could entertain jurisdiction of the cause upon the ground insisted upon by the defendants' counsel, that the bill was to be considered as inland. The difficulty which occasioned the adjournment of the cause to this court, is produced by the 11th section of the judiciary act of 1789, which declares, that no district or circuit court shall have "cognizance of any suit to recover the contents of any promissory note, or other chose in action, in favour of an assignee, unless a suit might have been prosecuted in such court to recover the said contents, if no assignment had been made, except in cases of *foreign* bills of exchange."

The only question is, whether the bill on which the suit is founded, is to be considered a foreign bill of exchange?

It is to be regretted that so little aid, in determining this question, is to be obtained from decided cases, either in England or in the United States.

Sir William Blackstone, in his Commentaries, distinguishes foreign from inland bills, by defining the former as bills drawn by a merchant residing abroad upon his correspondent in England, or vice versa; and the latter as those drawn by one person on another, when both drawer and drawee reside within the same kingdom. Chitty, p. 16, and the other writers on bills of exchange, are to the same effect; and all of them agree, that until the statutes of 8 and 9 *W.* III. ch. 17, and 3 and 4 *Anne*, ch. 9, which placed these two kinds of bills upon the same footing, and subjected inland bills to the same law and custom of merchants which governed foreign bills; the latter were much more regarded in the eye of the law than the former, as being thought of more public concern in the advancement of trade and commerce.

Applying this definition to the political character of the several states of this Union, in relation to each other, we are all clearly of opinion, that bills drawn in one of these states, upon persons living in any other of them, partake of the character of foreign bills, and ought so to be treated. For all national purposes embraced by the federal constitution, the states and the citizens thereof are one, united under the same sovereign authority, and governed by the same laws. In all other respects, the states are necessarily foreign to, and independent of each other. Their constitutions and forms of government being, although republican, altogether different, as are their laws and institutions. This sentiment was expressed, with great force, by the president of the court of appeals of Virginia, in the case of Warder *vs.* Arrell, 2 *Wash.* 298; where he states, that in cases of contracts, the laws of a foreign country, where the contract was made, must govern; and then adds as follows:—"The same principle applies, though with no greater force, to the different states of America; for though they form a confederated government, yet the several states retain their individual sovereignties, and, with respect to their municipal regulations, are to each other foreign."

This character of the laws of one state in relation to the others, is strongly exemplified in the particular subject under consideration; which is governed, as to the necessity of protest and rate of damages, by different rules in the different states. In none of these laws, however, so far as we can discover from Griffith's Law Register, to which we were referred by the counsel, except those of Virginia, are bills, drawn in one state upon another, designated as inland; although the damages allowed upon protested bills of that description, are generally, and with great propriety, lower than upon bills drawn upon a country fo-

reign to the United States, since the disappointment and injury to the holder must always be greater in the latter, than in the former case. It is for the same reason, no doubt, that, by the laws of most of the states, bills drawn in and upon the same state, and protested, are either exempt from damages altogether, or the rate is lower upon them, than upon bills drawn on some other of the states.

The only case, which was cited at the bar, or which has come to our knowledge, to show that a bill drawn in one state upon a person in any other of the states, is an inland bill, is that of Miller *vs.* Hackley, 5 *Johns. Rep.* 375. Alluding to this case, in the third volume of his Commentaries, p. 63, in a note, Chancellor Kent remarks very truly, that the opinion was not given on the point on which the decision rested; and he adds, that it was rather the opinion of Mr. Justice Van Ness than that of the court. It is not unlikely, besides, that that opinion was, in no small degree, influenced by what is said by Judge Tucker in a note to 2 *Black. Com.* 467; which was much relied upon by one of the counsel in the argument, where the author would appear to define an inland bill, as being one drawn by a person residing in one state on another within the United States. He is so understood by Chancellor Kent, in the passage which has been referred to: but this is undoubtedly by a mistake, as the note manifestly refers to the laws of Virginia; and by an act of that state, passed on the 28th of December, 1795, it is expressly declared, that all bills of exchange drawn by any person residing in that state, on a person in the United States, shall be considered, in all cases, as inland bills. The case of Miller *vs.* Hackley, therefore, can hardly be considered as an authority for the position which it was intended to maintain. We think it cannot be so considered by the courts of New-York, since the principle supposed to be decided in that case, would seem to be directly at variance with the uniform decisions of the same courts upon the subject of judgments rendered in the tribunals of the sister states. In the case of Hitchcock *vs.* Aicken, 1 *Caines*, 460, all the judges seem to have treated those judgments as *foreign* in the courts of New-York; and the only point of difference between them grew out of the construction of the 1st section of the 4th article of the constitution of the United States, and the act of congress of the 26th of May, 1790, ch. 38, respecting the effect of those judgments, and the credit to be given to them in the courts of the sister states.

It would seem, from a note to the case of Bartlett *vs.* Knight, 1 *Mass. Rep.* 430, where a collection of state decisions on the same subject is given, that these judgments had generally, if not universally, been considered as foreign by the courts of many of the states. If this be so, it is difficult to understand upon what principle bills of exchange drawn in one state upon another state can be considered as inland; unless in a state where they are declared to be such by a statute of that state.

It has not been our good fortune to see the case of Duncan *vs.* Course, 1 *South Carolina Constitutional Reports*, 100; but the note above referred to in 3 *Kent's Com.* informs us, that it decides that bills of this description are to be considered in the light of foreign bills; and the learned commentator concludes, upon the whole, and principally upon the ground of the decision just quoted, that the weight of American authority is on that side.

That it is so, in respect to the necessity of protesting bills of that description, was not very strenuously controverted by the counsel for the defendant. But he insists, that under a just construction of the 11th section of the judiciary act, concerning the jurisdiction of the federal courts, these bills ought to be considered and treated as inland. The argument is, that the mischief intended to be remedied by the provisions in the latter part of

that section, by the assignment of promissory notes and other choses in action, is the same in relation to bills of exchange of the character under consideration.

We are of a different opinion. The policy which probably dictated this provision in the above section, was to prevent frauds upon the jurisdiction of those courts by pretended assignments of bonds, notes, and bills of exchange strictly inland; and as these evidences of debt generally concern the internal negotiations of the inhabitants of the same state, and would seldom find their way fairly into the hands of persons residing in another state; the prohibition, as to them, would impose a very trifling restriction, if any, upon the commercial intercourse of the different states with each other. It is quite otherwise as to bills drawn in one state upon another. They answer all the purposes of remittances, and of commercial facilities, equally with bills drawn upon other countries, or vice versa; and if a choice of jurisdictions be important to the credit of bills of the latter class, which it undoubtedly is, it must be equally so to that of the former.

Nor does the reason for restraining the transfer of other choses in action apply to bills of exchange of this description, which, from their commercial character, might be expected to pass fairly into the hands of persons residing in the different states of the Union. We conclude, upon the whole, that in no point of view ought they to be considered otherwise than as foreign bills.

David Wilkinson vs. *Thomas Leland & al.*

In this cause, a bill of exceptions was taken, on which a judgment pro forma was entered, to obtain the final decision of the supreme court, as to the validity of an act of the legislature of Rhode Island.

The facts are stated in the opinion of the court.

Mr. Whipple and Mr. Wirt appeared for the plaintiff.

Mr. Webster and Mr. Hubbard for the defendant.

Mr. Justice Story delivered the opinion of the court.

This is a writ of error to the circuit court of the district of Rhode Island, in a case where the plaintiff in error was defendant in the court below. The original action was an ejectment, in the nature of a real action, according to the local practice, to recover a parcel of land in North Providence in that state. There were several pleas pleaded of the statute of limitations, upon which it is unnecessary to say any thing, as the questions thereon have been waived at the bar. The cause was tried upon the general issue; and, by consent of the parties, a verdict was taken for the plaintiffs, and a bill of exceptions allowed upon a pro forma opinion given by the court in favour of the plaintiffs, to enable the parties to bring the case before this court for a final determination. The only questions which have been discussed at the bar arise under this bill of exceptions.

The facts are somewhat complicated in their details, but those which are material to the points before us may be summed up in a few words.

The plaintiffs below are the heirs at law of Cynthia Jenckes, to whom her father, Jonathan Jenckes, by his will in 1787, devised the demanded premises in fee, subject to a life estate then in being, but which expired in 1794. By his will, Jonathan Jenckes appointed his wife Cynthia, and one Arthur Fenner, executrix and executor of his will. Fenner never accepted the appointment. At the time of his death, Jonathan Jenckes lived in New-Hampshire, and after his death his widow duly proved the will in the proper court of probate in that state, and took upon herself the administration of the estate

as executrix. The estate was represented insolvent, and commissioners were appointed in the usual manner, to ascertain the amount of the debts. The executrix, in July, 1790, obtained a license from the judge of probate in New-Hampshire, to sell so much of the real estate of the testator, as, together with his personal estate, would be sufficient to pay his debts and incidental charges. The will was never proved, or administration taken out in any probate court of Rhode Island. But the executrix, in November, 1791, sold the demanded premises to one Moses Brown and Oziel Wilkinson, under whom the defendant here claims, by a deed, in which she recites her authority to sell as aforesaid, and purports to act as executrix in the sale. The purchasers, however, not being satisfied with her authority to make the sale, she entered into a covenant with them on the same day, by which she bound herself to procure an act of the legislature of Rhode Island, ratifying and confirming the title so granted; and, on failure thereof, to repay the purchase money, &c. &c. She accordingly made an application to the legislature of Rhode Island for this purpose, stating the facts in her petition, and thereupon an act was passed by the legislature, at June session, 1792, granting the prayer of her petition and ratifying the title. The terms of this act we shall have occasion hereafter to consider. In February, 1792, she settled her administration account in the probate court in New-Hampshire, and thereupon the balance of £15 7*s.* 7*d.* only remained in her hands for distribution.

Such are the material facts; and the questions discussed at the bar ultimately resolve themselves into the consideration of the validity and effect of the act of 1792. If that act was constitutional, and its terms, when properly construed, amount to a legal confirmation of the sale and the proceedings thereon, then the plaintiff is entitled to judgment, and the judgment below was erroneous. If otherwise, then the judgment ought to be affirmed.

It is wholly unnecessary to go into an examination of the regularity of the proceedings of the probate court in New-Hampshire, and of the order or license there granted to the executrix to sell the real estate of the testator. That cause could have no legal operation in Rhode Island. The legislative and judicial authority of New-Hampshire were bounded by the territory of that state, and could not be rightfully exercised to pass estates lying in another state. The sale, therefore, made by the executrix to Moses Brown and Oziel Wilkinson, in virtue of the said license, was utterly void; and the deed given thereupon was, proprio vigore, inoperative to pass any title of the testator to any lands described therein. It was a mere nullity.

Upon the death of the testator, his lands in Rhode Island, if not devised, were cast by descent upon his heirs, according to the laws of that state. If devised, they would pass to his devisees according to the legal intendment of the words of the devise. But, by the laws of Rhode Island, the probate of a will in the proper probate court is understood to be an indispensable preliminary to establish the right of the devisee, and then his title relates back to the death of the testator. No probate of this will has ever been made in any court of probate in Rhode Island; but that objection is not now insisted on; and if it were, and the act of 1792 is to have any operation, it must be considered as dispensing with or superseding that ceremony.

The objections taken by the defendants to this act, are, in the first place, that it is void as an act of legislation, because it transcends the authority which the legislature of Rhode Island can rightfully exercise under its present form of government. And, in the next place, that it is void, as an act of confirmation, because its terms are not such as to give validity to the sale and deed, so as to pass the title of the testator, even if it were otherwise constitutional.

The first objection deserves grave consideration from its general importance. To all that has been said at

the bar upon the danger, inconvenience and mischiefs of retrospective legislation in general, and of acts of the character of the present in particular, this court has listened with attention, and felt the full force of the reasoning. It is an exercise of power, which is of so summary a nature, so fraught with inconvenience, so liable to disturb the security of titles, and to spring by surprise upon the innocent and unwary, to their injury and sometimes to their ruin; that a legislature invested with the power, can scarcely be too cautious or too abstemious in the exertion of it.

We must decide this objection, however, not upon principles of public policy, but of power; and precisely as the state court of Rhode Island itself ought to decide it.

Rhode Island is the only state in the union which has not a written constitution of government, containing its fundamental laws and institutions. Until the revolution in 1776, it was governed by the charter granted by Charles II. in the fifteenth year of his reign. That charter has ever since continued in its general provisions to regulate the exercise and distribution of the powers of government. It has never been formally abrogated by the people; and, except so far as it has been modified to meet the exigencies of the revolution, may be considered as now a fundamental law. By this charter the power to make laws is granted to the general assembly in the most ample manner, "so as such laws, &c. be not contrary and repugnant unto, but as near as may be agreeable to the laws, &c. of England, considering the nature and constitution of the place and people there." What is the true extent of the power thus granted, must be open to explanation, as well by usage, as by construction of the terms in which it is given. In a government professing to regard the great rights of personal liberty and of property, and which is required to legislate in subordination to the general laws of England, it would not lightly be presumed that the great principles of Magna Charta were to be disregarded, or that the estates of its subjects were liable to be taken away without trial, without notice, and without offence. Even if such authority could be deemed to have been confided by the charter to the general assembly of Rhode Island, as an exercise of transcendental sovereignty before the revolution, it can scarcely be imagined that that great event could have left the people of that state subjected to its uncontrolled and arbitrary exercise. That government can scarcely be deemed to be free, where the rights of property are left solely dependent upon the will of a legislative body, without any restraint. The fundamental maxims of a free government seem to require, that the rights of personal liberty and private property should be held sacred. At least no court of justice in this country would be warranted in assuming, that the power to violate and disregard them; a power so repugnant to the common principles of justice and civil liberty; lurked under any general grant of legislative authority, or ought to be implied from any general expressions of the will of the people. The people ought not to be presumed to part with rights so vital to their security and well being, without very strong and direct expressions of such an intention. In Terret *vs.* Taylor, 9 *Cranch*, 43, it was held by this court, that a grant or title to lands once made by the legislature to any person or corporation is irrevocable, and cannot be re-assumed by any subsequent legislative act; and that a different doctrine is utterly inconsistent with the great and fundamental principle of a republican government, and with the right of the citizens to the free enjoyment of their property *lawfully* acquired. We know of no case, in which a legislative act to transfer the property of A. to B. without his consent, has ever been held a constitutional exercise of legislative power in any state in the union. On the contrary, it has been constantly resisted, as inconsistent with just principles, by every judicial tribunal in which it has

been attempted to be enforced. We are not prepared, therefore, to admit that the people of Rhode Island have ever delegated to their legislature the power to devest the vested rights of property, and transfer them without the assent of the parties. The counsel for the plaintiffs have themselves admitted that they cannot contend for any such doctrine.

The question then arises, whether the act of 1792 involves any such exercise of power. It is admitted that the title of an heir by descent in the real estate of his ancestor, and of a devisee in an estate unconditionally devised to him, is, upon the death of the party under whom he claimed, immediately devolved upon him, and he acquires a vested estate. But this, though true in a general sense, still leaves his title encumbered with all the liens which have been created by the party in his lifetime, or by the law at his decease. It is not an unqualified, though it be a vested interest; and it confers no title, except to what remains after every such lien is discharged. In the present case, the devisee under the will of Jonathan Jenckes without doubt took a vested estate in fee in the lands in Rhode Island. But it was an estate, still subject to all the qualifications and liens which the laws of that state annexed to those lands. It is not sufficient to entitle the heirs of the devisee now to recover, to establish the fact that the estate so vested has been devested: but that it has been devested in a manner inconsistent with the principles of law.

By the laws of Rhode Island, as indeed by the laws of the other New-England states, (for the same general system pervades them on this subject) the real estate of testators and intestates stands chargeable with the payment of their debts, upon a deficiency of assets of personal estate. The deficiency being once ascertained in the probate court, a license is granted by the proper judicial tribunal, upon the petition of the executor or administrator, to sell so much of the real estate as may be necessary to pay the debts and incidental charges. The manner in which the sale is made is prescribed by the general laws. In Massachusetts and Rhode Island, the license to sell is granted, as matter of course, *without notice* to the heirs or devisees; upon the mere production of proof from the probate court of the deficiency of personal assets. And the purchaser at the sale, upon receiving a deed from the executor or administrator, has a complete title, and is in immediately under the deceased, and may enter and recover the possession of the estate, notwithstanding any intermediate descents, sales, disseisins, or other transfers of title or seisin. If, therefore, the whole real estate be necessary for the payment of debts, and the whole is sold, the title of the heirs or devisees is, by the general operations of law, devested and superseded; and so, pro tanto, in case of a partial sale.

From this summary statement of the laws of Rhode Island, it is apparent, that the devisee under whom the present plaintiffs claim, took the land in controversy, subject to the lien for the debts of the testator. Her estate was a defeasible estate, liable to be devested upon a sale by the executrix, in the ordinary course of law, for the payment of such debts; and all that she could rightfully claim, would be the residue of the real estate, after such debts were fully satisfied. In point of fact, as it appears from the evidence in the case, more debts were due in Rhode Island than the whole value for which all the estate there was sold; and there is nothing to impeach the fairness of the sale. The probate proceedings further show, that the estate was represented to be insolvent; and in fact, it approached very near to an actual insolvency. So that upon this posture of the case, if the executrix had proceeded to obtain a license to sell, and had sold the estate according to the general laws of Rhode Island, the devisee and her heirs would have been devested of their whole interest in the estate, in a manner entirely complete and unexcep-

tionable. They have been devested of their formal title in another manner, in favour of creditors entitled to the estate; or rather, their formal title has been made subservient to the paramount title of the creditors. Some suggestions have been thrown out at the bar, intimating a doubt whether the statutes of Rhode Island, giving to its courts authority to sell lands, for payment of debts, extended to cases where the deceased was not, at the time of his death, an inhabitant of the state. It is believed that the practical construction of these statutes has been otherwise. But it is unnecessary to consider whether that practical construction be correct or not, inasmuch as the laws of Rhode Island, in all cases, make the real estate of persons deceased chargeable with their debts, whether inhabitants or not. If the authority to enforce such a charge by a sale be not confided to any subordinate court, it must, if at all, be exercised by the legislature itself. If it be so confided, it still remains to be shown, that the legislature is precluded from a concurrent exercise of power.

What then are the objections to the act of 1792? First, it is said that it devests vested rights of property. But it has been already shown that it devests no such rights, except in favour of existing liens, of paramount obligation; and that the estate was vested in the devisee, expressly subject to such rights. Then again, it is said to be an act of judicial authority, which the legislature was not competent to exercise at all; or if it could exercise it, it could be only after due notice to all the parties in interest, and a hearing and decree. We do not think that the act is to be considered as a judicial act; but as an exercise of legislation. It purports to be a legislative resolution, and not a decree. As to notice, if it here necessary, (and it certainly would be wise and convenient to give notice, were extraordinary efforts of legislation are resorted to, which touch private rights,) it might well be presumed, after the lapse of more than thirty years, and the acquiescence of the parties for the same period, that such notice was actually given. But by the general laws of Rhode Island upon this subject, no notice is required to be, or is in practice, given to heirs or devisees, in cases of sales of this nature; and it would be strange, if the legislature might not do without notice, the same act which it would delegate authority to another to do without notice. If the legislature had authorized a future sale by the executrix for the payment of debts, it is not easy to perceive any sound objection to it. There is nothing in the nature of the act which requires that it should be performed by a judicial tribunal, or that it should be performed by a delegate, instead of the legislature itself. It is remedial in its nature, to give effect to existing rights.

But it is said that this is a retrospective act, which gives validity to a void transaction. Admitting that it does so, still it does not follow that it may not be within the scope of the legislative authority, in a government like that of Rhode Island, if it does not devest the settled rights of property. A sale had already been made by the executrix under a void authority, but in entire good faith, (for it is not attempted to be impeached for fraud;) and the proceeds, constituting a fund for the payment of creditors, were ready to be distributed as soon as the sale was made effectual to pass the title. It is but common justice to presume that the legislature was satisfied that the sale was bona fide, and for the full value of the estate. No creditors have ever attempted to disturb it. The sale then was ratified by the legislature; not to destroy existing rights, but to effectuate them, and in a manner beneficial to the parties. We cannot say that this is an excess of legislative power; unless we are prepared to say, that in a state not having a written constitution, acts of legislation, having a retrospective operation, are void as to all persons not assenting thereto, even though they may be for

beneficial purposes, and to enforce existing rights. We think that this cannot be assumed as a general principle, by courts of justice. The present case is not so strong in its circumstances as that of Calder *vs.* Bull, 3 *Dall. Rep.* 386, or Rice *vs.* Parkman, *Mass. Rep.* 226; in both of which the resolves of the legislature were held to be constitutional.

Hitherto, the reasoning of the court has proceeded upon the ground that the act of 1792 was in its terms sufficient to give complete validity to the sale and deed of the executrix, so as to pass the testator's title. It remains to consider whether such is its predicament in point of law.

For the purpose of giving a construction to the words of the act, we have been referred to the doctrine of confirmation at the common law, in deeds between private persons. It is said that the act uses the appropriate words of a deed of confirmation, "ratify and confirm;" and that a confirmation at the common law will not make valid a void estate or act, but only one which is violable. It is in our judgment wholly unnecessary to enter upon any examination of this doctrine of the common law, some of which is of great nicety and strictness; because the present is not an act between private persons having interests and rights to be operated upon by the terms of their deed. This is a legislative act, and it is to be interpreted according to the intention of the legislature, apparent upon its face. Every technical rule, as to the construction or force of particular terms, must yield to the clear expression of the paramount will of the legislature. It cannot be doubted that an act of parliament may by terms of confirmation make valid a void thing, if such is its intent. The cases cited in *Plowden*, 399 in *Comyn's Dig.* Confirmation, D, and in 1 *Roll. Abridg.* 583, are directly in point. The only question then is, what is the intent of the legislature in the act of 1792? Is it merely to confirm a void act, so as to leave it void, that is to confirm it in its infirmity? or is it to give general validity and efficacy to the thing done? We think there is no reasonable doubt of its real object and intent. It was to confirm the *sale* made by the executrix, so as to pass the title of her testator to the purchasers. The prayer of the petition, as recited in the act, was, that the legislature would "*ratify* and *confirm the sale* aforesaid, which was made by a deed executed by the executrix, &c." The object was a ratification of the *sale*, and not a mere ratification of the formal execution of the deed. The language of the act is, "on due consideration whereof, it is enacted, &c. that *the prayer of the said petitioner be granted*, and that the deed be, and the same is hereby ratified and confirmed, so far as respects the *conveyance of any right or interest* in the estate mentioned in said deed, which belonged to the said Jonathan Jenckes at the time of his decease." It purports, therefore, to grant the prayer, which asks a confirmation of the sale, and confirms the deed, as a *conveyance of the right and interest* of the testator. It is not an act of confirmation by the owner of the estate; but an act of confirmation of the sale and conveyance, by the legislature in its sovereign capacity.

We are therefore all of the opinion, that the judgment of the circuit court ought to be reversed, and that the cause be remanded, with directions to the court to award a venire facias de novo.

BIOGRAPHIES.

WILLIAM TILGHMAN.

April 30, 1827. At Philadelphia, died WILLIAM TILGHMAN, late Chief Justice of the Supreme Court of Pennsylvania, in the 71st year of his age.

William Tilghman was born on the 12th of August, 1756, upon the estate of his father, in Talbot county, on the eastern shore of Maryland.

His paternal great grand-father, Richard Tilghman, emigrated to that province, from Kent county, in England, about the year 1662, and settled on Chester river, in Queen Anne's county.

His father, James Tilghman, was secretary of the Proprietary Land Office, and brought that department into a system as much remarked for order and equity, as, from its early defects, it threatened to be otherwise.

His maternal grandfather was Tench Francis the elder, of Philadelphia, one of the most eminent lawyers of the province, the brother of Richard Francis, author of "Maxims of Equity," and of Dr. Philip Francis, the translator of Horace.

In 1762, his family removed from Maryland to Philadelphia.

In February, 1772, he began the study of the law in Philadelphia, under the direction of the late Benjamin Chew, afterwards chief justice of the supreme court of Pennsylvania, and, at the close of the high court of errors and appeals, its venerable president.

In the office of this gentleman, he continued until December, 1776.

From 1776 to 1783, partly on his father's estate, and partly at Chestertown, whither his family had removed, he continued to pursue his legal studies, and applying his intervals of leisure to the education of a younger brother. In the spring of 1783, he was admitted to the courts of Maryland.

In 1788, and for some successive years, he was elected a representative to the legislature of Maryland. His temper and habits were not perfectly congenial with active political life, nor was he at any time attracted by that career; but he took an active part in procuring the adoption of the Federal Constitution, to which he felt and uniformly declared the most profound attachment.

In 1793, a few months previous to his marriage with Miss Margaret Allen, the daughter of Mr. James Allen, he returned to Philadelphia, and commenced the practice of the law, which he prosecuted until his appointment by President Adams, on the 3d of March, 1801, as chief judge of the circuit court of the United States for the third circuit.

His powers as an advocate, but more especially his learning and judgment, were held in great respect. His law arguments were remarkable for perspicuity and ac-

curacy. He was concise, simple, occasionally nervous, and uniformly faithful to the court, as he was to the client. But the force of his intellect resided in his judgment; and even higher faculties than his, as an advocate, would have been thrown comparatively into the shade, by the more striking light which surrounded his path as a judge.

The court in which his judicial ability was first made known, had but a short existence. It was established at the close of the second administration of the national government; and although this particular measure was deemed by many as the happiest organization of the federal judiciary, yet, having grown up amid the contentions of party, in a year after its enactment, the law which erected the court was repealed.

After the abolition of the circuit court, Mr. Tilghman resumed the practice of his profession, and continued it until the 31st July, 1805, when he was appointed president of the courts of common pleas in the first district of Pennsylvania.

He remained but a few months in the common pleas. In the beginning of the year 1806, Mr. Shippen, the chief justice of the supreme court of Pennsylvania, yielded to the claims of a venerable old age by retiring from the office, and, on the 25th of Feb. Mr. Tilghman was commissioned in his place by governor M'Kean, himself a great lawyer and judge, and interested as a father in the court which he had elevated to distinguished reputation in the United States.

From the time that he took his seat on the bench at March term, 1806, for the space of more than ten years, he delivered an opinion in every case but five, the arguments in four of which he was prevented from hearing by sickness, and in one by domestic affliction; and in more than two hundred and fifty cases, he either pronounced the judgment of the court, or his brethren concurred in his opinion and reasons without a comment.

In addition to these strictly official duties, the legislature of Pennsylvania committed to the judges of the supreme court, in the year 1807, the critical duty of reporting the English statutes in force within that state. The service exacted an unlimited knowledge of the colonial legislation, and of the practice and administration of the law in the province, through a period of nearly a century. It required also an intimate familiarity with the written law of England—its history, both political and legal. In the course, however, of less than two years, it was performed; and the profession and the public are indebted to it for an invaluable standard of reference, in a department of the law before that time without path or guide.

Judicial legislation he abhorred. His first inquiry in every case was of the oracles of the law for their response; and when he obtained it, notwithstanding his clear perception of the justice of the cause, and his intense desire to reach it, if it was not the justice of the law, he dared not to administer it. He acted upon the sentiment of Lord Bacon, that it is the foulest injustice to remove landmarks, and that to corrupt the law, is to poison the very fountain of justice. With a consciousness that to the errors of the science there are some limits,

but none to the evils of a licentious invasion of it, he left it to the legislature to correct such defects in the system, as time either created or exposed.

It was not his practice to bring into his opinions, an historical account of the legal doctrine on which they turned; nor to illustrate them by frequent references to other codes, to which, nevertheless, he was perfectly competent by the variety as well as by the extent of his studies. His preference was rather to deduce the judgment he was about to pronounce, as a logical consequence from some proposition of law which he had previously stated and settled with great brevity. No judge was ever more free both in mind and style from every thing like technicality. He never assigned a technical reason for any thing, if another were at command, or if not, without sustaining the artificial reason by an explanation of its grounds. At the same time, his knowledge embraced all the refinements of the law, and he took an obvious satisfaction in showing their connexion with substantial justice.

But that quality which most exalts his judgments, is the ardent love of justice which runs through them all. His appetite for it was keen and constant; and nothing could rouse his kind and courteous temper into resentment, more than a deliberate effort to entangle justice in the meshes of chicane. Justice was the object of his affections; he defended her with the devotion of a lover.

If the common law were a science, in which the mind of a judge might speculate without impediment, as in some others, it would be natural to ask, what new principles he added to the code, or what new combinations he made to increase its vigour. It is such an inquiry that imparts interest to the biographical notices of men, who have been eminent in physics, in the higher branches of the mathematics, and emphatically of such as have been distinguished actors in the formation of political constitutions, or of new codes of law. There is a freedom and expansiveness in some parts of science, that even imagination may be invited to attend upon genius as it explores them; and the legislator especially, or the founder of new governments, is so little restrained in his movements, that the personal character of the individual becomes the pervading soul of the work, and looks out from every part of it. But the law, as a practical science, depends mainly for its value, upon retaining the same shape and nearly the same dimensions from day to day. A speculative, inventive, imaginative judge, is a paradox. No one can reasonably ask what a judge has invented or devised, or even discovered. His duty and his praise are in the faithful administration of a system created to his hands; a system of principles, the just development of which affords sufficient scope for genius, without destroying what is established, or innovating in the spirit of a lawgiver. If ever his labours approach the merit of discovery, it is when he reforms or brings to light what had a previous existence, but had been perverted or obscured.

In some particulars of great interest to the profession, the late chief justice had the merit of relieving the jurisprudence of Pennsylvania from perversion and ob-

security of this description. He reinstated a statute of indispensable use, which was imperceptibly giving way to judicial legislation—the statute of limitations in actions of assumpsit.

He led the way also, and resolutely persevered, in opening the large rivers of the commonwealth, to the great work of public improvement, by rejecting the inapplicable definitions of the English common law, which would have subjected them to the claim of the riparine owners.

But the great work, at which he laboured with constant solicitude, was the thorough incorporation of the principles of scientific equity, with the law of Pennsylvania.

The Common Law left nothing to the discretion of the judge or the monarch. It was itself the great arbiter, and ruled every question by principles of great certainty and general application. In its earliest day, a day of comparative simplicity, its general principles and forms embraced and adjusted almost every transaction; and when they did not, the authority of the common law courts was legitimately extended by new writs devised in the then incipient chancery. The refinements of later times, the invention of uses, and afterwards of trusts, the complications of trade, the defects incident to the multiplied operations of men, all tended to produce controversies which the judges of the common law could not, consistently with their integrity and the integrity of their rules, adjust with perfect effect; and hence the development of the court of chancery. It is a great misconception of that court, to suppose that it overturns the common law. Equity is a part of the common law; and a court of chancery is the homage paid by a free constitution to the integrity of the courts of common law. It restrains dishonest men from applying the general rules of those tribunals to cases which they ought not to embrace,—it extends to the upright the benefit of a rule of those courts, of which a defect in circumstance deprived them,—and it attains its purposes by a process, between parties, and through a method of relief, almost necessarily different from those of the courts of common law, but in perfect analogy with what the rules of those courts effect where they properly apply. It is no more the reproach of the common law, that it has a department of equity; than that it has a department of admiralty law, or of ecclesiastical law. There is no more reason why the original constitution of the courts of common law should be destroyed, by blending with their principles and practice, the rules of a court of chancery, than by uniting with them the rules of the admiralty. It is a question of having two courts to execute different parts of the same system, instead of one; and the experience of England, and of most of these states, shows that the purity and vigour of both law and equity, are well maintained by preventing their intercourse in the same tribunal. That their separation is unfriendly to the people, is refuted by the examples of Maryland, Virginia, and New York, and by the example of all the states in their federal capacity.

In Pennsylvania, the want of a court of chancery left her tribunals no alternative but that of at-

Her chancery history is short and tempting this difficult incorporation. striking.

There was no such court among the institutions of William Penn, or of his day. That this was the consequence of a jealousy of the principles and practice of that court entertained by the people, is not indicated by their early juridical history. It was more probably owing to a question connected with the introduction of the court, and under the influence of which it met an early fate,—in whom, according to the constitutional law of that day, the office of Chancellor ought to vest, and whether it could be legally executed, except by one, who, under the great seal of England, acted as the king's representative. The prerogative lawyers of the colony held the negative of that question; yet the alleged necessity for the court was such, and such the attachment to both its forms and principles, that the Legislature, by a mere resolution, requested Sir William Keith to hold a court of chancery; and it was accordingly opened under the proclamation of that Governor, in August, 1720. During the rule of a less popular Governor in 1736, the organization of the court was denounced by the assembly as a violation of the charter of privileges, and at the same session a bill was sent up for the approbation of Governor Gordon, establishing superior and inferior courts of equity in the ordinary way. The prerogative objection recurred; it became a party question; the bill was not approved; chancery powers were no further exercised; and Pennsylvania lost the system, because her governors and representatives could not agree by whom the office of chancellor should be held.

It may be supposed that the circles of this party feud grew larger as they advanced, and that they finally encompassed the court itself. Such probably was the case at the commencement of the revolution. Scientific equity fell under general proscription, and with some few exceptions was made to give place to a spurious equity, compounded of the temper of the judge, and of the feelings of the jury, with nothing but a strong infusion of integrity, to prevent it from becoming as much the bane of personal security, as it was the bane of science.

To remedy this evil, the days and nights of Chief Justice Tilghman were devoted,—a work suggested by his distinguished predecessor, but consummated by himself and his colleagues, who fully established the principles of methodized and scientific equity in their just sway, as a part of the common law of the land.

He achieved this work, at the same time, without the slightest innovation upon legal forms, upholding them, on the contrary, as the only instruments for the administration of equity, except where the legislature otherwise directs.

In the department of penal law he was relieved by his office from frequent labours, although he annually presided in a court of oyer and terminer for the county of Philadelphia. His knowledge of this branch of the law was extensive and accurate; his judgment in it, as in every other, was admirable. His own exemption from moral infirmity, might be supposed to have made him severe in his reckonings with the guilty; but it is the quality of minds as pure as his, to look with compassion upon those who have fallen from virtue. He was obliged

to pronounce the sentence of the law upon such as were condemned to hear it; but the calmness, the dignity, the impartiality, with which he ordered their trials, the deep attention which he gave to such as involved life, and the touching manner of his last office to the convicted, demonstrated his sense of the peculiar responsibility which belonged to this part of his functions. In civil controversies, such excepted, as by some feature of injustice demanded a notice of the parties, he reduced the issue pretty much to an abstract form, and solved it as if it had been an algebraic problem. But in criminal cases, there was a constant reference to the wretched persons whose fate was suspended before him; and in the very celerity with which he endeavoured to dispose of the accusation, he evinced his sympathy. It was his invariable effort, without regard to his own health, to finish a capital case at one sitting, if any portion of the night would suffice for the object; and one of his declared motives was, to terminate, as soon as possible, that harrowing solicitude, worse even than the worst certainty, which a protracted trial brings to the unhappy prisoner. He never pronounced the sentence of death without severe pain. His awful reverence of the great Judge of all mankind, and the humility with which he habitually walked in that presence, made him uplift the sword of justice, as if it scarcely belonged to man, himself a suppliant, to let it fall on the neck of his fellow man.

Upon the whole, his character as a judge, was a combination of some of the finest elements that have been united in that office. Among those which may be regarded as primary or fundamental, were a reverential love of the common law, and a fervent zeal for justice, as the end and intended fruit of all law. The former was enlightened by laborious study in early life; the latter was purified, like the constitution of his whole mind, by a ceaseless endeavour to ascertain the truth. In the service of these exalted affections, he never faltered. His effort in every cause was to satisfy them both; and by attention to the researches of others, patient inquiry for himself, and a judgment singularly free from disturbance of every kind, he rarely failed to attain his object. He was moreover equal to all the exigencies of his office, and many of them were great, without any such exertion as appeared to disturb the harmony, or even the repose, of his faculties; and he finally laid down his great charge, with the praise of being second to none who had preceded him.

On Monday the 30th of April, 1827, after a short illness, he terminated his earthly career, in the 71st year of his age.

RT. HON. GEORGE CANNING.

Aug. 8, 1827. At Chiswick, aged 57, the Rt. Hon. George Canning, First Commissioner of the Treasury, Chancellor and Under-Treasurer of the Exchequer of Great Britain and Ireland.

The family of Canning were originally of Foxcote in Warwickshire. George, fourth son of Richard Canning, of Foxcote, emigrated to Ireland at the commencement of the seventeenth century, as agent of the company of Londoners in the plantation at Ulster, and settled at Garvagh, in the county of Londonderry. His great grandson of the same name, marrying a daughter of Robert Stratford, esq. of Bal-

tinglass, (an aunt of the first Earl of Aldborough,) had a son named Stratford after his maternal ancestors,—the father of three sons, George, Paul, and Stratford. Of these, the eldest gave birth to the deceased statesman; the second to George, now Lord Garvagh; and the third to a numerous family, including the Right Hon. Stratford Canning.

George Canning, father of the departed statesman, was a barrister of the Inner Temple, a good scholar, and much attached to literature. He published "A Translation of Anti-Lucretius," 4to, 1766, a quarto volume of poems in the following year, and composed several fugitive productions; among others, the beautiful and affecting poetical epistle of Lord Wm. Russell, supposed to be written on the night previous to his execution, to William Lord Cavendish, who had offered to change clothes in order to facilitate his escape. It appears, however, that Mr. Canning offended his father by his marriage to a lady, who, though highly accomplished and of a congenial taste, was his inferior both in rank and fortune.

After her husband's death, Mrs. Canning attempted the profession of the stage, and performed Jane Shore to Garrick's Lord Hastings; but her talent was not sufficient to command a London engagement. She afterwards acted in various provincial companies, and successively changed her name by marriage for those of Reddish and Hunn.

The education of the future Premier was superintended by his uncle Paul, a merchant in London; but its expenses were sufficiently provided for by a small estate in Ireland, which, though inadequate as a provision for life, was amply sufficient as a fund for education. His rudimental instruction Mr. Canning acquired at Hyde Abbey school, near Winchester, under the care of the Rev. Charles Richards. Even then his early compositions were distinguished by an extraordinary vigour of mind. From thence Mr. Canning went to Eton, taking with him that talent for verses which is the great qualification for distinction at that school. At Eton, his most intimate friend was Lord Hen. Spencer, in conjunction with whom, John Hookham Frere, Robert Smith, John Smith, and others, he contributed to that celebrated display of rising talent, entitled the Microscope, published in weekly numbers, from Nov. 6, 1786, to July 30, 1787. The essays signed B., and a poem, entitled "The Slavery of Greece," are the contributions of Mr. Canning.

For several years a society had periodically met in a hall at Eaton, for the purpose of discussion. The masters encouraged the practice, for its obvious utility: it was a little House of Commons. In the miniature senate, the crown and the people had their respective champions; the advocates were as solemn, as eager for victory, and as active in obtaining it, as the more mature debaters of the Parliament itself. Mr. (now Marquis) Wellesley, Mr. (now Earl) Grey, and at a subsequent period, Mr. Canning, distinguished themselves in the intellectual warfare of this juvenile House of Commons.

From Eton, Mr. Canning, in Oct. 1787, removed to Christ Church, Oxford. His career at the University was a splendid fulfilment of the high promise he had previously given, and his compositions ob-

tained several prizes. It was at Oxford that his friendship commenced with the Earl of Liverpool; who was only of a few months older standing, having received his previous education at the Charter House. They were constantly in each other's society, and there acquired that mutual regard, which no occasional political operation at any time seriously interrupted. It was also to Mr. Jenkinson, though not entirely, that Mr. Canning was indebted for his introduction to Mr. Pitt.

It has been often repeated, that Mr. Canning was a decided Whig in his youth; but he had scarcely passed that period of his life, when he declined a seat in Parliament, offered him by the Duke of Portland, then at the head of the Whig party, alleging his political opinions as the reason.

Not many months after, the Duke of Portland himself, with more than half of the great Whig party, joined the banners of Mr. Pitt. This event took place previously to the opening of the Parliament of 1793–4, which was also Mr. Canning's first session. Mr. Canning, with the view of pursuing the profession of the law, had entered himself of Lincoln's Inn. He took his seat as member for Newtown, in the isle of Wight, to which borough he was introduced through the interest of Mr. Pitt, with Sir Richard Worsley, who retired purposely to make room for him. Though initiated into the arena of debate both at Eton and Oxford, and more particularly in town, at the debating society in Old Bond-street, he was nearly a year in the House before he assumed courage to speak. His maiden effort was in favour of the subsidy proposed to be granted to the King of Sardinia. After this, the member for Newtown was accustomed to deliver his sentiments in most debates of importance; and as the ministers were supposed to have displayed on some occasions more decision than argument, his assistance was more than usually serviceable.

In 1796, Mr. Canning accepted from Mr. Pitt the post of Under Secretary of State; and at the general election in that year, he was returned for the treasury borough of Wendover. At the same period he was appointed Receiver General of the Alienation Office; and in March, 1799, one of the Commissioners for managing the affairs of India.

On the eighth of July, 1800, he increased his fortune and interest by marriage with Joanna, youngest daughter and co-heir of Gen. John Scott, of Balcomie, an officer who had acquired great wealth in the East Indies.

In 1801, on the retirement of Mr. Pitt from power, Mr. Canning resigned his situations; and in the following year was returned for the borough of Tralee. Both in and out of Parliament, he was a powerful enemy of the Addington administration. He inveighed against that minister in the House of Commons, and ridiculed, or perhaps, to use the proper phrase, lampooned him through the press. He had joined Mr. Gifford in the "Anti-Jacobin Review," and largely contributed to that periodical. His most striking compositions were those satirical effusions of his muse, in which he openly denounced or contemptuously ridiculed the most notorious of his political adversaries. The poem of "New Morality," written in 1798, is distinguished by strength of expres-

sion and harmony, which we in vain look for in any of his other poetical pieces. If he condescended to be the Pasquin of his day, in such compositions as the "Grand Consultation" and "Ode to the Doctor," he approved himself the modern Juvenal in the spirited satire of "New Morality." The song of the "Pilot that weathered the Storm," is the most popular of the poetical effusions which he published through this medium. With these productions Mr. Canning has often been taunted, as if he had committed himself by them. He showed, however, no disposition to retract them, and adhered with constancy to the declaration made in Parliament, in a debate, in 1807—"that he felt no shame for the character or principles of the 'Anti-Jacobin;' nor any other sorrow for the share he had in it, than that which the imperfection of *his* pieces was calculated to inspire."

In 1803, when Mr. Pitt returned to the helm, Mr. Canning succeeded Mr. Tierney as Treasurer of the Navy, being then also admitted to the Council board. He continued to hold that office till Mr. Pitt's death, in 1806, when he again went into the Opposition, being returned M. P. for Sligo. But his talents rendered him invaluable to any ministry which could obtain his assistance; and it was not long before he found himself again in power, with an accession of rank, having in 1807 joined the Duke of Portland and Mr. Perceval, as Secretary of State for Foreign Affairs, and taking his seat for the borough of Hastings. It was in this capacity that he made his famous speeches on the bombardment of Copenhagen and the seizure of the Danish fleet. He also fought a duel, on a dispute arising out of the conduct of the Walcheren expedition, with the late Marquis of Londonderry, then Lord Castlereagh, who was the Secretary for War and Colonies, which terminated in Mr. Canning's being wounded, and in both going out of office. Lord Castlereagh gave the challenge; and at six o'clock on the morning of the 21st of September, 1809, the parties met near the telegraph, Putney heath. After taking their ground, they fired, and missed; but no explanation taking place, they fired a second time, when Mr. Canning received his adversary's ball in his thigh. He did not fall from the wound, nor was it known by the seconds that he was wounded, and both parties stood ready to give or receive further satisfaction, when Mr. Ellis perceiving blood on Mr. Canning, the seconds interfered. Mr. Canning was conveyed to his house, Gloucester lodge, at Brompton, where he was for some time confined; but as the bone of the thigh was not fractured, he recovered sufficiently to attend the levee on the 11th of October, and resign his seals of office, as did Lord Castlereagh also.

The quarrel excited a considerable sensation among the friends of both parties at the time; and it was understood that the late King expressed his strong disapprobation of the practice of settling ministerial disputes by sword or pistol. Mr. Canning addressed two letters to Earl Camden, (which were published,) defending the part which he had taken in the affair; but the result was his separation from the party with which he had acted; and not long after he made that which may be considered as his first demonstration in favour of

popular principles, by offering himself as a candidate for the representation of Liverpool, for which place he was elected in 1812. Mr. C. stood four times for Liverpool, and was each time elected, but never without a strong opposition. On the first occasion he had four antagonists, and his majority was 500; the numbers being, for Mr. Canning, 1631; for Gen. Gascoyne (the second member,) 1532; for Mr. Brougham, 1131; for Mr. Creevey, 1068; and for Gen. Tarleton, 11. At the second election, very great exertions were made to throw him out; but he was returned after a struggle of three days, by the retirement of his opponent, Mr. Leyland. The third election, of 1818, was distingnished by an extraordinary quantity of electioneering manœuvre, eighteen *nominal* candidates having been set up, on one side and the other, in addition to the four real ones; the majority, however, of Mr. Canning, was greater than on any occasion before. The last election of 1820, was less warmly contested, his chief opponent being a gentleman of the name of Crompton, who succeeded only in obtaining 345 votes.

In 1814, on occasion of congratulating the Prince of Brazil on his return to Europe, Mr. Canning was appointed Ambassador to Lisbon. This was considered a job by the Opposition, and formed the subject of a motion in the House of Commons; but Mr. Canning most ably defended himself and colleagues.

In 1818, Mr. Canning came into office as President of the Board of Control; but left England and abandoned his place, in preference to taking part in the proceedings against the late Queen. Subsequently, in 1822, he was named Governor of India, and was on the point of again quitting the country, having actually taken leave of his constituents in Liverpool, for the purpose of proceeding to Bengal. At that very moment, however, the death of the Marquis of Londonderry suddenly opened the situation of Secretary for Foreign Affairs to him, a post which he accepted, and held until the change consequent on the illness of the Earl of Liverpool, when it was his fortune to attain that high station for which his talents pre-eminently qualified him.

There are three great eras in Mr. Canning's political life. The first comprehends his pupilage under, and friendship with, Mr. Pitt, and extends from the period of his coming into parliament, in 1793, to the death of his great patron in 1806. In the second, which reaches to 1822, he was occasionally in place by the force of his abilities, and as often out of office from a struggle of his principles—differing from his old colleagues, (who claimed to be exclusive interpreters of Mr. Pitt's policy,) upon many vital questions, and kept, upon the whole, in subordination to men very much his inferior in talent and acquirements. The third and last period —that from 1822 to the hour of his death, was a career of progressive triumph, during which he gradually obtained an ascendancy for liberal principles in the cabinet; and, finally, thrust out those few remaining members who clung to a dark and servile policy, to make room for men whose principles had, for several years, been completely identified with the great objects of his administration. In this real, but bloodless revolution,

he necessarily had to encounter the most virulent hatred; for, "it was not only in the Roman customs, but it is in the nature and constitution of things, that calumny and abuse are essential parts of triumph."

There never was a more remarkable illustration of the character of the English people, than the effect produced by the accession of Mr. Canning to power, in 1822. In some particulars, his principles and intentions were doubtful. He had been the colleague of men, who had many acts of weakness and oppression to answer for; and though it was known that he was distinctly opposed to their views on some of the most important questions of foreign and domestic policy, it could not be felt how many evils he had averted, or how much good he had enforced. But he had been the avowed rival of Castlereagh, and that circumstance alone gave hope. In a few months, the whole temper of the country was altered. From the peace of Paris up to the moment of Mr. Canning's acceptance of high office, in 1822, the government had been in almost constant collision with the people. It was Mr. Canning's glory to show the people, by a few simple acts, that their position was changed. They at once abandoned the belief, that the administration had a settled purpose to destroy the rights of the subject. A new era was arrived: and they read a new determination to make the happiness of the many an object of importance in the deliberations of the few.

Mr. Canning's most distinguished, because most characteristic, post as a minister of state, was that of Foreign Secretary. He took, in some respects, an enlarged view of the position which Great Britain ought to occupy with relation to the other nations of the world. Whilst he was premier, the eyes of the world turned to him with alternate hope and dread. He was enthusiastically cheered by the friends of liberty every where. They regarded not so much the fortuitous causes that had unexpectedly invested him with so high and perilous a championship, or the motive, or even sincerity, of his allegiance to its tenets, as the good that he might achieve whilst exercising it, *de facto*, with a fearless spirit and a giant's arm.

He was a Briton, through and through—British in his feelings, British in his aims, British in all his policy and projects. It made no difference whether the lever that was to raise them was fixed at home or abroad, for he was always and equally British. The influence, the grandeur, the dominion of Britain, were the dream of his boyhood To establish them all over the globe, even in the remote region where the waters of the Columbia flow in solitude, formed the intense efforts of his ripe years. For this he valued power, and for this he used it. Greece he left to her melancholy fortunes, though so much alive to all the touching recollections and beauties of that devoted land, because the question of her escape from a thraldom so long, so bitter, so unchristian, was a Turkish and European, not a British question. For Britain's sake, *exclusively*, he took the determination to counteract France and the Continent, in Spanish America. With the same view, he invariably watched, and was as invariably for counteracting, the United States. He had sagacity to see into the present and latent resources of our commercial,

our navigating, our manufacturing strength. Upon the knowledge of these, actual and prospective, he took his measures; and although they were not always wisely taken, since true liberality in the intercourse of nations is, in the end, apt to prove true wisdom: still, he took them in a spirit that was British.

He made it his boast, that British policy, British interests, the hope of British sway, were ever uppermost in his aspirations and schemes. To secure these, he called, as he said, the new states of America into existence. Truly he did, so far as the share that England had in that great work was concerned; and it goes to make up the richest portion of his fame; as the earlier forecast of Henry Clay, acting upon an expanded love of human liberty, earns for *him* laurels, still richer, in the same field. If this be not the award of justice to Mr. Clay, the part which the United States *first* took in that great work, must for ever pass for nothing in our eyes. If it be not the award of justice, the glorious recollection that the United States recognised them in 1822, must be struck from history, because England recognised them in 1825. Mr. Canning's settled devotion to the principles of monarchy, his constant, and, doubtless his honest conviction, of its intrinsic superiority over all other forms for the government of man, followed him into this hemisphere. His official conferences with the French ambassador at London, record his preference of this form for the new states: agreeing here with the equally avowed predilections of France. Nor is it believed that, to the day of his death, he abated any thing of this preference, though he had too much of practical wisdom to pursue its establishment in the new states.

With all our admiration of the mental powers of Mr. Canning, whether as inherited from nature, or carried to the highest pitch by the discipline of business and study; whether we marked their efforts when brought to the most momentous trials, or only gazed at them when they dazzled in lighter ones; truth compels us to state, that he was never the political friend of this country.

It is remarkable, that long as he was in office, there is no one occasion upon which he lent his sanction to any treaty or convention with the United States. That of 1815, one of fair reciprocity as far as it goes, both as to commerce and navigation, was the work of Lord Londonderry, on the side of Britain. Its renewal in 1818, was under the same auspices. From Mr. Canning literally nothing was obtained.

It was a remarkable distinction in the life of Mr. Canning, that he climbed to the highest station that a subject can occupy, by the unaided force of his intellectual supremacy. He was, indeed, one of

> 'Fortune's jewels, moulded bright,
> Brought forth with their own fire and light;—

but he fought his way to command under great disadvantages of obscure birth and limited means. By the dint of genius and cultivation, he distinguished his boyhood, and won the patronage of the haughty dictator of English policy;—by the powers of his eloquence, he maintained for thirty-five years a complete ascendency over the most fastidious popular assembly of the world;—by a steady perseverance in the attempt to make the govern-

ment keep pace with the knowledge of the people, he destroyed the tendency of the English cabinet to repose upon prescription and influence ;—by a courageous assertion of his own claims to honourable distinction, he consolidated an administration of unequalled firmness ; —and, by a thorough knowledge of the tendencies of the age, he maintained himself in power against the most violent and the most subtle attacks of the aristocracy.

Mr. Canning was the last, as he was the youngest, of those extraordinary men who played a leading part in that great drama of British politics, which formed one of the loftiest episodes of the fearful tragedy of the French revolution. This circumstance threw around his political character a species of authority, which no comparatively modern man could have obtained. He came into public life at the early age of 22. He passed through the fever and turmoil of the days of Jacobinism, the most accomplished skirmisher of Mr. Pitt's intellectual forces. Whilst his master essayed the graver and loftier style of oratory, Mr. Canning wielded

"The light artillery of the lower sky."

He brought his literature to the aid of his politics, and accomplished as much by his pen as by his eloquence.

The eloquence of Mr. Canning was unquestionably of a more splendid and polished character than any efforts of his later contemporaries. He possessed in an eminent degree that charm of intellect, which, of all the gifts to man, is the most powerful for good or for evil—the charm of holding a mixed and divided assembly completely absorbed by the powers of the individual who addresses them; with their understandings and their feelings for the moment completely prostrate before the influence of one magic voice.

JOHN EAGER HOWARD.

October 12, 1827. At his residence, in Baltimore, John Eager Howard.

JOHN EAGER HOWARD was born on the 4th of June, 1752, in Baltimore county, state of Maryland. His grandfather, Joshua Howard, an Englishman by birth, having, while yet very young, left his father's house, in the vicinity of Manchester, to join the army of the duke of York, during Monmouth's insurrection, was afterwards afraid to encounter his parent's displeasure, and came to seek his fortune in America, in the year 1685–86. He obtained a grant of the land in Baltimore county, on which Col. Howard was born, and which is still in the family, and married Miss Joanna O'Carrol, whose father had lately emigrated from Ireland. Cornelius, one of his sons by this lady, and father of John Eager Howard, married Miss Ruth Eager, the grand daughter of George Eager, whose estate adjoined, and now makes a considerable part of the city of Baltimore. The Eagers came from England, probably soon after the charter of lord Baltimore ; but the records afford little information prior to 1668, when the estate near Baltimore was purchased.

John Eager Howard, not educated for any particular profession, was determined to that of arms by the circumstances of his country.

One of the first measures of defence adopted by the colonies, against the mother country, was the assemblage of bodies of the militia, termed flying camps. One of these was formed in Maryland in 1776, and Mr. Howard was appointed to a captaincy in the regiment of Col. J. Carvil Hall. His commission, signed by Matthew Tilghman, the president of the convention of Maryland, is dated the 25th of June, 1776, a few days after he had completed his twenty-fourth year. This corps was dismissed, however, in the December of the same year, congress having required of each of the states to furnish a certain portion of regular troops, as a more effective system of defence. On the organization of the seven regiments which were to be furnished by Maryland, Captain Howard, who had been retained by the wish of the commissioners empowered to appoint officers, was promoted to a majority in one of them, the 4th, under his former commander, Col. Hall. His commission is dated 10th of April, 1777. On the 1st of June, 1779, he was appointed lieutenant colonel of the fifth, and in the following spring he was transferred to the sixth; and finally, after the battle of Hobkick's Hill, he succeeded to the command of the second, in consequence of the death of Lieut. Col. Ford, who never recovered from a wound received in that battle.

To the services of Col. Howard, during the war, his contemporaries bear honourable testimony. In the chivalrous and hazardous operations of Greene in the south, he was one of his most efficient and conspicuous coadjutors.—"At the battle of Cowpens," says Lee, "he seized the critical moment, and turned the fortune of the day. He was alike conspicuous, though not alike successful, at Guilford and the Eutaws; and at all times, and on all occasions, eminently useful." Besides the battles just mentioned, he was in the engagements of White Plains, of Germantown, of Monmouth, Camden, and Hobkick's Hill. Having been trained to the infantry service, he was always employed in that line, and was distinguished for pushing into close battle, with fixed bayonet; an honourable evidence of his intrepidity, as it is well known how seldom bayonets are actually crossed in battle, even with the most veteran troops. It was at Cowpens that this mode of fighting was resorted to for the first time in the war; and the Maryland line was so frequently afterwards put to this service, as almost to annihilate that gallant corps. In this battle, Col. Howard, at one time, had in his hands the swords of seven officers, who had surrendered to him personally. During the engagement, having ordered some movement of one of the flank companies, it was mistaken by the men for an order to retreat. While the line was in the act of falling back, Morgan rode up to him, exclaiming, "that the day was lost." "Look at that line," replied Colonel Howard; "men who can retreat in such order, are not beaten." Morgan then pointed out a position which he ordered him to take, and make a stand. Without halting his men, and facing them about, he poured a sudden fire on the enemy, and then, on his own responsibility, dashed on them with the bayonet. It was on this occasion that he saved the life of the British general O'Hara, whom he found clinging to his

stirrup, and claiming quarter.—O'Hara afterwards addressed to him several letters, thanking him for his life.

Colonel Howard continued in his command till the army was disbanded, when he retired to his patrimonial estate near Baltimore. He soon after married Margaret Chew, the daughter of Benjamin Chew, of Philadelphia; a lady whose courteous manners and elegant hospitality, will long be remembered by the society of Baltimore. In November, 1788, Col. Howard was chosen the governor of Maryland, which post he filled for three years; and having, in the autumn of 1796, been elected to the senate of the United States, to fill the vacancy occasioned by the resignation of Mr. Potts, he was, the same session, chosen for the full term of service, which expired on the 4th of March, 1803.

The fortunate situation of Colonel Howard's estate, in the immediate vicinity of Baltimore, not only placed him above the want which has pursued the old age of too many of our veterans, but was the foundation of subsequent opulence. The inconsiderable town which, at the close of the late war, numbered less than ten thousand souls, has since, under the influence of that liberty which he aided in asserting, expanded to a city of seventy-two thousand, embracing, by degrees, within its growing streets, the venerable shades which sheltered the retired soldier. An old age, warmed and enlivened by such topics of grateful reflection, is the most enviable of the conditions of human life, as well as an object of the utmost veneration and regard. Towards the soldier of the Cowpens, this regard was felt, not only by his immediate neighbours, and by his companions in arms, but by the most eminent worthies of his day. The "Father of his country," in more than one letter, expressed to him his confidence and esteem. In one, he regrets Colonel Howard's declining to accept a post, as a loss both to himself and to the public, and requests, in another, the interposition of a gentleman in Philadelphia, to induce the colonel's acceptance. "Had your inclination," says Washington in his letter to Colonel Howard, "and private pursuits, permitted you to take the office that was offered to you, it would have been a very pleasing circumstance to me, and, I am persuaded, as I observed to you on a former occasion, a very acceptable one to the public. But the reasons which you have assigned for not doing so, carry conviction along with them, and *must, however reluctantly, be submitted to.*"

At his death, colonel Howard was the highest officer in rank in the continental service, except General Lafayette—Gen. Sumpter, who is still living, having been an officer of militia, and without any continental commission.

THOMAS ADDIS EMMET.

November 14th, 1827.—At New-York, in the sixty-fourth year of his age, Thomas Addis Emmet.

Mr. Emmet was born in the city of Cork, Ireland, in the year 1764, being the second son of Robert Emmet, a respectable physician, and a lady whose maiden name was Mason; a woman of superior understanding and accomplishments. He was originally intended for the medical profession, and after completing his classical studies at Trinity

College, Dublin, commenced his preparatory professional studies at the university of Edinburgh, where he graduated in September, 1784, as M. D.

While in that university, he evinced the same untiring industry, and profound genius, which, at a later period of his life, and in another hemisphere, made him pre-eminent at the bar. The thesis, prepared according to the statutes, at the time of taking his degree, was selected for its merit, and appeared, among the best dissertations produced at that university, in the Thesaurus Medicus published at Edinburgh by Smellie, the naturalist. His inclinations, however, obviously tended to forensic pursuits, and so conspicuous was he at this early period as a speaker, that we find him acting as president of no less than five debating societies. One of these societies, termed the speculative, was not confined to topics connected with the study of medicine, but embraced the whole extent of politics, metaphysics, political economy, and literature. With the view of completely preparing himself for the medical profession, he also visited the most celebrated schools of the continent, making the tour of Italy and Germany.

After attaining as much reputation as can well fall to the share of a student, he returned to Ireland, with the intention of commencing the practice of his profession. A different destiny, however, awaited him. His brother, Christopher Temple Emmet, a member of the Irish bar, of surpassing talents, was cut off by a premature death, leaving a vacancy, which it was determined that the subject of this memoir should occupy. He accordingly commenced the study of the law almost immediately after completing his medical studies. Two years were spent at London in attending terms in the Temple, and the courts at Westminster, where he often heard Erskine, then in the zenith of his fame.

He then returned to his native land; was admitted to the bar in 1791, and commenced the practice of the law in Dublin.

Shortly after his admission to the bar, he married Miss Jane Patten, the warm hearted and affectionate partner of his future life, and who showed, throughout the long and severe trials to which his political course subjected him, how justly she appreciated the character, and coincided in the views of the patriot of Ireland.

Mr. Emmet very soon rose to distinction at the Irish bar. He rode the circuit with Curran; to whom, in the opinion of many, he was superior in talents, and unquestionably in legal attainments, and general information.

This, however, was not the time for him to realize his anticipations of legal distinction. The condition of Ireland was such as to engross the constant thought of all who regarded her as their country. For ages she had been suffering under the most monstrous system ever devised by a bigoted and unjust government to oppress, impoverish, and enslave a conquered people. The resources and industry of Ireland had been regarded by their English neighbours as the legitimate objects of English cupidity, and the policy of the government had been directed, so as easiest to appropriate them to the use of the more favoured subjects of the empire. While

this policy had been acted upon until it seemed to have become the fundamental law of the kingdom, and while the efforts of the government had been directed rather to perpetuate so much of this system as could be preserved, than to reform it altogether, the progress of society in political science and intelligence, brought the Irish people into direct collision with the British government. For several years previous to the period alluded to, they had shown symptoms of impatience at their galling yoke, which should have warned England of the danger of persisting in her infatuated policy. But the French revolution kindled a flame, which found in Ireland materials too well prepared to extend the sphere of its action. The doctrines of freedom promulgated in that moment of enthusiasm, met with a ready response from thousands of Irishmen, oppressed and degraded, but still sanguine and enthusiastic. They saw in the revolutionary movements of France, a new ground of hope for Ireland, and they determined to use the favourable conjuncture, to effect, if not the emancipation, at least some melioration in the condition of their country.

With this view, in 1791, the association of United Irishmen was instituted, for the purpose of removing the differences previously existing between the Catholics and the Protestants, and of uniting all Irishmen, of whatever faith, into one party, aiming to remove the grievances of which the country so justly complained. Their object was at first the repeal of the Catholic laws; but as they soon found that the influence of the British cabinet was so powerful over the Irish government, as to prevent any hope of success while the connexion continued, they began to regard freedom as attainable only through the medium of révolution. The short-lived administration of Lord Fitz William, only raised their expectations to blast them the more cruelly; and the decided manner in which all movements towards Catholic emancipation were repressed, by extinguishing all hope of constitutional relief, taught them that their sole chance of success was in an independent government.

The societies of United Irishmen were accordingly revived, in 1795, with increased strength, and the leaders of the revolutionary movements began to enrol their names among their members. These associations were organized on the footing of secret societies, and their members were bound by the most sacred oaths to their obligations as United Irishmen. Differences in point of religious faith were gradually forgotten, and they were soon all united as one party in the cause of their common country.

These societies, however, by their constitution, could not comprehend more than thirty-six members, and in order to bring them to act together, a system of representation by committees was instituted in an ascending order, from baronial, county, provincial, to national committees. This constitution was framed by a delegation from various societies convened at Belfast May 10th, 1795.

The national committee consisted of five delegates from each provincial; the provincial, of three delegates from each county; and the county, of two delegates from each baronial committee, which

was formed by a similar delegation from the various societies within the barony. Where the societies in the barony amounted to more than eight, two or more baronial committees were instituted, with the view of preventing any one committee from becoming too numerous. These committees were elected by ballot, once in three months, and the several subordinate committees reported their proceedings to the next highest committee, until the communication reached the national committee. At the head of this organization, comprehending half a million of persons, was an executive committee, of which Mr. Emmet was a member, and which was in effect a national government. Funds were raised by monthly subscriptions, and were paid into a national treasury. As the plan of organization was matured, it became more apparent that force must be finally resorted to, and a military department was engrafted upon the civil department the latter part of the year 1796, and was mostly composed of the same persons. In order to avoid giving alarm, the ordinary denominations were preserved. The secretary of the primary societies was commonly the sergeant; the delegate from five societies to a baronial committee, was the captain, and the delegate to the next grade was a colonel.—These officers were elected, but all of a higher rank were appointed by the executive. Adjutant generals were also appointed by the executive, and through these all military communications were held with the counties. The several societies were thus formed into an organized military body, and each man was directed to provide himself, as far as practicable, with arms, and the necessary munitions of war.

A military committee was formed in 1798, to prepare a plan of operations, and measures were taken to procure aid from France. This aid, however, was to be chiefly limited to arms and money. The number of troops asked for did not exceed 10,000 men. The committee was induced to ask for this small number of troops, because, first, they did not wish to excite any jealousy among their countrymen of foreign interference; and, secondly, they were unwilling to give to France too strong a footing in Ireland. Their object was to render Ireland independent under a republican government; and though desirous of the aid of France, they sought it as from an ally, and not as from a protector.

With these views Mr. Emmet joined the association of United Irishmen in 1796, and his talents and character soon obtained him a place in their chief executive committee. In taking this step he gave a most signal proof of his disinterested patriotism. His rank in society, and intellectual powers, would have secured to him the highest stations, had he chosen to join the court party. Fortunately for his true fame, he determined otherwise, and directed all his energies to obtain for his country her political and religious rights.

While in the executive, which was from January until May, 1797, and again from December until March, 1798, Mr. Emmet was most efficient in properly organizing the association. Before, however, they were ready to declare themselves openly, the government discovered their inten-

tions through the treachery of one Thomas Reynolds, who had so far obtained their confidence as to be appointed a provincial delegate from Leinster, and a colonel of a regiment.

In consequence of his disclosures immediate steps were taken to arrest the leaders, and on the twelfth of March, Oliver Bond, and twelve others, were taken into custody at Bond's house, and other distinguished friends of the revolution were arrested at the same time in other places. A proclamation was also issued, announcing the existence of the conspiracy, and the military authorities were authorized to employ the most summary measures to suppress it. Mr. Emmet of course was included among the number arrested, and was thrown, with many others, in the prison of Kilmainham, in Dublin.

This arrest of the leaders, however, did not prevent the general rising, which took place on the 23d of May following, the day appointed for that purpose. As the time approached, the dreadful notes of preparation were manifest in all parts of the country. In the interior the peasantry began to move in large masses to some central points. Night after night they were known to be proceeding along unfrequented roads to their places of rendezvous. The cabins throughout large tracts of country, were either deserted, or found to contain only women and children. The lower classes that were in the habit of flocking to the cities for employment were no longer to be found in their usual places of resort. A general consternation prevailed. Even the measures taken on the part of the government promised no security. On the contrary, from their arbitrary and despotic character, they only tended to exasperate the spirit of disaffection. Martial law was proclaimed, and the people were sent in droves to the prisons, until they could contain no more. Prison ships were then employed, and many of the conspirators were informally executed, and many who were innocent were put to death in a summary manner. In this state of things, upon the appointed day the explosion took place. Deprived of their chosen leaders, the direction of the revolutionary movements fell into the hands of less competent men. After a short but sanguinary struggle, and some partial successes in the counties of Wexford and Wicklow, the insurgents were defeated, and entirely dispersed at the battle of Vinegar Hill, by the army under the command of General Lake. By the latter end of July the government had entirely succeeded in crushing the rebellion. Shortly after this a French army, about 1200 strong, under General Humbert, landed at Killala, on the north-west coast of Ireland, on the 12th of August. It was, however, too late to rally the Irish insurgents, and in less than a fortnight the French were compelled to surrender at discretion. This terminated the struggle for Irish independence, and we now return to the subject of our biography. During his confinement in Dublin prison, Mr. Emmet was treated with great severity, through the malignant disposition of the chief gaoler. Twenty of the state prisoners were confined in this prison, each in a room about twelve feet square, with a common hall, where, by the connivance of a subordi-

nate keeper, they were permitted to assemble after midnight, and where they remained until nearly the dawn of day, when they quietly retired to their several rooms. Mr. Emmet was denied all intercourse with his family; but his wife, being permitted to visit him towards the close of his imprisonment in Dublin, refused to quit the prison except with her husband.

She was peremptorily ordered to leave the room, but she positively refused, and remained with him during his confinement. It was ascertained that orders had been given to the keepers not to permit her to return, in case she left the room where her husband was confined. This order, however, she never gave them an opportunity of carrying into effect during the time of her husband's imprisonment in Dublin, except on one occasion, and then under peculiar circumstances. Her child, who had been left with Mr. Emmet's father, was dangerously ill, and upon appealing to the gaoler's wife, herself a mother, Mrs. Emmet was permitted to depart, at the hour of midnight, from the gaol, and the next night, at the same hour, was suffered to return to her husband without the knowledge of the gaoler.

After Mr. Emmet and his companions had been imprisoned several months, and the insurrection was crushed, a movement was set on foot by Francis Dobbs, with the concurrence of Lord Charlemont, with the view of releasing the state prisoners from their confinement.

A proposition was accordingly made to them on the part of the Irish government, the latter part of July, 1798, with the view of obtaining information from the prisoners as to their ultimate designs and expectations in their revolutionary movements. At first the government demanded names, but as the prisoners unanimously refused to compromit any person, this demand was relinquished, and Mr. Emmet, Dr. M'Neven, and Mr. Arthur O'Connor, were appointed agents on the part of the prisoners to agree upon the terms of the convention. An arrangement was finally made, after some negotiation, by which the prisoners agreed to give to the government certain information respecting the intended alliance between the United Irishmen and France, and other information respecting the intended revolution, provided it did not implicate any individuals; and the government, on its part agreed, that a general amnesty should be granted to all suspected or accused of political offences, except such as were guilty of murder; and it was also stipulated, that this should not be construed to extend to the loss of life in battle. It was also mutually agreed, that the state prisoners should go to the United States.

On the 4th of Aug. accordingly, a memoir was delivered by the agents to the government, containing the promised disclosures. Lord Cornwallis professed to be dissatisfied with this, on account of its being a vindication of the course of the revolutionists.—As the agents refused to alter it, a parol examination was resolved upon, before the secret committees of both houses of the Irish parliament. The deputies, consequently, were examined, and their examinations being committed to writing, the greater part thereof was published, with the view of justifying

the Irish government in its arbitrary measures, against a party aiming at independence and alliance with France.

The government admitted that the prisoners had complied with the agreement on their part; but as it was deemed inexpedient to liberate them at once, means were devised, on the part of the court, to prolong their imprisonment. At first, it was industriously circulated by the adherents of government, that the deputation had betrayed their political associates, by divulging their names; but the uneasiness which this report occasioned, was soon quieted by an advertisement, under their own signatures, contradicting this statement.—This advertisement they found means to convey to their friends still at large, and on the 27th of August it appeared in two of the Dublin newspapers. This bold and decided step on the part of the prisoners, exasperated the ministers, and they ordered the three agents to be debarred from all intercourse with their friends. They also resolved not to carry into effect the compact with the prisoners, and on the 16th of September, 1798, under pretence that the American minister had remonstrated against their being sent to the United States, they were told that they could not be permitted to leave their prison. Not many months after this deliberate breach of its plighted faith, the British government determined to remove Mr. Emmet and nineteen of his fellow prisoners to Fort George, on the northeastern coast of Scotland, to be held as hostages for the behaviour of their political associates still at large. Without any previous notice, they were accordingly removed to this fort, then under the command of Governor Stuart. After an ineffectual application to the Irish government, Mrs. Emmet obtained permission from the British government to share the imprisonment of her husband, and remained with him until his final liberation.

During their residence at Fort George, the Irish prisoners were treated with great kindness by Governor Stuart, who told them, upon their arrival, that it was his intention to treat them like gentlemen. This footing was of course gladly acceded to, and Governor Stuart never had occasion to repent of a noble confidence which endeared him to the prisoners under his charge.

After the peace of Amiens, the government at last determined to carry into effect its agreement with the prisoners. A list of pardons was transmitted to governor Stuart, of all the prisoners but Mr. Emmet. Gov. Stuart sent for Mr. Emmet, and told him of this omission; but could not give any information as to its being intentional or accidental. At length, the Governor told him that he would assume the responsibility of releasing him with the rest of the prisoners; and the next morning they were all discharged, and, with the exception of four, who were permitted to return to Ireland, they were conveyed in a frigate to the river Elbe, where they were landed near Hamburgh.

Mr. Emmet's health had been impaired by his long imprisonment; and, during his residence on the continent, he devoted himself to renovate his shattered constitution. The winter of 1802 was spent in Brussels, where he saw his gallant,

but ill fated brother, Robert Emmet, a short time before he embarked in that unfortunate enterprise which ended in his execution.

The following year he visited France, where he resided until 1804, when he determined to relinquish, as hopeless, any further effort in behalf of his oppressed country, and to seek an asylum in the United States.

He arrived in New-York the 11th of November, 1804. He was then about 40 years of age, with a large family, and his fortune much impaired in the course of his political career. After some deliberation between the two professions, for which he was equally well qualified, he determined in favour of the bar.

Having made an immediate declaration of his intention to become a citizen, he repaired to Washington city, where he was admitted to the bar of the Supreme Court of the United States.

He now partly determined to remove to Ohio, as his future place of residence—a choice he was induced to make from the many advantages held out at that period in the western states for men of enterprise and talent.

George Clinton, then the governor of the state of New-York, hearing of this intention, sent for Mr. Emmet, and advised him to remain in the city of New-York. The fall of General Hamilton in a duel had left an opening at the bar, which Mr. Emmet was every way competent to fill, and he earnestly pressed him to remain.

Mr. Emmet replied, that he would gladly do so, but he was not able to comply with the rules of the court, requiring three years study in the state, as a preliminary to admission to the bar.

Gov. Clinton told him, that that was not requisite ; and that if the supreme court declined giving him a license, the legislature would authorize him to practise by a special law. An informal application was then made to the supreme court, and although some opposition was made to it, a license was granted him by the court, and Mr. Emmet commenced his career as an advocate at the New-York bar.

Mr. Emmet soon became the head of the profession, and maintained that station until his death.

In 1807, indeed, he lost many of his clients in consequence of interfering in the politics of the country ; but his ability, assiduity, learning, zeal, and eloquence, finally triumphed over the political prejudices of the day ; and although he identified himself with the democratic party, many of his best clients were of opposite politics.

In 1812, the council of appointment conferred on him the office of Attorney General of the state. This selection was made, not with the view of augmenting his professional distinction, but to enable the state to avail itself of his talents in the prosecution of an offence deeply implicating the honour of the legislature. A strong suspicion prevailed, that improper means had been used to procure the incorporation of certain monied institutions ; and an indictment was found against one of the prominent agents.

Upon the trial of this cause, in the county of Chenango, an attempt was made to excite a prejudice against Mr. Emmet, who, as Attorney General, conducted the prosecution. But the attempt recoiled

on those who made it; and the overwhelming severity of his reply afforded a salutary lesson, which, ever after, secured him respectful treatment at the New-York bar.

A similar result attended the attack made upon him by Mr. Pinckney, in 1815, before the supreme court of the United States.

Yielding to an arrogant feeling, which too much predominated in the mind of the Maryland orator, Mr. Pinckney, in closing the argument in an important case, where they were opponents, alluded, in a harsh manner, to Mr. Emmet's migration to the United States.

Mr. Emmet, although not entitled to reply, rose at the moment, and, after correcting some trivial error in Mr. Pinckney's statements, alluded to the manner in which he had been treated.

It was true, he said, that he was an Irishman, and that, in attempting to rescue a brave and generous people from oppression, he had been banished from the forum and senate of his own native land; it was true that he had sought protection beneath the constitution and laws of the United States, the country of his adoption; and it was also true that his learned antagonist would never gather a fresh wreath of laurel, or add lustre to his well-earned fame, by alluding to these facts in a tone of malicious triumph. He knew not by what names arrogance and presumption might be called, on this side of the Atlantic, but sure he was, that Mr. Pinckney never acquired those manners in those polite circles of Enrope, which he had long frequented, as the representative of his country. Mr. Pinckney made no reply at the time; and a few days afterwards, being again opposed to Mr. Emmet, took occasion to make the amende honourable, by paying to his genius, fame, and private virtues, the highest tribute of respect. But though Mr. Emmet was thus prompt at reply, he was not addicted to personal discussions. His conduct towards his professional brethren was mild and courteous, and his arguments, although abounding with historical illustrations, and the noblest bursts of eloquence, were always confined to the case before the court.

As an advocate, he was unrivalled.

Thoroughly imbued with the learning of his profession, he had also made himself minutely acquainted with the political history of Europe. For many years, he was engaged in politics, and on terms of intimate intercourse with the first men of the age. He was thus enabled to bring in aid of his argument the happiest historical illustrations, and drawing on his memory, he overwhelmed his antagonists with parallels and striking contrasts, which they were not competent to explain or repel.

The great charms of his eloquence, however, consisted in his earnestness and unrivalled imagination. The most indifferent were attracted by the manner in which he made the cause of his client his own. It was obvious that all his faculties were enlisted in his success, and that this conviction was founded upon an intimate acquaintance with every fact in the case.

His fancy was inexhaustible. It enabled him to impart interest to the most dry and meagre topic. His figures were often bold, but always indicating a well regulated taste.

This play of the imagination was

not, however, to the detriment of his reasoning faculty. Logical, clear, comprehensive, and profound, he sifted every question to the bottom, and presented his argument in every point of view in which it could be exhibited. It was indeed a fault in him, that every topic which could be brought in favour of his clients, was urged to the uttermost. Men of plain sense often saw in his argument the labour of a powerful understanding and superior genius, rather than the natural inferences from the facts of the case. His manner was deeply impressive. No one that ever heard him speak could forget his dignified, but earnest attitude, his forcible and unstudied gestures, obviously springing from the impulse of the moment; his powerful and expressive voice, whose very tones carried conviction, and, above all, that noble exhibition of passion, imagination, and reason, all combining and concentrating in one powerful, and often irresistible, appeal to the hearts and understandings of the audience.

No orator knew better how to enlist his hearers on the side of his client, or to avail himself of that sympathetic feeling which, in a deeply excited audience, is communicated from bosom to bosom, until the jurors themselves, yielding to the contagion, find a justification for the verdict they determine to give, in the glistening eyes and excited countenances of the surrounding spectators.

Mr. Emmet was naturally great. He did not, however, neglect any of the means by which ordinary men become eminent. His labour was unceasing. *Nil sine magno vita labore dedit mortalibus* was his motto. More than thirteen hours of the day were occupied in study and business. His evenings were spent in the investigation of cases, until two to three o'clock of the morning. In court, too, he was often engaged until a late hour; and he was in the habit of remarking, that about the hour of midnight he felt himself endowed with new vigour of thought and imagination.

This incessant toil he was enabled to undergo, by his uniformly temperate habits. His constitution was vigorous, and did not seem affected by his devotion to study.

When not employed in legal investigations, he often amused himself with mathematical calculations, which also principally occupied him during his confinement in Fort George. He mixed but little with the fashionable world, and rarely appeared at public dinners. The full energies of his mind were engrossed with the great and interesting topics which occupy the forensic and legislative halls.

His appropriate sphere was active life; and well did he fill the station for which nature and education had peculiarly qualified him.

Although the prime of his life was darkened by misfortune; and the hardships of imprisonment and the bitterness of exile were added to the calamities of political defeat, yet he was revered and loved in the land from which he was banished as a rebel; and in his adopted country he readily obtained the confidence of the community, mingled largely in the management of its most important business, and placed himself at the head of his profession, with an unrivalled fame as a lawyer and orator, and without a stain upon his reputation as a

man. He may be called fortunate in his life, and he was truly fortunate in his death. With an unbroken constitution and unimpaired faculties, he continued to the last in the active performance of his professional duties.

At the October term of the circuit court of the United States, in 1827, he had been engaged in several important cases, requiring great and laborious preparation. The Astor cause, involving the title to a large part of Putnam county,* had closely confined him for several days, and on Monday the 12th of Nov. he replied to Mr. Webster and Mr. Van Buren, in behalf of the plaintiffs, in a most elaborate and triumphant argument. The trial of the Sailors' Snug Harbour causes ensued, and the intense and unremitting labour necessarily bestowed in preparing those causes, without doubt, caused the attack which closed his useful life. On the following Wednesday, he was engaged in his usual manner in the trial of this case, when, during the discussion of some incidental question, the attention of the surrounding spectators was attracted to Mr. Emmet, who seemed to be resting his head upon his hand, as if indisposed. He was spoken to, but was found to be insensible. The court was instantly adjourned, and medical aid was called in, but all effort proved unavailing. The hand of death was upon him, and in the fulness of his fame, and on the very field where his laurels had been earned, he terminated his mortal career, and left a void which will not be speedily filled.

PRINCE ALEXANDER YPSILANTI.

Jan. 29, 1828. At Vienna, prince Alexander Ypsilanti, the person who may be considered as having been the first active and avowed mover in the Greek revolution.

He was the son of an Hospodar of Wallachia, who first assumed the government of that country in the year 1802. About three years after his installation as a prince, Ypsilanti's father received a summons from the sultan, to attend him at Constantinople. But knowing that his obedience to this summons would most probably cost him his head, he determined on retiring to Russia, with his family and suite. Here Alexander, his son, chose the military profession, and accordingly entered the Russian army; where, in several battles against the French, he obtained considerable distinction, and was at length promoted to the rank of major-general, and aid-de-camp to the emperor. Previously to this, however, he had received a wound, which deprived him of his right hand. It was, no doubt, on account of his military talents and success, no less than his distinguished birth, that he was fixed upon by the members of the Ἑταιρεία, as a competent person to commence the revolution in Wallachia and Moldavia. His name must therefore unquestionably be transmitted to posterity in immediate connexion with the origin of this noble cause. But still, judging from his after actions, as well as the unfortunate results of his proceedings in the principalities, it must be confessed that the choice was not a happy one. He

* Note Vide Supra, page 45.

evinced little of that character which belongs to a real patriot, and which must distinguish a popular leader, if he would deserve and maintain his station in the public eye. Instead of mixing with his army, and seeking to gain the personal favour of his soldiers, he always kept himself strictly apart from them. In fact, to so high a pitch did he carry this feeling of exclusiveness, that, whenever he was stationed for any time on a particular spot, he used to cause to be marked out a precise point, which he called *the sacred way*, and beyond which no one was allowed to pass but himself and his own brothers. This, no doubt, evinced a kind of feeling, in regard to his relationship with those about him, which, in a cause like that which he was professing to espouse, totally disqualified him from fulfilling the duties of his station, or satisfying the hopes and wishes of those who had placed him there.

Upon the whole, it must be admitted that neither Alexander Ypsilanti, nor his brother Demetrius, showed those talents which are indispensible to political leaders in a struggle like that in which the Greeks were engaged. In fact, it was speedily discovered that this was the case with Demetrius; and accordingly he was displaced from his command, to live the life of a private individual in the Morea. As for Alexander, after the unfortunate results of the battle in which he was engaged at Dragachan, he was compelled to seek refuge in the Austrian dominions, where he remained a prisoner till his death, though it is not apparent in what way he subjected himself to this restraint, since none of his actions had offended the laws of the Austrian government.

HELEN MARIA WILLIAMS.

At Paris, aged 65, Miss Helen Maria Williams, pre-eminent among the ardent female advocates of the French revolution.

She was a native of London; but was resident at Berwick at the time of her composing "Edwin and Elfrida," a legendary tale in verse; after publishing which in 4to, 1782, under the patronage of Dr. Kippis, she returned to the metropolis. This first production was so far successful as to induce her to pursue her literary career in a variety of ways. In 1783, she produced an "Ode on the Peace;" in 1784, "Peru, a poem;" in 1786, in two volumes, "A Collection of Miscellaneous poems;" and in 1788, "Poems on the Slave-trade." Some of these, being published by subscription, were productive of considerable profit. About the last-mentioned year she visited France, and having formed there various literary and political connexions, about two years after, fixed her residence in Paris. In 1790, she published in two volumes, a novel, entitled "Julia;" also, "Letters written from France, in the summer of 1790," to which work a second and third volume were added in 1792, the previous year, 1791, having produced "A Farewell for two years to England." In the succeeding clash of factions, she was in great danger, and actually confined in the temple, but was released at the fall of Robespierre. The first fruits of her pen, subsequently to her liberation, were, "A Sketch of the Politics of France,

from May 31, 1793, to July 28, 1794; and of the scenes which have passed in the prisons of Paris; in letters;" and extending to four volumes. Her next publication was a "Translation of Paul and Virginia," the exquisite simplicity of which she destroyed, by interlarding the original with some of her own sonnets. In 1798, she produced a "Tour in Switzerland, with comparative sketches of the present state of Paris;" in 1800, "Sketches of the State of manners and opinions in the French republic;" and in 1803, a translation of the "Political and confidential correspondence of Louis XVI., with Observations," in 3 vols. 8vo. She also for some years wrote that portion of the New Annual Register which relates to the affairs of France.

During the "hollow armed truce of Amiens," Miss Williams is understood to have had some intercourse with the English government; and, upon the subsequent war, she became an object of suspicion to the French police, by whom her papers were seized and examined. In 1814, she translated the first volume of "The Personal Travels of M. de Humboldt," which she completed in 1821. Her latest performances are, "A Narrative of Events in France," in 1815;—"On the Persecution of the Protestants in the South of France," in 1816;—"Letters on the Events which have passed in France since the Restoration of 1815," in 1819; and, subsequently, a slight sketch, entitled, "The Leper of the City of Aoste, from the French."

In her latter political writings, Miss Williams became a friend of the Bourbons, and an enemy of the revolution.

DE WITT CLINTON.

February 11th, 1828. At Albany, De Witt Clinton, aged 59.

Mr. Clinton was born in Orange county, N. Y., in the year 1769. His ancestors, originally of English descent, emigrated to Ireland during the civil commotions of Charles I.; in which country they remained till about 1730, when they crossed the ocean to seek their fortunes in America. The family was early distinguished in the colony of New-York by its respectability and influence.

James Clinton, father of De Witt, was a general in the revolutionary war. He was present with general Montgomery at the invasion of Canada, and subsequently commanded in the northern division of the army. He was also at the seige of Yorktown. He was elected a member of the convention, which formed the constitution of the state, in 1777, and was for some years a member of the state senate.

George Clinton, brother of James, and uncle of De Witt Clinton, was even more eminent as a public man. During the revolutionary war, he took an active part in the contest, as commander in chief of the forces of the state. He was elected governor in 1777, and was chosen to that office for six successive triennial terms. Having resigned in 1795, he was again elected governor in 1801, for one term, at the termination of which, he was elected vice-president of the United States, which station he held till his death, in 1812.

De Witt Clinton received his elementary education at a school on Long Island, and afterwards entered Columbia College, New-York. In 1786, he was graduated with the first honours of his class.

His mind seems to have been early characterized, by the powerful energies so signally manifested in after life.

During the same year, he commenced his legal studies, and thoroughly qualified himself to understand the nature of the government and its laws. He was admitted to the bar, but it does not appear that he was much engaged in professional practice. He early imbibed a strong predilection for political life, and was soon appointed the private secretary of his uncle, George Clinton, then governor of the state.

In 1797, at the age of 28, he was sent to the legislature, from the city of New-York; and two years after, was chosen a member of the state senate. This was at the height of the greatest political excitement known in the history of the federal government. The country was divided into two parties, whose contentions were carried on with the utmost vehemence. The statesmen of '98 were obliged constantly to recur to the great principles of political science. The theory of free governments was to be settled, its elements investigated, its tendencies illustrated; and these discussions were regarded as about to give a direction to the future policy of the country. The times afforded a school for politics, which no subsequent period of our history has, or probably can, equal. Impressed with the conviction that they were struggling for the salvation of the infant republic, the respective leaders of the two parties embarked in the contest with all the zeal and animation of excited patriotism.

Mr. Clinton coincided in opinion with the popular party, and was one of the champions of democracy. In that great political contest, he bore a conspicuous part. Many excesses were no doubt committed in the struggle for power; and Mr. Clinton, as a leading member of his party, cannot escape the just censure, which, upon a calm and sober review of history, attaches itself to most of the prominent characters of that day. Mr. Clinton went with his party in securing their political ends—an important one of which was, their continuance in power;—but he seems, at the same time, to have remembered his more urgent duties to the country. In the excitements of party and power, he did not forget that he had other responsibilities and higher duties. It was a matter of necessity with him to attach himself to party, and take part in its struggles—for all around was excitement, and violent commotion. But it was no part of his character to suffer his political attachments to allure him from public duty.—At this period, he adopted principles to regulate his public conduct, which he carried with him through life. Among the prominent objects which attracted his attention, were education, the sciences, and the arts; and his aim was to foster by legislative aid those institutions of learning which have since sprung up into vigorous maturity, the ornaments and pride of his native state. He advocated liberal appropriations for Union College, and the common schools; and by his continued efforts early evinced his attachment to the great cause of public education.

He also contributed his ardent efforts towards the abolition of slavery within the jurisdiction of New-York. A plan of gradual

emancipation was adopted, which has been since carried into effect; rescuing New-York, for ever, from the stain of slavery.

Mr. Clinton took a warm interest in the measures relative to the Indian tribes within the territory of the state. He believed that they had rights, and although their territory had been formally vested by treaty in the state, and was held by them as sub grantees, he uniformly acted with the friends of the aborigines, in securing to them certain immunities, and for the general melioration of their condition.

The cause of internal improvement occupied his attention even at this early day. In 1800, he advocated a bill "for opening and improving certain great roads within this state." The bill did not then pass. It is, however, worthy of observation, that at the very commencement of his career, he indicated those traits of character, which subsequently raised him so high in the estimation of the community.

Mr. Clinton continued in the state legislature for five years, actively engaged, as appears from the journals, in all the subjects of state legislation. His zeal for his party continued unabated, and as one of its organs, he commenced a controversy with Governor Jay, in relation to the council of appointment, in which he claimed, as a member, a co-ordinate right of nomination, with the governor. This claim was resisted by Governor Jay, and in consequence of his refusing to permit the members of the council to nominate, and the refusal on their part to act until that claim was acceded to, all the officers of the state held over, for one year, when the dispute was finally settled by an amendment to the constitution in 1801, establishing the principle contended for by Mr. Clinton.

In 1802, at the age of 33, Mr. Clinton was appointed a senator of the United States. He appeared at the seat of government shortly after the election of Mr. Jefferson to the presidency, and during the excitement produced by the extraordinary attempt to elevate Aaron Burr to that office. Mr. Clinton advocated the amendment, which was incorporated into the federal constitution altering the mode of electing the president. The object of the amendment, was to prevent the possibility of defeating the choice of the people, in the future elections of their chief magistrate.

Mr. Clinton, with his habitual regard for the aborigines, voted for the treaty with the Creek Indians, in 1803. This treaty confirmed the right of the Indians to their territory in Georgia, and guarantied to them the title and peaceful possession of the soil.

Whilst a member of the senate, he delivered a speech upon the navigation of the Mississippi, which was deservedly admired for its power of thought and argument. The free navigation of the Mississippi, together with the privilege of using New-Orleans, as a port of deposite, had been secured to the United States by a treaty with Spain, in 1795. The provisions of this treaty were violated, in 1802, by the Spanish intendant of New-Orleans, who prohibited, by a proclamation, the citizens of the United States from depositing their merchandise at that port. The federal party, with Gouveneur Morris and Mr. Ross at their head, called loudly for

an immediate appeal to arms; deeming the insult and injury to the nation too great to admit of any delay. On the other hand, Mr. Jefferson, and the democratic party, were in favour of a more peaceable adjustment of the difficulties, principally, because a negotiation had been commenced for the acquisition by purchase, of the Louisiana territory. Mr. Clinton delivered the views of his party in the speech referred to, contending with great force in favour of moderation and delay; not only as expedient, but as right, until the issue of the negotiation could be ascertained. These views, the justice and policy of which have never been since controverted, prevailed.

The acquisition of Louisiana, was the result of this policy. And it is not the least of the benefits of Mr. Clinton's political career, that he contributed by his vote and influence to the adoption of this measure, which has added so much to the strength and prosperity of the nation. The last vote Mr. Clinton gave in the senate of the United States was to confirm the treaty for the acquisition of Louisiana.

He retired from the senate, after a term of only two years, in consequence of his election to the Mayoralty of New-York—at that time, an office of great emolument, patronage, and distinction. He was chosen mayor, in 1803, and was annually re-elected till 1815, with the exception of two years, viz: 1807, when Colonel Willett acted as mayor, and 1810, when Judge Radcliff, by a party vote, was put in his place.

He discharged the duties of the mayoralty with much assiduity. As its chief municipal officer, all his efforts were directed to the prosperity of the city. He was zealous in encouraging its public institutions, literary and charitable, and in promoting its interests by wise municipal regulations. Under his auspices, the New-York Historical Society, the New-York Academy of Arts, and other public societies, were incorporated; the City Hall was founded; the Orphan Asylum established; free schools were fostered and encouraged; laws were introduced for the improvement of prison discipline, and for the more effectual prevention of crime; a plan for the fortification of the city was carried into execution; a new system of quarantine regulations was established; and vigorous means were adopted, through an active police, to guard the public morals, and preserve the peace. When called upon by his office to preside in the courts of justice, Mr. Clinton displayed great legal knowledge. He was admirably qualified for his station, always useful, ardent, active, warmly advocating the cause of public improvement and sound morals; and materially augmenting, while mayor, his claims to public confidence and favour.

New-York is greatly indebted to Mr. Clinton for his early efforts to advance its prosperity. During the war, and the turbulent period which preceded it, it required no ordinary effort to regulate its municipal concerns. The city, in those times of excitement, presented a most difficult theatre of action. The many occasions of unlawful disturbance, the restlessness of the public mind, the opportunity for concert in action, the irritability of the multitude, the violence of party spirit, were all so many counteracting causes to obstruct the success-

ful operation of the laws. The mayor was surrounded by numerous embarrassments, but his prudence and fortitude surmounted them all. He discharged the responsibilities of his station, to the satisfaction of the public, and to the advancement of his own character. In 1815, he retired from office, and continued a private citizen, until elected the governor of the state.

During the term of his mayoralty, Mr. Clinton held at the same time other important public stations. In 1806, '7, '8, '9, '10 and '11, he was a senator, and in 1812, and '13, the lieutenant governor of the state. During the whole of this period, he took an active part in its legislation, and in the various measures of its internal policy. He was, at this time, one of the most conspicuous men of the state, and his influence on its politics was very extensive. The aspiring activity of his mind would not allow him to act an inferior part in the political regulation of its affairs. He was foremost in the ranks of public men, directing and controlling, not guided and governed. Early embarking in political life, and regarding office not only as the honourable means of support, but as the great object of his ambition; his talents and his ambition, together with his desire of being useful, always secured to him a predominating influence in the councils of the state.

In 1812, whilst Mr. Clinton was lieutenant governor, war was declared against Great Britain. The opinions and conduct of Mr. Clinton, in relation to this event of our national history, require a particular notice. He was opposed to the war solely on the ground of expediency. He did not deny that the injuries of our country were sufficient to excite the indignation of every American citizen. But this strong appeal to his feeling was overcome by the sober convictions of his judgment. The wrongs of which we justly complained, he felt to be mainly growing out of the struggle between the continental powers, and incident to the state of protracted warfare. Besides, the interests of the country were all on the side of peace. With these views, Mr. Clinton opposed the measures of the war party, though unsuccessfully. But notwithstanding his disinclination to war, it was no sooner declared, than he stood forth to defend his country. It was sufficient that a course of policy had been decided upon by the constituted authorities, to command his animated co-operation. To waive his private opinion, and yield to the claims of his country, was with him both the duty of patriotism, and the suggestion of wisdom. He accordingly aided, in his public capacity, the progress of those military preparations, which, for a time, "covered our waters, and darkened our land;" he exerted his activity and influence in rallying the energies of the state, and in drawing forth its resources against the enemy. He also volunteered to the governor his personal services as commander of a portion of the forces of the state; but from political jealousy, this offer was declined.

When the presidential election came on in 1812, Mr. Clinton's opinions and character recommended him to the advocates of peace, as the candidate in opposition to Mr. Madison. The prospect tendered to the nation in the event of his success was, that being

unpledged to any particular opinions or men; he would pursue the interests of the country, unembarrassed by party or local considerations. Mr. Clinton met with a strong support, but failed in the contest. The votes were, for

James Madison 128
De Witt Clinton 89

Peace was ratified not long after.

Mr. Clinton, by allowing his name to be used in opposition to Mr. Madison, alienated from him many of his political friends. He was denounced as having abandoned the party, and gone over to the "enemy" in perilous times. It was said that, tempted by the honours of office, and by the prospect of success, he was led astray through his aspiring ambition. Mr. Clinton's age, and some of the circumstances of the contest, gave weight to the charge. These party differences, though forgotten for a season, were afterwards remembered to his disadvantage.

In 1815, Mr. Clinton became a private citizen. This year was the only one, from the commencement of his public career, in which he had not occupied some public station.

In 1816, he was appointed a canal commissioner, and president of the board.

The important agency of Mr. Clinton in establishing the canal policy, demands a brief statement of the measures which led to its final adoption.

In 1808, a resolution passed the legislature, authorizing the surveyor general, Simeon De Witt, "to cause an accurate survey to be made of the rivers, streams and waters in the usual route of communication between the Hudson river and lake Erie." Mr. Clinton was a member of the senate at the time, and supported the resolution.

In 1809, Mr. Geddes, the engineer, made a report to the legislature, and by his surveys, it was satisfactorily established that a canal from lake Erie to the Hudson was "not only practicable, but practicable with uncommon facility."

In 1810, a board of commissioners was appointed,* with powers to make farther surveys, the result of which "with their estimates and opinion thereon," they were required to report at the next session of the legislature.

In 1811, the commissioners made a report, confirming the practicability of the canal, and estimating its expense at $5,000,000. During this year, Mr. Clinton introduced a bill, which was passed, granting to the commissioners further powers, authorizing them to make application to the federal government for assistance, and to ascertain on what terms loans could be procured on the credit of the state, &c.

In 1812, the commissioners again reported. The report states that the application to the general government having failed, the state is thrown upon its own resources,—and that these resources are amply sufficient. The commissioners say, "it is almost a contradiction in terms, to suppose that an expenditure of five or six millions in ten or a dozen years can be a serious consideration to a million of men, enjoying one of the richest soils and finest climates under heaven." "The credit of the state is suffi-

* The members of the first board of commissioners, were Gouverneur Morris, Stephen Van Rensselaer, De Witt Clinton, Simeon De Witt, William North, Thomas Eddy, and Peter B. Porter.

cient. If therefore the legislature say, let the work be done—it will be done."

The declaration of war, in 1812, put an end to further measures upon the subject at that time. The attention of the state was taken up with military preparations, and its resources were turned from the arts of peace to the operations of war.

In 1815, the consideration of the subject was resumed, and in 1816, a new board of commissioners was appointed, of which Mr. Clinton was the president. It was deemed advisable to make another application to congress in behalf of the state; and Mr. Clinton was deputed to draw up a representation of the case. In this communication, he urged considerations of a political nature, and especially the importance to the union of the proposed system of internal improvements. "These improvements," he adds, "are peculiarly fit for a republic. They contribute equally to the safety and opulence of the people, and the reputation and resources of the government. They are equally desirable in reference to the employments of peace and of war. In whatever light they are viewed, they seem to combine the substantial glories of the most splendid and permanent utility."

The application to Congress, however, did not succeed; and the alternative was presented to the state, either of abandoning a work of so much importance to its prosperity, or of carrying it on by its own enterprise, energy, and resources.

In 1817, Mr. Clinton, on behalf of the commissioners, submitted a report containing a plain statement of facts, and exhibiting in detail the estimates of the engineers, the probable expense per mile, the character of the soil, &c. with various local information.

The whole expense of the Erie canal was estimated at $5,000,000; and no doubt was entertained that, by the creation of a funded debt, the work could be accomplished without the imposition of taxes. The commissioners state that "their investigations have shown the physical facility of this great internal communication, and a little attention to the resources of the state will demonstrate its financial practicability." They, therefore, recommended the immediate commencement of the canal.

A bill was accordingly introduced into the legislature "respecting the navigable communications between the lakes and the Atlantic Ocean." The friends of internal improvement urged its passage with great eloquence and power; but the bill was obliged to encounter a formidable and obstinate opposition. There was much division of sentiment, as to the practicability of the canal, and the power of the state to complete a work of such magnitude. Many, who were in favour of the undertaking, were disposed to procrastinate, when its final accomplishment seemed a matter of so much uncertainty. Many, too, who admired the plan in the abstract, were opposed to it when it became a subject of calculation, especially when the idea of taxation was brought to bear upon the question. It was thought that the people would be burthened with debt and overwhelmed with taxes; and great efforts were made to postpone the work until a more convenient season.

After a long and violent struggle, in which all Mr. Clinton's influence was exerted in favour of the measure, the friends of the ca-

nal prevailed; and in April, 1817, the law was passed, authorizing the junction, by a navigable communication, of the lakes and the Atlantic ocean. The votes, on the final passage of the bill, were, in the lower branch, 64 to 35; in the senate, 19 to 8, and in the council of revision, 3 to 2.

In the following month, Mr. Clinton was elected governor of New-York, without opposition. All parties seem to have united in the propriety of calling him, at this crisis, to the office of chief magistrate. His distinguished character and experience in public life, and his opinions in relation to internal improvement, recommended him to his fellow citizens as the individual best qualified to superintend and promote the interests of the state.

His first message to the legislature was one of his ablest official communications. He gave an exposition of his views of domestic policy, and of his opinions respecting the true interests of the state. He called the attention of the legislature to agriculture, roads, canals, common schools, colleges, the finances, militia system, criminal jurisprudence, penitentiary system, poor laws, the Indians, and the currency. It appeared evident, from his communication, that his course of policy was of an enlarged character, and that he was determined to pursue it in all its comprehensive details. His opinions had been matured by reflection and experience, and he was now ready to employ all the resources of his mind in the public service.

The system of internal improvements was a chief object of his attention. In his first message to the legislature, and in all his subsequent reports until the canal was completed, he urged the importance of persevering in the undertaking. Its advantages were urged in detail—its practicability was pointed out—the glory which would result to the state, and the prosperity which would succeed, were prophetically portrayed. As governor of the state, Mr. Clinton came forward with all his official influence in aid of the canal. In his first communication, he summed up his remarks upon it in the following words:—"The enhancement of the profits of agriculture; the excitement of manufacturing industry; the activity of internal trade; the benefits of lucrative traffic; the interchange of valuable commodities; the commerce of fertile, remote, and wide-spread regions, and the approximation of the most distant parts of the Union, by the facility and rapidity of communication, that will result from the completion of these stupendous works, will spread the blessings of plenty and opulence to an immeasurable extent. The resources of the state are fully adequate, without extraneous aid; and when we consider that every portion of the nation will feel the animating spirit and vivifying influence of these great works; that they will receive the benediction of posterity, and command the approbation of the civilized world, we are required to persevere by every dictate of interest, by every sentiment of honour, by every injunction of patriotism, and by every consideration which ought to influence the councils and govern the conduct of a free, high-minded, enlightened, and magnanimous people."

The vast project of uniting the ocean and the lakes, by a canal 363 miles in length, was, of ne-

cessity, attended with many obstacles. The physical difficulties of the work were, of themselves, sufficiently formidable to create anxiety in the mind of the governor. But these formed only a part of the embarrassments to the undertaking. A strong party arrayed itself against its execution. The governor, by some of his early official appointments, gave great dissatisfaction to his democratic friends, who, indeed, had not suported him very cordially since the war. The spirit of faction was immediately kindled. His opponents partially succeeded, in turning against him the doubts of the public concerning the practicability of the canal, and by the discipline of party they soon presented an efficient and formidable body in the legislature. Every means were taken to obstruct his policy, and to render his administration unpopular. These efforts were finally successful. For a time, the situation of Mr. Clinton was embarrassing in the extreme. He seems to have been deserted by almost all, at a time when the cordial co-operation of his fellow-citizens was necessary in giving energy and spirit to the councils of the state. He had before him the mortifying reflection that, in that trying hour, many of those whom he was striving to serve, were his inveterate opponents.

In 1818 and '19, attempts were even made to arrest the progress of the canal, by withholding the supplies necessary to carry it on. The scheme, however, failed; and with this failure, all efforts to interrupt the canal policy were abandoned. The works had now progressed so far, that their successful completion was no longer a matter of doubt.

In 1820, the election for governor took place. The opposition to Mr. Clinton was very violent, and great efforts were made to defeat his election. The Vice-President of the United States (who had formerly been a popular governor for ten years) was selected as the candidate best qualified to oppose Mr. Clinton with success. After a severe contest, the people, true to their honour and their interest, confirmed their faith in Mr. Clinton's administration. The votes were, for

Clinton,	47,447
Tompkins,	45,990

This was a signal triumph to the friends of Mr. Clinton; but it was of short duration. The spirit of party continued to harass and obstruct his administration. A bitter feeling prevailed against him in the legislature, which resulted in an open controversy between the co-ordinate branches of the government.

His opponents, though obliged to relinquish their opposition to the canal, continued their attempts to gain the ascendancy. Many of those who had uniformly voted with the friends of the canal, were now arrayed against Mr. Clinton, from party considerations. His political opponents succeeded in obtaining strong majorities in both branches of the legislature, and became predominant throughout the state. A convention was called to amend the constitution, and the gubernatorial term having been limited to two years; in 1822, when the election came on, under the new constitution, Mr. Clinton withdrew from the contest, in order to avoid certain defeat. His second administration was, nevertheless, distinguished, like the first, by his

ardent efforts to promote the prosperity of the state.

Mr. Clinton proved, by his *measures*, that he was not idle in administering the government. During the period of his administration, he recommended, and procured the adoption of, various measures of state policy.

Regarding agriculture not only as the source of subsistence, but as "the basis of our strength, and the foundation of our prosperity," he urged its direct encouragement by the formation of county societies, and the distribution of premiums. The salutary effects of these regulations were soon visible in the spirit of agricultural improvement, which sprung up in the state.

He urged the encouragement of manufactures, not merely as a measure "appertaining to the legitimate functions of the national government," but also as "demanding the weight of the influence of the state, and the assistance of the public spirit of the community."

He recommended the particular attention of the legislature to the subject of public education, and advised liberal donations to common schools, academies, and colleges. "It cannot," he remarks, "be too forcibly inculcated, nor too generally understood, that in promoting the great interests of moral and intellectual cultivation, there can be no prodigality in the application of the public treasure."

He also recommended, and obtained, liberal appropriations to the schools of medical science, and to the public institutions of charity.

He called the attention of the legislature to the penitentiary system, and to the subject of prison discipline. The important improvements which have since resulted to the community, in the increased efficacy of prison and penitentiary discipline, by the establishment of new penitentiaries, and the Auburn and Sing-Sing prisons, are greatly owing to his early exertions.

He also kept alive the spirit of internal improvement, and promoted the operations on the canal, by his constant and earnest reference to this subject in all his official communications. At the end of his administration, the canal had progressed far beyond the anticipations of all; the middle section, comprising a distance of 96 miles, was finished; and the other two sections were in a course of rapid completion. The Champlain canal was also finished throughout. Governor Clinton's administration, thus distinguished by its enlightened spirit, and by the wisdom, energy, and success of its measures, is one of the proudest in the annals of the state. The governor retired from office, with the consciousness of having left behind him the memorials of usefulness, and with the pride of having carried through his measures, in spite of the intimidations of faction, and the loss of political power.

From 1823 to 1824, Mr. Clinton continued to act as president of the board of canal commissioners, the only public office with which he was invested. He had been appointed to this office in 1816, and from that period, had discharged its duties, in addition to the responsibilities which devolved upon him as governor.

In 1824, he was removed from the board of canal commissioners by a vote of both branches of the legislature. No reason whatever was assigned to the public for this extraordinary and unexpected use

of legislative power. Mr. Clinton was one of the earliest friends of the canal; he had contributed more than any other man to its commencement and execution; he had honestly (and gratuitously) performed the duties of canal commissioner; and his competency, his integrity, and his official industry, had never been called in question.

It was imagined, that, as Mr. Clinton was now prostrate, he might be crushed with impunity. But the inconsiderateness of faction could not have been more strikingly illustrated, than by this act of political malevolence. The insult to Mr. Clinton was too great to be controlled, even by the discipline of party; and the honest indignation of the people was roused throughout the state. He was immediately nominated for governor, and gained the election by an unprecedented majority. The votes were, for

Clinton,	103,452
Young,	87,093

Mr. Clinton, upon his election, acted upon his former policy.—With the view of extending his favourite system of internal improvements, he recommended a number of local measures, many of which have been carried into operation. The Seneca and Cayuga canals, the Oswego canal, the Chemung canal, the Hudson and Delaware canal, and many other subordinate works in the great system, were all strenuously advocated and promoted by his official influence. He also recommended the construction of a state road from the Hudson to Lake Erie, through the southern counties of the state.

An attempt had been made, the year previous, by one of the subordinates of the treasury department, to bring the boats navigating the New-York canals, within the operation of the act of Congress, to "regulate commerce among the several states." Mr. Clinton resisted this claim as "unfounded and pernicious." "The consequences of such an assumption, if carried into effect, would be to annihilate our revenue arising from tolls; to produce the most oppressive measures; to destroy the whole system of internal improvement, and to prostrate the authority of the state governments." The claim was soon abandoned, by instructions from superior authority.

During the administration of Mr. Clinton, in 1825, the Erie canal was finished throughout its whole length; and it was a subject of congratulation with his friends, that he was invested with the honours of office, at the period of its completion.

The successful termination of this great work was celebrated throughout the state, with much pride and public acclamation. The canal had been commenced only eight years previously, amidst the doubts and apprehensions of the community. It was now ready for navigation, throughout its whole course, exhibiting to the people a glorious evidence of their public spirit and perseverance.

Who first projected the canal, is a point that cannot be easily ascertained, with much satisfaction. Nor is it of very great importance. The principal consideration is, "who made it?" Who carried it through? Who deserves the praise of its successful completion? The chief merit is unquestionably due to the *people of the State of New-York*. It was their measure. They understood its importance; they

furnished the resources; they countenanced it by their favour. The glory of the undertaking belongs most appropriately to them.

But whilst the glory is given to whom it is due, let honour be rendered "to whom honour." In the language of Mr. Clinton, "for the good which has been done by individuals in relation to this work, let each have a due share of credit." And Mr. Clinton himself deserves special homage and praise. He stands pre-eminent among the men who conducted the undertaking. He supported the first measure taken on the subject, and was its firm and efficient friend to the last. By his early efforts, by his unremitting exertions through good and evil report, by his zeal and perseverance, by the influence of his name and character, by his official support, he contributed more than any other individual to its triumphant issue.

Mr. Clinton does not claim the honour of projecting the canal. It had, no doubt, previously occupied the occasional attention of different individuals. It was perhaps regarded as an undertaking of more than probable utility, and as an enterprise, which, if executed, would produce important advantages to the state. But the merit of Mr. Clinton consists in this—that whilst the public generally regarded the canal in the light of a splendid *project*, he considered it not only as a practical, but a practicable undertaking. He looked upon it as *a measure to be accomplished.* He looked upon it as a work, which, although it would consume much time, labour and expense, was nevertheless within the scope and power of present resources.

In this, he displayed the profound and practical energy of his mind. He was the man the emergency required. There was occasion for great firmness and resolution. The execution of so vast a design required much perseverance—an active, untiring zeal in its prosecution, and a firm conviction of its ultimate success. Even after it was commenced, the public were startled at the magnitude of the work; and required the assistance of some great spirit to encourage their hopes, to dissipate their apprehensions, to sustain their energy. It was one of those occasions, which emphatically demanded the superintendance and counsel of a great man. Mr. Clinton assumed the responsibilities of the undertaking, and carried it forward with an energy equal to its magnitude. He identified his political fortunes with the result. He animated the people, by the example of his zeal, to persevere in defiance of obstacles; he encouraged the anticipations of the friends of the measure, and put down the assaults of its enemies; he bore the brunt of a most bitter opposition, which harrassed and impeded all his efforts; and when all around was apprehension and uncertainty, he stood firm and unshaken. Never did he suffer his faith in the undertaking to waver, or his zeal to slacken. He laboured faithfully to the end, until it was brought to a successful and glorious termination. His name is identified for ever with its success.

In 1826, Mr. Clinton was re-elected governor of the state, although he was again opposed by a formidable party. The votes were, for

Clinton	99,785
Rochester	96,135

His friends made no particular exertions in his behalf; but the re-

sult of the election plainly indicated the fickleness of public opinion. It also illustrated the unfortunate tendency of party spirit, and its practical disregard of the claims of public benefactors, even when they are acknowledged and admitted.

During this year, President Adams tendered to Mr. Clinton the embassy to England; but it was declined by the governor, partly from prudential motives, and perhaps partly from an aversion to abandon his political prospects at home.

Mr. Clinton, in the administration of the state government, continued to exert his influence in a manner consistent with his former policy. The various measures of local interest engrossed his attention; and his official messages prove his indefatigable industry in aiming to promote the general welfare.

The most prominent measure of his administration, and one which he himself first recommended, was an amendment to the constitution, which made the right of suffrage universal. The questionable policy of this unlimited extension of the elective franchise has been ascribed, by many, to the desire of the governor to secure popularity. He had so often experienced the animosities of faction, that he vainly imagined this measure would in future conciliate the democracy of the country.

It may be remarked that, only four years previous, when the new constitution went into operation, the right of suffrage had been then so far extended as to satisfy the most ardent "friends of the people." There was, therefore, no call for a more liberal provision; and, in recommending it, the governor went beyond the reasonable expectations of the community.

The law, however, was no sooner officially recommended, than it was hailed with acclamation. It passed both branches of two successive legislatures with but two dissenting voices; and when it came before the people for their decision, was carried by a majority of 123,000, there being only 4000 against it. If the object of the governor was to secure popularity, he failed in the attempt; for it is a curious fact that, at the very same election, he came within a few votes of being superceded in his office. During the last term for which he was elected, his administration was not distinguished, except by an adherence to those great principles, which governed his public conduct. His useful life, however, was now about to terminate, and like the mortal career of many of the most eminent characters of the present day, by a sudden attack.

On Monday, the 11th of February, after returning from a morning ride, he was sitting in his study, when he felt a stricture across his breast. He informed his son of his unpleasant sensation, and medical aid was sent for; but before any assistance could be afforded, Clinton was no more.

Death came upon him, not too early, for it found him at the height of his renown; and he sunk to the grave, with all the honours of a great man.

Although his loss was felt to be a public calamity, yet it can scarcely be said to have been premature. What man dies prematurely, who ends his earthly course, in the midst of honours and full of fame? who leaves behind him the evidences of an active, useful and en-

lightened public spirit, and of a life devoted to the welfare of his fellow men?

As a statesman, Gov. Clinton was enlightened in his views; intimately conversant with the constitution, laws, and policy of his country; zealous in promoting her cardinal interests, and unwavering in his attachment to all her great public institutions. His ancestors were whigs of the revolution. Imbibing his political maxims from the old school of democracy, he was actuated through life by an ardent attachment to freedom and his country. He took an active part in the party conflicts of the day; and although provoking, by his talents and efficiency, a personal opposition, which degenerated into a species of persecution, he was still undiscouraged, and exhibited, through life, the same animated zeal for the public welfare. Mr. Clinton courted, perhaps, too much the honours of party triumph and popular favour; yet he was not satisfied with these ephemeral distinctions. He strove to identify his name with improvements and measures, which would be felt by the present and succeeding generations. Throughout his public career, he was the firm, active, and enlightened friend of public improvement. The tone and standard of his politics were much above the general aim of public men. He regarded political rank and influence as the pledges of industrious exertion, and as the incitements to public duty. His aim was to meliorate the condition of the age, by improving that of his country. His talents were not permitted to slumber. He devised new plans; brought forward new measures; called out new resources. His official messages strikingly display the comprehensiveness of his mind, the fertility of his invention, the extent of his knowledge, and his zeal for improvement. He was not, however, the speculative politician, ready to innovate, but unable to execute and achieve. On the contrary, Mr. Clinton's strong characteristic was his practical usefulness. He rarely failed in any of his measures. They were generally of such plainly practical policy, as to meet with cordial support, and, in their results, to realize his anticipations. It is such a man—the practical statesman—who alone is of any value, as a public character; and such a man was Clinton.

He was the friend of education, morals, and learning; the friend of science, and the arts; the friend of agriculture, manufactures, and of public improvement in all its forms. In short, he was the friend of every measure which had in view the advancement of society; and he contributed, in no ordinary degree, to the prosperity, power, and glory of his native state. Perhaps his lasting reputation depends as much upon the association of his services with the Erie canal, as upon the general merit of his administration. This great work completes the usefulness of his career, and consummates the greatness of his fame. Whilst its waters are confined within their barriers, and until the marks of human power are lost in the "flood of age," the stranger shall not ask in vain, "who was De Witt Clinton?" and "where are the memorials of his earthly career?"

As a judge in the criminal courts, his vigilance, ability, and impartiality, especially in cases involv-

ing the life of the offender, furnished a model worthy of imitation by all who occupy that responsible station. Believing that the certainty of punishment afforded the best security against the commission of crime, he aimed, while in the legislature, to mitigate the severity of the English criminal code, so far as it had been adopted in this state; but in his judicial capacity, he looked only to the law, and carried its judgments into effect, against such as were guilty, with commendable firmness, tempered with mercy.

In the court for the correction of errors, in which Mr. Clinton held a distinguished rank for many years, he rendered most important services to the jurisprudence of the state, by emancipating our courts from a slavish submission to English precedents.

His judgment in the case of John Van Ness Yates, vindicated not only the personal liberty of the citizen, but the integrity of the writ of habeas corpus, so justly called the safeguard of freedom. His decision respecting the binding force of the decrees of admiralty courts upon neutral powers, was still more important. The principle of the English law is, that the sentences of those courts are conclusive upon all mankind. Under the authority of this principle, a system of legalized capture, but little better than piracy, was set on foot against American commerce, and by the sanction of the petty admiralty courts of the West Indies, the property of our merchants was transferred to the coffers of the belligerents, upon the most frivolous pretences.

Against this system of rapine, Mr. Clinton raised his voice, and, in a powerful opinion, repudiated the principle, as forming no part of our national law.

The proceedings of these courts were declared to be open to investigation, as well as those of other foreign courts, their sentences subject to be overthrown upon proof, and a check was provided against the spoliations of belligerent cruisers, and the illegal adjudications of foreign courts.

Mr. Clinton was not only eminent as a statesman and a jurist. He occupied a conspicuous rank as a man of learning. His mind, strong and active, was comprehensive in its range, and successful in all its pursuits. Besides his political attainments, he was a man of letters and of general learning—a scholar, with a mind exercised in literature and science. His general acquirements in the various branches of knowledge were of a high order. He was frequently appointed to deliver discourses before the different scientific and literary societies, in which he always displayed the greatness and versatility of his powers. His various public addresses, and his official communications to the legislature, exhibit the same perspicuity, strength, and comprehensiveness of intellect. He was remarkable as a writer, rather than as an orator. But his powers of public speaking, though not brilliant, were far from being of an ordinary stamp. His delivery was plain, and often embarrassed; but his language and opinions were forcible, and his knowledge and decided character gave him great influence in a deliberative assembly.

Never did Mr. Clinton permit his mind to be inactive. His habits were those of diligence and

close application. He rose at an early hour at all seasons. When not engaged in public affairs, his attention was occupied with the pursuit of general knowledge. His reading was deep and extensive. History, political and natural, theology, metaphysics, and polite literature, all in turn, occupied his moments of leisure. He regarded his connexion with the present world as the theatre for constant exertion; and this responsibility he carried out with him energetically through life. "If there be any thing," said he, "in this world, which can administer pure delight, it is when we summon our intellectual powers—rally our mental resources."

Mr. Clinton was closely connected with many literary and scientific, as well as charitable and religious institutions. He was president of the Philosophical Society of New-York; of the New-York Historical Society; of the Academy of Fine Arts. He was a member of the American Philosophical Society, and of the principal scientific associations of this country, and of several in Europe. He likewise patronized the different societies established for religious objects. He was a vice-president of the American Bible Society; of the Missionary Society, &c., and president of various benevolent and charitable societies. His character for usefulness extended from the state to the interests of the church. He was the profound statesman—the upright judge—the distinguished scholar—the useful citizen—honourably known in all the walks of life.*

DUGALD STEWART.

June 11, 1828. At Edinburgh, aged 75, Dugald Stewart, Professor of Medical Philosophy at Edinburgh.

Dugald Stewart was the only son who survived the age of infancy, of Dr. Matthew Stewart, Professor of Mathematics in the University of Edinburgh, and of Marjory Stewart, daughter of Archibald Stewart, esq. one of the writers of the signet of Scotland. His father, of whom a biographical memoir has been given to the public by the late Mr. Playfair, is well known to the literary world as a geometrician of eminence and originality. His mother was a woman remarkable for her good sense, and for great sweetness and kindliness of disposition, and was always remembered byher son with the warmest sentiments of filial affection.

He was born in the College of Edinburgh, on the 22d of November, 1753, and his health, during the first period of his life, was so feeble and precarious, that it was with more than the ordinary anxiety and solicitude of parents that his infancy was reared. His early years were spent partly in the house at that time attached to the Mathematical Chair of the University, and partly at Catrine, his father's property in Ayrshire, to which the family regularly removed every summer, when the academical session was concluded. At the age of

* For a more particular account of Mr. Clinton, his character, productions, and public services, we refer our readers to the eloquent memoir of this distinguished statesman, by his friend, Dr. Hosack, published in quarto, New-York, 1829.

seven he was sent to the high school, where he distinguished himself by the quickness and accuracy of his apprehension, and where the singular felicity and spirit with which he caught and transfused into his own language the ideas of the classical writers, attracted the particular remark of his instructors.

Having completed the customary course of education at this seminary, he was entered as a student at the college of Edinburgh. Under the immediate instruction of such a mathematician and teacher as his father, it may readily be supposed that he made an early proficiency in the exact sciences; but the distinguishing bent of his philosophical genius recommended him in a still more particular manner to the notice of Dr. Stevenson, then professor of logic, and of Dr. Adam Ferguson, who filled the moral philosophy chair. In October, 1771, he was deprived of his mother, and he, almost immediately after her death, removed to Glasgow, where Dr. Reid was then teaching those principles of metaphysics which it was the great object of the pupil's life to inculcate and to expand.

After attending one course of lectures at this seat of learning, the prosecution of his favourite studies was interrupted by the declining state of his father's health, which compelled him, in the autumn of the following year, before he had reached the age of nineteen, to undertake the task of teaching the mathematical classes. With what success he was able to fulfil this duty, was sufficiently evinced by the event; for, with all Dr. Matthew Stewart's well-merited celebrity, the number of students considerably increased under his son. As soon as he had completed his twenty-first year, he was appointed assistant and successor to his father, and in this capacity he continued to conduct the mathematical studies in the University, till his father's death, in the year 1785, when he was nominated to the vacant chair.

Although this continued to be his ostensible situation in the University, his avocations were more varied. In the year 1778, during which Dr. Adam Ferguson accompanied the Commissioners to America, he undertook to supply his place in the moral philosophy class; a labour that was the more overwhelming, as he had for the first time given notice, a short time before his assistance was requested, of his intention to add a course of lectures on Astronomy to the two classes which he taught as professor of Mathematics. Such was the extraordinary fertility of his mind, and the facility with which it adapted its powers to such inquiries, that although the proposal was made to him and accepted on Thursday, he commenced the course of metaphysics the following Monday, and continued, during the whole of the season, to think out and arrange in his head in the morning (while walking backwards and forwards in a small garden attached to his father's house in the College,) the matter of the lecture of the day. The ideas with which he had thus stored his mind, he poured forth extempore in the course of the forenoon, with an eloquence and a felicity of illustration surpassing in energy and vivacity (as those who have heard him have remarked) the more logical and better-digested expositions of his

philosophical views, which he used to deliver in his maturer years. The difficulty of speaking for an hour extempore, every day on a new subject, for five or six months, is not small; but when superadded to the mental exertion of teaching also, daily, two classes of mathematics, and of delivering, for the first time, a course of lectures on astronomy, it may justly be considered as a very singular instance of intellectual vigour. To this season he always referred as the most laborious of his life; and such was the exhaustion of the body, from the intense and continued stretch of the mind, that, on his departure for London, at the close of the academical session, it was necessary to lift him into the carriage.

In the summer of 1783, he visited the continent for the first time, having accompanied the late Marquis of Lothian to Paris; on his return from whence, in the autumn of the same year, he married Helen Bannatine, a daughter of Neil Bannatine, Esq. a merchant in Glasgow.

In the year 1785, during which Dr. Matthew Stewart's death occurred, the health of Dr. Ferguson rendered it expedient for him to discontinue his official labours in the University, and he accordingly effected an exchange of offices with Mr. Stewart, who was transferred to the class of moral philosophy, while Dr. Ferguson retired on the salary of mathematical professor. In the year 1787, Mr. Stewart was deprived of his wife by death; and, the following summer, he again visited the continent, in company with the late Mr. Ramsay of Barnton.

These slight indications of the progress of the ordinary occurrences of human life, must suffice to convey to the reader an idea of the connexion of events, up to the period when Mr. Stewart entered on that sphere of action in which he laid the foundation of the great reputation which he acquired as a moralist and a metaphysician. His writings are before the world, and from them posterity may be safely left to form an estimate of the excellence of his style of composition —of the extent and variety of his learning and scientific attainments —of the singular cultivation and refinement of his mind—of the purity and elegance of his taste—of his warm relish for moral and for natural beauty—of his enlightened benevolence to all mankind, and of the generous ardour with which he devoted himself to the improvement of the human species;—of all of which, while the English language endures, his works will continue to preserve the indelible evidence.

As a public speaker, he was justly entitled to rank among the very first of his day; and, had an adequate sphere been afforded for the display of his oratorical powers, his merit in this line alone would have sufficed to secure him an eternal reputation.

The ease, the grace, the dignity of his action; the compass and harmony of his voice, its flexibility and variety of intonation; the truth with which its modulation responded to the impulse of his feelings, and the sympathetic emotions of his audience; the clear and perspicuous arrangement of his matter; the swelling and uninterrupted flow of his periods, and the rich stores of ornament which he used to borrow from the literature of Greece and of Rome, of France and of England,

and to interweave with his spoken thoughts with the most apposite application, were perfections not any of them possessed in a superior degree by any of the most celebrated orators of the age.

In 1790, after being three years a widower, he married Helen D'Arcy Cranstoun, a daughter of the honourable Mr. George Cranstoun, a union to which he owed much of the subsequent happiness of his life.

In the year 1792 he first appeared before the public as an author, at which time the first volume of the philosophy of the human mind was given to the world. While engaged in this work, he had contracted the obligation of writing the life of Adam Smith, the author of the Wealth of Nations, and very soon after he had disembarrassed himself of his own labours, he fulfilled the task which he had undertaken—the biographical memoir of this eminent man having been read at two several meetings of the Royal Society of Edinburgh, in the months of January and March, 1793. In the course of this year also, he published the outlines of Moral Philosophy,—a work which he used as a text-book, and which contained brief notices for the use of his students, of the subjects which formed the matter of his academical prelections. In March, 1796, he read before the Royal Society his account of the life and writings of Dr. Robertson, and in 1802, that of the life and writings of Dr. Reid.

By these publications alone, he was known as an author until the appearance of his volume of Philosophical Essays in 1810.

In the period which intervened between the publication of his first volume of the Philosophy of the Human Mind, and the appearance of his Philosophical Essays, he produced and prepared the matter of all his other writings, with the exception of his dissertation on the Progress of Metaphysical and Ethical Philosophy, prefixed to the supplement of the Encyclopædia Britannica. Independent of the prosecution of those metaphysical inquiries that constitute the substance of his second and third volumes of the Philosophy of the Human Mind, to this epoch of his life is to be referred the speculations in which he engaged with respect to the science of political economy, the principles of which he first embodied in a course of lectures, which, in the year 1800, he added as a second course to the lectures that formed the immediate subject of the instruction previously delivered in the university from the moral philosophy chair. So general and extensive was his acquaintance with almost every department of literature, and so readily did he arrange his ideas on any subject, with a view to their communication to others, that his colleagues frequently, in the event of illness or absence, availed themselves of his assistance in the instruction of their classes. In addition to his own academical duties, he repeatedly supplied the place of Dr. John Robison, professor of natural philosophy. He taught for several months during one winter the Greek classes for the late Mr. Dalzel: he more than one season taught the mathematical classes for the late Mr. Playfair; he delivered some lectures on logic during an illness of Dr. Finlayson; and, he one winter lectured for some time on Belles Lettres for the successor of Dr. Blair.

In the year 1806, he accompa-

nied his friend the Earl of Lauderdale on his mission to Paris, and he had thus an opportunity not only of renewing many of the literary intimacies which he had formed in France before the commencement of the revolution, but of extending his acquaintance with the eminent men of that country; with many of whom he continued to maintain a correspondence during his life.

The year after the death of his son, he relinquished his chair in the university, and removed to Kinneil House, a seat belonging to his Grace the Duke of Hamilton, on the banks of the Firth of Forth, about twenty miles from Edinburgh, where he spent the remainder of his days in philosophical retirement. From this place were dated, in succession, the Philosophical Essays in 1810; the second volume of the Philosophy of the Human Mind in 1813; the Preliminary Dissertation to the Encyclopædia; the continuation of the second part of the Philosophy in 1827; and finally, in 1828, the third volume, containing the Philosophy of the Active and Moral Powers of Man; a work which he completed only a few short weeks before his career was to close for ever. Here he continued to be visited by his friends, and by most foreigners who could procure an introduction to his acquaintance, till the month of January, 1822, when a stroke of palsy, which nearly deprived him of the power of utterance, in a great measure incapacitated him for the enjoyment of any other society than that of a few intimate friends, in whose company he felt no constraint. This great calamity, which bereaved him of the faculty of speech, the power of exercise, and the use of his right hand,—reduced him to a state of almost infantile dependence on those around him, and subjected him ever after to a most abstemious regimen, he bore with the most dignified fortitude and tranquillity. The malady which broke his health and constitution for the rest of his existence, happily impaired neither any of the faculties of his mind, nor the characteristic vigour and activity of his understanding, which enabled him to rise superior to the misfortune. As soon as his strength was sufficiently re-established, he continued to pursue his studies with his wonted assiduity, to prepare his works for the press with the assistance of his daughter as an amanuensis, and to avail himself with cheerful and unabated relish of all the sources of gratification which were still within his power, exhibiting, among some of the heaviest infirmities incident to age, an admirable example of the serene sunset of a well-spent life of classical elegance and refinement, so beautifully imagined by Cicero: "Quiete, et pure, et eleganter actæ ætatis, placidâ ac lenis senectus."

MARSHAL COUNT LAURISTON.

June 17, 1828. At Paris, of apoplexy, aged 60, James-Alexander-Bernard Law, Comte de Lauriston, a Peer and Marshal of France, and a commander of the Order of St. Louis.

He was the great nephew and representative in the male line of the celebrated financier Law, comptroller-general of France, and author of the Mississippi system. He was born February 1, 1768, the third son of John Law, Marshal de Camp, governor of Pondicherry, and commandant-general

of all the French settlements in India, by Miss Jean Carvalho, daughter of a Portuguese gentleman settled at Calcutta. His father died at Paris, about 1796; and, he being of the Romish communion, his younger brother, Francis-John-William Law, Esq. a merchant of London, was, in 1808, the nearest heir to his father of the reformed religion, and entered into possession of the estates in Scotland.

The deceased, at an early age, embraced the military profession, and obtained rapid promotion in the artillery. He was active, and he enjoyed the friendship of Bonaparte, who made him one of his aides-de-camp. Bonaparte also employed him on several important missions. In 1800, he commanded, as Brigadier-general, the 4th regiment of flying artillery at La Fere. In 1801, he brought to England the ratification of the preliminaries of the peace of Amiens.

After the death of the Duc d'Enghien, General Lauriston happened to be in the antechamber of the consular court of Bonaparte with M. de Caulaincourt, when the conversation having turned upon the murder of the prince, and upon the part which Caulaincourt had performed in the affair, Lauriston spiritedly exclaimed, "the First Consul has too much esteem for me, to employ me in such a transaction." The conversation grew warm, and it was only through Bonaparte's interference that the quarrel was not carried to a greater height. Though displeased with Lauriston's remark, the consul did not dismiss him, but sent him on an unimportant embassy to Italy, and contrived that he and Caulaincourt should never meet again in his presence.

M. de Lauriston was in every campaign of note in Spain, Germany, and Russia. In 1809, he penetrated into Hungary, and took the fortress of Raab, after a bombardment of eight days. He also decided the victory in favour of the French at the batttle of Wagram, by coming up to the charge at full trot, with one hundred pieces of artillery. In 1811, he was appointed ambassador to the court of St. Petersburgh. His mission, the object of which was to obtain the occupation of the ports of Riga and Revel, and to exclude English ships from the Baltic, having failed, he was employed in the Russian campaign; and, after the taking of Moscow, he was sent to the Emperor Alexander, with proposals for an armistice. Those proposals were rejected.

General Lauriston, after the retreat from Moscow, commanded an army of observation on the banks of the Elbe. During three months he defended that river with a small force, and prevented the enemy from entering Hanover. Having distinguished himself at the battle of Leipsic, he retreated to the bridge between that town and Lindenau. Finding the bridge destroyed, he plunged into the river with his horse, but was taken prisoner, and conducted to Berlin, where he was treated with much favour and kindness.

After the conclusion of the general peace, the king created him a Knight of St. Louis, Grand Cordon of the Legion of Honour, and captain-lieutenant of the Gray Musketeers, an appointment rendered vacant by the death of General Nansouty. After the 20th of March, 1815, he followed the royal household to the frontiers of France, and then retired to his estate of Riche-

court, near La Fere, without taking part in any of the transactions of the Hundred Days.

On the return of the king, Gen. Lauriston was made president of the Electoral College of the department of l'Aisne, lieutenant-general of the first division of royal Foot Guards, and member of the commission appointed to examine into the conduct of such officers as had served from the 20th of March to the 18th of July, 1815. He was created a commander of the Order of St. Louis, in 1816; and he presided, in the course of the same year, over the council of war appointed for the trial of Admiral Linois, Count Delaborde, &c. On the 6th of June, 1823, he was raised to the dignity of Marshal of France, in the room of the Prince of Eckmuhl, deceased, and appointed commander-in-chief of the second corps of reserve of the French army in Spain.

DUKE OF SAN CARLOS.

July 17, 1828. At Paris, of aneurism in the heart, aged 57, the Duke of San Carlos, ambassador from Spain to the court of France, aud formerly to England.

He was a native of Lima, and received his education in the principal college of that city, the rector of which was his governor. At the age of seventeen he went to Spain, where he progressively attained his military rank, became a grandee of the first class, counsellor of state, &c. He commenced his military career as colonel in the second regiment of Majorca infantry, of which his uncle was colonel-proprietor. He served in the Catalonian campaign, in the war of 1793; and as a volunteer in the Toulon expedition.

On the death of his uncle, Colonel San Carlos was appointed chamberlain, and afterwards governor, to the Prince of the Asturias, now Ferdinand VII. His system of education, however, not being in accordance with the political views of Godoy, Prince of Peace, the influence of that profligate adventurer deprived him of his honourable post. Yet, such was the consequence of San Carlos, that he was named Major Domo to the Queen in 1801, when the court was occupied with negotiating an alliance between the heir of Spain, and his cousin, a princess of Naples.

In 1805, he was invested with the office of Major Domo to Charles IV.; but in 1807, some time previously to the imprisonment of the Prince of the Asturias, through the intrigues of Godoy, in the palace of the Escurial, he was removed from court, and appointed to the viceroyship of Navarre. Three months after his assumption of that government, he was ordered to consider himself a prisoner in the citadel. This measure is understood to have been taken in consequence of a report that the Duke of San Carlos had ventured to advise the heir-apparent to deprive the queen-mother of all political influence in the event of the king's death, his majesty being at that time very ill, and also to put Godoy upon his trial. On the 28th of October, 1807, Ferdinand's papers were seized, his person placed in durance, and he and his counsellors declared to be traitors. In the subsequent investigation of the Escurial, the duke was subjected to close and severe examination;

and though subsequently liberated with the prince, he was ordered to remove sixty leagues from Madrid, not to reside within twenty leagues of the coast, and not to fix his abode in Navarre.

When the French armies entered Spain, he resided at Alfaro. In the mean time, the insurrection in Aranjuez broke out, Prince Ferdinand ascended the throne, (March, 1808,) imprisoned and confiscated the property of Godoy, and appointed the Duke of San Carlos Grand-Master of the Household and Member of his Privy Council. The duke arrived in Madrid some days before his royal master's departure for Bayonne, accompanied him in his journey, and had several conferences with Bonaparte on the subject of exchanging the crown of Spain for that of Etruria. In these conferences the duke invariably insisted, that Ferdinand would not consent to any treaty without the enjoyment of his liberty, or without the sanction of the Cortes. In the interim, Godoy had been liberated in Madrid, through the influence of Murat. He immediately proceeded to Bayonne, whither he was followed by Charles IV. and his queen. The old monarch then retracted his abdication, and ultimately his son was compelled to restore to him his crown. Joseph Bonaparte having first been placed on the throne of Spain, Ferdinand, was sent to Valençay, in France, whither he was accompanied by the Duke of San Carlos, the Canon Escoiquitz, &c. The Duke remained with Ferdinand till he, with Escoiquitz, was ordered by Buonaparte to Paris. While in that capital, he availed himself of the opportunity to confer with the diplomatic agents of Russia, Prussia, and Austria, on the affairs of Spain. Bonaparte afterwards suspecting the influence possessed by the duke, and by Escoiquitz, over his royal captive, determined upon separating them from Prince Ferdinand. The duke was accordingly confined at Leons-le-Taulnier, and the canon at Bourges.

In his retirement the Duke of San Carlos cultivated his taste for botany, and more particularly for history, politics, and general literature. Five years had Ferdinand and his relatives been in captivity in France, when Bonaparte, finding himself attacked by the allied powers of Europe, and no longer in a condition to leave a numerous army in Spain, determined to reinstate him. In consequence of this resolve he recalled the Duke of San Carlos to Paris, in November, 1813. There San Carlos communicated with the Duke of Bassano, and then went to Valençay, where, after several long discussions, a treaty was concluded on the 11th of December. The Duke, in consequence, set out for Madrid, to obtain the consent of the regency to the treaty. He arrived there on the 16th of January, 1814; but the arrangements proposed by France were not accepted, and he was under the necessity of returning to Valençay. In passing through Catalonia he had a conference with Marshal Suchet, on the subject of evacuating Spain by the French army. Previously to the duke's arrival at Valençay, Ferdinand, impatient of his return, had despatched Don Joseph Palafox to Madrid, with new instructions. At length, after many obstructions, the king, accompanied by the duke, set out upon his return. It was found expedient to proceed in the

first instance to Saragossa; and the Cortes not choosing to give up the reins of government, they next went to Valencia, in the month of April.

On the 3d of May, the Duke of San Carlos was appointed first secretary of state. In consequence of the refusal of General Freyre to accept the office of Minister of War, the duke accepted it, in conjunction with that of Minister of the King's Household. The former post he soon afterwards resigned in favour of General Eguia.

Soon after the restoration of king Ferdinand, the duke his minister commenced the task of introducing a system of economy into the kingdom. He established a junta of ministers, over whom he presided, took various measures for a general repair of the roads, increasing the number of canals, and reviving the credit of the national bank; and he established several academies for the cultivation of the arts and sciences. Notwithstanding these very laudable exertions, his enemies were numerous; and finding them increase, he obtained permission, in November, 1814, to terminate his ministerial functions.

In October, 1815, he was nominated ambassador to the Austrian court. In 1817, he was recalled, and sent in the same capacity to the court of Britain, where he resided some years, till replaced by the Duke of Frias. His next and last diplomatic appointment, which he held until the time of his death, was at the French court. He is succeeded in his titles and estates by his eldest son, the Count del Puerto, an officer in the royal guards of Spain.

RICHARD PETERS.

August 21st, 1828.—At his residence in Blockley, aged 84, Richard Peters, late judge of the U. S. district court for Pennsylvania.

Richard Peters was born in June 1744. He received his education in the city of Philadelphia; and, on entering the active scenes of life, was a good Latin and Greek scholar, and possessed a knowledge of the French and German languages.

Having adopted the law as a profession, his acquaintance with the German enabled him to follow the courts of justice into all the surrounding counties, where his fluent conversation, extensive knowledge of the provincial grants and kindred laws, brought him into practice.

On those circuits, he was accustomed to display his unrivalled wit. The playfulness of his conversation, always enlivened by flashes of the gayest pleasantry, was forever quick and unrestrained, and varied by casts of true humour. Thus distinguished, he became a favourite with all classes.

About this time a conference was held with the Indians of the six nations, at Fort Stanwix, in the province of New-York, and Mr. Peters accompanied the delegation from Pennsylvania. During the negotiation of the treaty, he insinuated himself so much into the good graces of the Indian chiefs, and became so acceptable to them, by his light-hearted jests, and sportive behaviour, that even those sedate red-men relaxed their rigid carriage, and unbending for a moment the usual severity of their characters, proposed to adopt him into their tribes. The offer was accepted, and Mr. Peters was for-

mally introduced to his new relations, receiving from them, in allusion to his amusing talkativeness, the appropriate name of *Tegohtias*, which means *Paroquet*.

Political difficulties with the mother country, now compelled every man to choose his side. Mr. Peters, although rather intimately associated with the proprietary government, did not hesitate to separate himself from it, and join the cause of his native country. While many influential members of the bar went over to the king, he stept forward with zeal in defence of American rights.

Pennsylvania was, in that early day, without a militia. The peaceful descendants of Penn, and of his non-resistant companions, had managed their affairs, even with the fierce aborigines, for nearly a century, without military aid, or any restraint whatever, other than the authority of mild and prudent laws.

But those quiet times were about to be disturbed. It became necessary to arm. Mr. Peters volunteered with his neighbours, and when they assembled for the purpose of organization, he was chosen their captain. His military career, however, was short. He was soon removed from the camp to the cabinet. The 13th of June, 1776, he was appointed by congress Secretary of the Board of War, where his services, during nearly the whole struggle for independence were acknowledged by a solemn vote of thanks by that illustrious body.

In February, 1781, a Secretary of War was authorised to be appointed instead of the Board of War, but the business was still carried on by the old board, and on the 19th of November, of that year, Mr. P. was requested to perform the duties of the department until the Secretary of War should enter upon the duties of his office.

The destitute state of the country, and the difficulties under which he laboured in the performance of his responsible duties as adjunct War Minister, are well illustrated in the following anecdote, told by Mr. Peters himself.

"I was Commissioner of War, he said, in 1779. General Washington wrote to me that all his powder was wet, that he was entirely without lead or balls; so that should the enemy approach him, he must retreat. When I received this letter, I was going to a grand gala at the Spanish ambassador's, who lived in Mr. Chew's fine house in South Third street;—the show was splendid; but my feelings were far from being in harmony with all this brilliancy. I met at this party, my friend Robert Morris, who soon discovered the state of my mind. 'You are not yourself, to-night, Peters; what's the matter?' asked Morris. Notwithstanding my unlimited confidence in that patriot, it was some time before I could prevail upon myself to disclose the cause of my depression; but at length I ventured to give him a hint of my inability to answer the pressing calls of the commander in chief. The army is without lead, and I know not where to get an ounce to supply it: the general must retreat for want of ammunition. 'Well, let him retreat,' replied the liberal minded Morris: 'but cheer up: there are in the Holkar privateer, just arrived, ninety tons of lead, one half of which is mine, and at your service; the residue you can get by applying to Blair M'Clanaghan, and Holkar,

both of whom are in the house with us.'

"I accepted the offer, from Mr. Morris, said Mr. Commissioner Peters, with many thanks, and addressed myself immediately to the two gentlemen who owned the other half, for their consent to sell; but they had already trusted a large amount of clothing to the continental congress, and were unwilling to give that body any further credit. I informed Morris of their refusal. 'Tell them,' said he, 'that I will pay them for their share.' This settled the business: the lead was delivered; I set three or four hundred men to work, who manufactured it into cartridge bullets for Washington's army, to which it gave complete relief."

On the 18th of June, 1778, Mr. Peters entered Philadelphia, at the very time the enemy was evacuating the place. He went there under a strong escort sent with him by General Washington. His object was to secure clothing and stores, secreted by our friends, who had remained in the city; and to purchase every thing that he could from the dealers. The British rear-guard was crossing the Delaware, when he arrived. He succeeded in fulfilling the wishes of the American general-in-chief. Arnold took command of the city a few days after, when Mr. Peters returned to York in Pennsylvania, where congress then held its sessions.

Mr. Peters's exertions were peculiarly meritorious and useful, at the time when General Washington suddenly changed his intended attack on New-York, to that of Yorktown in Virginia.

This change of plan originated with Washington alone: Mr. Peters, with Mr. Morris, who had been directed by a resolution of congress to confer with the commander in chief on the plan of the campaign, gave the following account of it:

"One morning at the beat of reveillé, Mr. Morris and myself, who occupied the same marquee, were roused by a messenger from head quarters, and desired forthwith to repair thither. We were surprised at the circumstance; every thing having been the evening before perfectly tranquil. We were more so on our meeting the general, who, the moment he saw me, with expressions of intemperate passion, handed to me a letter from the French admiral, who commanded six or seven ships at Rhode Island: 'Here,' said the general, 'read this; you understand the French;' —then turning away: 'so do I now better than ever.' Mr. Morris and myself stood silent, and not a little astonished. The letter informed the general that the writer had received by an express frigate, arrived from the fleet of Comte de Grasse, *at sea*, orders to join that fleet in the Chesapeake, as the *Comte* had changed his destination, on information that the bay of New-York was dangerous for his heavy ships; and if any thing could be done in the southern quarters, co-operation was offered during the few weeks of his intended stay in those waters, to avoid the West India hurricane season. Secrecy was enjoined, and we went our way. On returning to breakfast, we found the general as composed, as if nothing had happened. That evening, or I think the next day, a letter arrived from the Marquis de Lafayette, from Virginia, announ-

cing the arrival of the French fleet in the Chesapeake.

"In the course of the day, I was asked by the general: 'well, what can you do for us, *under the present change of circumstances?*' I answered, 'please to inform me of the extent of your wants.'—Being, after some time, *generally* informed, I replied: 'I can do every thing with money; nothing without it; but what can be transported from hence, must be relied on.' I looked impressively on Mr. Morris, who said, 'I understand you; I must have time to consider and calculate.'"

Mr. Morris shortly after told the general that he had no tangible effects; but if anticipations on the credit of his personal engagements would succeed, he could supply the means for transporting the army from New-Jersey to the Chesapeake.

"In a day, or two," continues Mr. Peters, "we left camp, under injunctions of secrecy, until the general developed his final objects and measures to congress.

"On our arrival at Philadelphia, I set to work most industriously, and masked the object for a time. By the zeal and extraordinary efforts of the staff departments, particularly that of ordnance and military stores, sixty pieces of battering cannon, and a greater number of field artillery, were completely provided and finished in three or four weeks; and as fast as any portion of the train was ready, it was sent off on its way to the south. Not a single gun was mounted on my arrival at Philadelphia, nor a rammer or a sponge, or other *attirail*, nor any considerable quantity of fixed ammunition. No European magazine or arsenal, could have done more in the time, and under like circumstances. General Knox, who arrived in twelve or fourteen days, had a great share of the merit of this effort. Mr. Morris supplied the *money* or the *credit;* and without derogation from the merit of the assistance rendered by state authorities, it may truly be said, that the financial means furnished by him, were the main-springs of transportation and supplies for the glorious achievement, which effectually secured our independence. He issued his *notes* for, I think, one million four hundred thousand dollars. They passed freely, and at the value of specie, and were in time all redeemed. The *Bank of North America*, which he founded, with money supplied from abroad, and by taxing the credit of his particular friends, and many other good friends to their country, assisted him most eminently. We gave our securities to the amount of a great proportion of its capital stock."

Those were times, as Mr. Peters adds, "when *wants* were plenty, and *supplies* lamentably *scarce*." The fearless manner in which property and personal responsibility were risked, is worthy of all praise. It was the tone of the day; a spirit of disinterested love of country prevailed, and a vigilance that no exertions could tire!

In December, 1781, Mr. Peters resigned his post in the War Office.

After Mr. Peters left the War Office, he was elected a member of congress, and assisted in closing the business of the war.

At the organization of a new government, under the present constitution, Washington selected Mr. Peters as the judge of the district court of Pennsylvania. This

office he accepted, although he was desirous to resume his profession, and enjoy some respite from public labour. He yielded, nevertheless, to the request of the President, and assumed the exercise of its duties, which he performed until his death; being a period of thirty-six years, during which time he was seldom detained from court by sickness, and never from any other cause. The admiralty portion of his judicial functions, was greatly simplified and improved under his care.

The duties of the district judge, particularly when associated with the judge of the circuit court, were sometimes extremely painful. Two insurrections—(the only ones that have taken place since the adoption of the present constitution) occurred in Mr. Peters's district. To aid in the suppression of the first, he followed the army as far as Pittsburg,—the western limit of his jurisdiction; and there, with his usual promptitude and prudence, satisfactorily discharged his official duties. In a few years after, he was called on again to try for treason, another set of rebels from the northern part of his district. His associate during part of the time, was the celebrated Samuel Chase, one of the justices of the supreme court of the United States. The trial of these deluded insurgents, and the execution of the two acts of congress so well known by the names of alien and sedition laws, gave great notoriety to the circuit court of this district. Its proceedings were narrowly watched by the political enemies of the Federal government, until at length, John Randolph, a member of the house of representatives from Virginia, thought he saw cause of impeachment in the conduct of its judges. Articles were agreed upon by the house of representatives, and sent up to the senate against Samuel Chase; and great pains were taken to include Mr. Peters. Indeed the house inserted his name at one time; but on proper investigation, it was withdrawn, under a conviction that no cause of accusation existed: on the contrary, when the examination took place, it was found that his judicial course had uniformly been marked by prudence, decorum, and moderation.

At this very moment, when political strife was at its height, he was actively engaged in promoting, and chiefly directing, one of the most beautiful and most useful improvements in the state of Pennsylvania—the erection of the great bridge over the Schuylkill, at the end of High-street.

Before Mr. Peters became a judge, and indeed, shortly after the termination of the war, in 1783, he visited England. His travels in that country, and in Scotland and Ireland, were extensive. He had in charge, on this occasion, a commission somewhat of a public nature, which introduced him to the acquaintance of the Primate and principal prelates of the English Church. Before the revolution, the Protestant Episcopal church in this country, of which Mr. Peters was a member, was governed by the Bishop of London; but when our political connexion was dissolved, no Protestant church here would consent to be regulated by a foreign diocesan. Mr. Peters, therefore, was commissioned to obtain the consent of the British prelates to ordain to the office of Bishop three priests of the American Episcopal church, and thus give to it a canonical succession. An act

of parliament had already been obtained by the Bishop of London, to enable him to dispense with such of the usual requisitions as were inconsistent with the engagements of certain citizens of the United States, who had applied to him for *holy orders*; and about the time the higher question of succession was agitated, the same subject was brought before the Danish government, in consequence of a conversation between Mr. Adams, then minister to Great Britain, and the Danish minister to the same court, to which a favourable answer was given; so that the Danish church stood ready in case of difficulty, to confer on the American Episcopal church the necessary powers of Episcopal succession. But it is believed that this incident had no influence on the conduct of the British government or church, both of which are represented by Mr. Peters, in a letter from England, dated March 4th, 1786, as favourably disposed. His opinion was subsequently confirmed by the courteous and friendly reception of the Right Revd. and venerable Bishop White, and his colleagues, who found the Archbishops and all the Bishops who were consulted on the business, acting with the utmost candour and liberality of sentiment; so that it is obvious that the English prelates were from the first ready and desirous to convey the succession to the American church; and that the only condition they made was, that there should not be such a departure, either in discipline, worship, or doctrine, as would destroy the identity of the two churches in their *spiritual* character.

As a practical farmer, Mr. Peters had from time to time communicated the results of the experiments made at Belmont, to such of his neighbours as chose to profit by them; but he had not written much, if any thing, upon agriculture, before the year 1797. His first publication was then made, and contained a statement of facts and opinions in relation to the use of Gypsum. This pamphlet circulated widely, and produced such a change in husbandry, by introducing the culture of clover, and other artificial grasses, as to give a magical increase to the value of farms. Estates which until then were unable to maintain stock, for want of winter fodder, and summer pasture, were suddenly brought into culture, and made productive. Formerly, on a farm destitute of natural meadow, no stock could be supported; and even where natural meadow existed, the barn yard was exhausted to keep up sufficient fertility, (in the absence of irrigation,) to feed a very few horses and black cattle.

In the year 1770, he was shown the effects of gypsum on clover, in a city lot, occupied by Mr. Jacob Barge, on the commons of Philadelphia.

The secret of its powerful agency, came from Germany, where it was accidentally discovered. Mr. Peters obtained a small quantity, which he used successfully, and gradually promoted its consumption, until by his example, and his publications, the importation from Nova Scotia alone, into the single port of Philadelphia, increased to the amount of fourteen thousand tons annually, before the discovery of that fossil in the United States.

But his rural labours were not confined to the tillage of the ground;

to the mere variety of grasses, or alimental improvement of the soil which produced them. He was zealously employed in improving, by crosses, the breed of sheep and other animals. The broad-tail Barbary rams, procured at Tunis by General Eaton, having been confided to his care, he placed them advantageously, and pressed on the farmers the propriety of using them.

In order to appreciate properly his industry in treating on husbandry and matters auxiliary to it, we must consult his voluminous communications, published in the Memoirs of the Philadelphia Agricultural Society.

It is not estimating the *quantity* of his labour too high, by placing it at one fourth of each volume; the *quality* of these productions is shown by their wide circulation, and great popularity.

As a judge, his purity was of the highest order, and his quickness of perception and sagacity enabled him to appear with great advantage by the side of judge Washington, his associate in the circuit court. Even when they occasionally differed, which was but seldom, his opinions were generally sustained. During the term when they were together, the greatest cordiality existed between them, and they cheerfully co-operated in furthering the ends of justice. Of the admiralty law of the U. States, Judge Peters may be deemed the founder.

His decisions, which are collected with some few others in Peters's Reports, form the ground work of this branch of our jurisprudence; and have been sanctioned, not only by our own courts, but received the striking tribute of the simultaneous adoption of their principles by Judge Stowell, the distinguished maritime judge of Great Britain.

The qualities of Judge Peters as a friend and companion in social life were remarkable. His ready and brilliant wit made him the admiration of all his acquaintance, while his good taste and kind disposition prevented any violation of decorum or good feeling.

A short time before his decease, he took occasion to declare, that he bore no ill will to any person living, and that he had never suffered the pain of taking vengeance on any one.

About a fortnight after this declaration, so illustrative of the happy calmness of his mind, while sitting in his chair, he expired without a struggle, at his country residence near Philadelphia; the spot where he was born, and had lived more than 84 years.

DR. GALL.

Aug. 22, 1828. At his country house, at Montrouge, near Paris, aged 71, the celebrated phrenologist, Dr. Gall.

Jean Joseph Gall was born in 1758, in a village of the Duchy of Baden; his parents were in trade. At Baden he first commenced his education. Then at Brucksal, and afterwards at Strasburg, he studied medicine, under professor Hermann. At Vienna in Austria, he became invested with the title of doctor, in the year 1785, and afterwards followed the practice of medicine; but at this place he was not permitted to develope his new deas on the functions of the brain,

which he had founded both on scientific study and observations on nature. This opposition to his views at length determined him to visit the north of Germany, and he was well received in all the capitals of the German states, as well as in Prussia, Sweden, and Denmark, and explained his system before several sovereigns, by whom he was honoured with marks of esteem and admiration. He likewise visited England, and at length determined to go to, and reside at Paris. Regarding it as the centre of the learned world, he judged it the most proper of all other places to propagate his doctrine: he therefore repaired to that capital in 1807, where his great reputation had already preceded him. Although Dr. Gall's lectures had been interdicted at Vienna in 1802, by command of the government, the expense of publishing the great work of Gall and Spurzheim, at Paris, in 1810, was guarantied by Prince Metternich, at that time Austrian minister at the court of France. He had previously attended several courses of Dr. Gall's lectures, consulted him as his physician, and remained attached to him up to the time of his death.

The object which Gall proposed was to dissipate the void which existed in physiology and philosophy relative to the situation of the intellectual faculties of man; and, notwithstanding the knowledge of the ancients, and the hitherto received notions which science had taught, yet still its fundamental notions, not by any means perfect, were far from that degree of scientific precision, to which the observations and genius of Gall have conducted us; and, although in the history of science the first ideas of the system may have been discovered, yet still it must be allowed that all the proofs belong to him, as well as the conservation of all the great truths which were brought forth in evidence.

The immense labours of Lavater were well calculated to draw the attention of the curious to the subject, and to apply to the back part of the head those observations which he had made on the face and on the frontal region. Our knowledge of the exterior appearances of the head was yet very imperfect and vague, and those who supported the possibility had not the means of demonstrating it; and the form of the head of those pretended connoisseurs, like the facial lines of Lavater, seemed rather coincidences than the necessary connexions between physics and morals. Gall collected these fugitive ideas, and finally imprinted on them a scientific form; and from which has resulted a system—a system of facts, a series of observations, enlightened by reasoning, grouped and arranged in such a manner that there necessarily follows the demonstration of a new truth, fruitful in useful applications, and sensibly advancing the progress of civilization. Such is the character of the celebrated system of craniology invented by Gall, and which it may be said his genius discovered almost instantaneously, although confirmed by the force of immense application. Starting from this point, the able physiologist laboured incessantly in his painful task, and consecrated to it the whole of his life with that indefatigable ardour, of which men of superior minds alone furnish examples; and although he has not completely succeeded in the difficult enterprise, yet he ought not to be reproached; on the contrary, thanks are due to

his memory for the mere attempt; for the service he has rendered to philosophy is immense. He has prepared immortal glory to medical philosophy, in indicating the nature of the study which ought to be pursued to give intellectual physiology all the development of which it is capable; and moral philosophy itself is much indebted to him, for having diverted it from speculations foreign to its true end, and in which the most trifling prejudice is an incalculable loss of time.

Gall was attended in his lectures by the most distinguished persons in Paris, illustrious as well for their learning, as for the eminent dignities they bore in society. The examination of his body took place 40 hours after his death, in presence of several members of the faculty. The exterior appearance of the body presented a considerable falling away, particularly in the face. The skull was sawed off with the greatest precaution. The substance of the brain was consistent, and this organ was firm and perfectly regular. No trace of ossification was remarked in the cerebral arteries, notwithstanding the advanced age of the defunct. The cerebral ventricles were not opened, the brain being expressly ordered to be preserved.

JOHN TAYLOR GILMAN.

September, 1828. At Exeter, John Taylor Gilman, in the 75th year of his age.

John Taylor Gilman was the first son of Nicholas Gilman, and of Ann Taylor, daughter of the Rev. John Taylor, of Milton, Massachusetts: born at Exeter, N. H. December 19th, 1753. Nicholas Gilman, his father, one of the delegates in forming the constitution of the United States, and a member of the senate of the United States at the time of his death, in 1814, was the second of five sons. Nicholas Gilman was engaged in ship-building and navigation. He brought up his sons to business, and gave them the usual preparatory education, which the condition of the province afforded to those who were not designed for the learned professions. The eldest son, inheriting a strong and capacious understanding, was made thoroughly acquainted with accounts, and became early conversant with the concerns and interests of the province.

At the commencement of the revolutionary contest with Great Britain, New-Hampshire engaged in concert with her sister colonies, in a series of local and popular movements, which were conducted with great spirit, prudence, and promptitude. These measures were rendered more difficult by the personal presence and influence of Lieut. Governor Wentworth, who was highly esteemed for his virtues, although circumstances rendered it necessary for him to withdraw from the government of the province. This event took place in the year 1775. On the removal of the public offices, which ensued, for safe keeping, from Portsmouth to Exeter, in the course of the same year, Nicholas Gilman was elected Treasurer by the provincial convention.

On the morning after the news was received of the action at Lexington, Mr. John T. Gilman marched as a volunteer in a company hastily formed, of more than a hundred, from Exeter, which slept the same night at Andover, and en-

camped the next day at noon on Cambridge Common. But the alarm which continued to prevail upon the seaboard, with the absence of so great a portion of the active population, who had carried away all the arms that were of use, occasioned an application for their return. He was, soon after his return home, employed in several affairs of importance in the service of the state; taking charge of a large quantity of arms received from France for delivery to the New-Hampshire regiments; and procured large quantities of clothing, so much wanted, for the army.

Mr. Gilman was also employed some time to assist his father as treasurer. In the outset, they adopted the same method in New-Hampshire which prevailed in Massachusetts, where the treasurer was accustomed to give his orders on the collectors; but Mr. Gilman's father refused to follow it, and determined to pursue a different course. It is recorded as a singular fact, that New-Hampshire lost nothing, in the administration of its finances, during the course of the revolution. Although this was, in some measure, to be attributed to after causes, in the administration of the same department by his son and successor, it is entitled, also, to a particular mention in this place, as laying that foundation of a judicious and well-ordered system observed in managing the state finances, which contributed towards the final result.

In 1779, Mr. Gilman was chosen a member of the legislature of the state, and thence elected one of the committee of safety. This committee, consisting of from seven to nine, was composed of persons chosen from the legislature; and, by not being re-elected to that body, they vacated their seats at the board. Several were chosen delegates to congress. The committee was in constant session during the whole revolution.

In October, 1780, a delegation from the New-England states and New-York convened first at Hartford, to consult on the public emergencies, and provide for the necessary means of common defence. The rest of the states, except New-Hampshire, were represented by several delegates. Mr. Gilman was the only delegate appointed from that state, and was very averse to undertaking the duty alone; but his objections were overcome by the urgency of President Weare and General Folsom, with the advice of Mr. John Langdon and others. There was not, at the time, money enough in the treasury to bear his expenses. "Things looked dark," Mr. Gilman observed, "in the fall of 1780;" and he long after recalled a conversation he had at that period with John Sloss Hobart, one of the delegates from New-York, who was considerably his senior in years, (afterwards senator in congress, and judge of the United States district court,) and which, on Mr. Gilman's part, probably, betokened some solicitude, at that critical season of the revolution. "Don't give yourself any concern," said Mr. Hobart, raising his finger *upward*, "it is written *there*, we shall be free!" The only person living of this convention, since Mr. Gilman, is believed to be Judge Benson, another delegate from New-York.

In March, 1781, Mr. Gilman was appointed a delegate to congress, but did not take his seat.

In January, 1782, he was re-appointed a delegate: and New-Hampshire being left without any representative in congress after April, he took his seat at Philadelphia on the 20th of June. He was, at that time, the youngest member of that body, and continued, without any colleague, until the termination of the congressional year, in November.

The negotiations for peace were pending, and the preliminary articles signed during the period Mr. Gilman was in congress. He was, of course, familiar with the springs and the progress of those principles and proceedings by which the councils of congress on that question were influenced or controlled; and which were kept inviolably secret, except from the French Legation at Philadelphia. The private political history of that affair, in its connexion with the interior discussions of congress on the subject, made a strong impression on his mind; and he retained a faithful and abiding recollection of the policy, both foreign and domestic, which marked the details of those extraordinary diplomatic measures, upon which subsequent developments have cast so broad and clear a light. Mr. Gilman joined, as the sole representative of New-Hampshire, in the solemn and memorable declaration of congress, which marked the close of the eventful political year 1782, that they would "conclude neither a separate peace nor truce with Great Britain; but that they would prosecute the war with vigour, until, by the blessing of God on the united arms, a peace should be happily accomplished, by which *the full and absolute sovereignty and independence* of these United States having been fully assured, *their rights and interests*, as well as those of their allies, *should be effectually provided for and secured.*" At the same time he was among those who were opposed to that controlling direction which was sought to be given by the form of instructions to our envoys at Paris, in conducting the negotiations for peace, in avowed deference to the court of France, and in conformity with the political views of M. de Vergennes. Not merely as the most nothern and eastern delegate in congress, but on principles of paramount fidelity to the whole Union, he realized the vital interest and importance to the objects set forth in the declaration of October, 1782, of maintaining our rightful boundaries and fisheries to the farthest verge of their legitimate limits. It was probably under a profound conviction of this character, that the sentiment was long cherished by Mr. Gilman, and uttered with emphatic earnestness at the closing period of his life, that "to John Adams and John Jay, AMERICA was more indebted than *to any two men living.*"

Besides the interesting question of peace, the affairs of Vermont, then known by the name of New-Hampshire Grants, formed a subject of serious concernment.

The preliminary articles of peace were received before Mr. Gilman left congress, which was in April, 1783. The resignation of his seat was occasioned by the sudden decease of his father, who was then in the office of treasurer of the state, which required his return, and which was soon followed by the death of his excellent mother. It devolved upon him to adjust his father's accounts, and having closed

these concerns, to the satisfaction of the state, he was chosen successor to the same trust in June, 1783. In this situation he continued, by successive re-elections, until he was appointed, under the authority of the confederation, one of the commissioners, three in number, to settle the accounts of the revolution between the different states. His colleagues were General Irvine, of Pennsylvania, and Mr. Kean, of South Carolina, in the room of Mr. Baldwin, of Georgia, who resigned on being chosen senator. This commission continued in force, without interruption of its business by the adoption of the federal constitution, and was sitting in New-York, where Mr. Gilman attended in January, at the organization of the new government; after which, a re-appointment took place under President Washington.

The declining health of his wife, whose death took place in 1791, occasioned his resignation. Previous thereto, a report of this committee was made by Mr. Gilman (in the absence of General Irvine) and Mr. Kean, April 29th, 1790, in compliance with an order of the house of representatives.

On relinquishing this appointment, he was re-chosen to the office of treasurer of N. Hampshire, which he continued to discharge until the new constitution of the state went into operation, and he was elected chief magistrate. The prudence with which the finances of the state were conducted, during the difficult season of the revolution, under the original administration of his father, has been already referred to as one of the causes why that state was saved from any loss in consequence of the revolution. But this result is finally and mainly attributable to the able, honourable, judicious, and disinterested management of the state funds, during the operation of the funding system, by which the state was enriched, while he took all the risk and responsibility on himself, with the acknowledgment of the most scrupulous integrity.

The character and services of Mr. Gilman, rendered him, at this period, a conspicuous object of public consideration in New-Hampshire. His opinions were exhibited, and their decision tested, in the primary stages of forming and administering the federal constitution. Public faith, virtue, and justice, had, with him, the authority of first principles. Their purity and sanctity were, in his view, inviolable; and he was distinguished as a foremost and fast friend of the important political scheme for redeeming the obligations of the revolution, establishing the efficacy of self-government, and insuring the safety and respectability of the Union. The demands for confidence and support required, in the outset of this great experiment, it may be more difficult, at the present time, fully to appreciate, since they have acquired the slow, but perfect sanction of experience; and the merits of those principles, which have now became axioms in public sentiment, have been almost lost in the splendid success which the original system has achieved. It may here be observed, that Mr. Gilman was always open and explicit in the expressions which were required of him, concerning public measures. Concealment or equivocation of any kind were entirely foreign to his character; and the general im-

pression which was established in his own state, in this respect, may be quoted from a reply of one of the branches of the legislature, several years after he had been in the office of governor. "We have long beheld," said the senate, in 1802, "with approbation, the decision and frankness with which your excellency has publicly advocated those political sentiments which, it is our belief, naturally result from an informed mind and an upright heart." Moral and political firmness constituted a remarkable trait in his character; and ample evidence of it was exhibited in the course of his public life.

When the present constitution of New-Hampshire, establishing the office and title of governor, which had been laid aside in the revolution, went into operation, in 1793, Mr. Gilman was nominated, and solicited to become the first candidate; but he was averse to the office; and, having publicly and positively declined, President Bartlett was accordingly elected the first year; but the latter having served one term, and feeling his constitution to be failing, was unwilling to continue in the office, and, with many other respectable persons, urged Mr. Gilman to consent to serve as his successor. Many considerations were employed to overcome Mr. Gilman's reluctance to undertake the duties of the station, which arose, in a great degree, from diffidence of his abilities to discharge them in a manner honourable to the state; and, yielding to the opinions of others, rather than the inclination of his own, he was chosen governor in 1794, by nearly four fifths of the votes.

The new constitution of New-Hampshire had given to the governor a negative on the acts of the legislature. This power had not been applied by Governor Bartlett. Governor Gilman, in the course of the first session after he was chosen, which continued but seventeen days, returned three bills. The question being taken on one of these, which he returned as repugnant to a provision in the constitution, whether it should pass notwithstanding, there was but a single vote in the affirmative; and that, as stated by the individual who gave it, in the common expression, "to take off the curse." At the ensuing election for governor in 1795, out of between nine and ten thousand votes, Governor Gilman received all but a hundred. In the winter session of that year he returned with objections a bill in relation to non-residents. This circumstance gave occasion to the most pointed marks of dissatisfaction from many of the members; and pains were taken, without success, to diminish the votes in his favour at the next election. The following year a fresh bill was offered on the same subject, free from the objections of the governor. This was admitted to be improved, and adopted. On several other occasions also, he exercised this constitutional faculty, viz.: to check the facility of granting new trials practised by the legislature; to protect the rights of property against empirical or improvident legislation; to preserve the fundamental and established principles of law; to prevent the infringement of public engagements, or measures impairing the obligation of contracts; and to secure an equal freedom of religious rights and liberties.

The measures of the federal government to preserve the peace and prosperity of the country, and to prevent it from becoming involved in the conflicts of Europe, began at this period to excite a sympathetic sensation and action in several parts of the union. The negotiation of the treaty with Great Britain, by Mr. Jay, received the unanimous approbation of the larger branch of the legislature of New-Hampshire, corresponding to the sentiments of the governor on that subject, in 1795. Governor Gilman was a constant and firm supporter of the policy of Washington, and the cardinal principles of impartial neutrality between foreign powers, enjoined and exemplified in the acts of his administration. Governor Gilman had been chosen an elector of president, in 1792, and, being again appointed, in 1796, joined in the suffrage given by New-Hampshire on that occasion. In seconding the system of defence adopted by the general government in the seaboard, Governor Gilman called the attention of the legislature to the security of the harbour of Portsmouth, always a subject of importance in a naval point of view, and an object of his particular concern, as chief magistrate of the state.

The efficient organization of the militia, and its establishment on a respectable footing, as constituting the real bulwark of public security, received a corresponding portion of his care and encouragement. He was invariable and unremitting in his endeavours to sustain, and strengthen the judicial authority, by enjoining adequate and honourable compensation. The honourable Jeremiah Smith was appointed chief justice, and the honourable Jeremiah Mason, Attorney General of the state. The reform of the criminal code, and the establishment of a penitentiary, were brought before the legislature by his recommendation, at the conclusion of his first and longest term of service. This was finished in the year 1805. But little comparative division of opinion existed in the political sentiments of this state, during the administration of the second president of the United States. An address was voted by both branches of the legislature, approving the administration of President Adams, without requiring any other act on the part of the governor, than to communicate it, which was done in respectful compliance with their request. On the election of Mr. Jefferson, Governor Gilman communicated his sentiments to his political friends in congress, and held a corresponding language in his official communications, advising them to contribute the same support to government, which they had been in the habit of doing. When called upon, however, by the form of a resolution adopted by the two branches of the legislature, the last year of his first term of office, (1804,) requiring his concurrence in a general expression of approbation of Mr. Jefferson's administration, Govenor Gilman declined uniting in the act, though it is said that he would have had no hesitation in conveying their sentiments, in the same manner he had done those of their predecessors, in relation to Mr. Adams. It deserves to be remembered, that in the tone, and temper of the customary replies from both branches of the legisla-

ture, in which were political majorities, organized by the choice of Nicholas Gilman, president of the senate, and John Langdon, speaker of the house, with a council also opposite to himself, there was the most respectful courtesy and moderation. In the succeeding year, Mr. Langdon was elected governor. Mr. Gilman attended, and assisted in the induction, and was, with much urbanity on the part of Governor Langdon, invited to keep him company throughout the ceremonial. From this period, Mr. Gilman was absent from public life, though not indifferent to public affairs, or unconcerned in there right administration. His name was again placed at the head of the list of electors of President, which was chosen in 1812; and he served one year, as a representative of the town of Exeter, in the legislature.

In 1813, Mr. Gilman was recalled, by the suffrages of the state, to the office of governor. A re-organization of the judiciary took place that year; Jeremiah Smith was appointed chief justice, and Arthur Livermore, and Caleb Ellis, associate justices of the supreme court. The construction of this court, possessing substantially the same powers with its predecessor, was similar to the scheme which had been established for several years, in Massachusetts, in the separation of terms for law questions, from those for jury trials. Some obstruction occurred to the administration of justice by this court, in consequence of the refusal of some of the sheriffs to recognise its authority, and part of the justices of the former court continued for a short time to claim and exercise their offices. An extra session of the legislature was required, to correct these irregularities; and the new system continued to be administered with success, and acquired the character of an acknowledged improvement, during the remainder of Governor Gilman's term of office; after which the law was repealed, and the court re-constructed on the original plan.

Although Governor Gilman's known opinions had been unfavourable to the declaration of war, no reproach applied to the patriotism of his admistration, of indifference to the defence of the state and country, or of disregard to the constitutional measures of the federal authorities. To the union of good judgment and good fortune, exhibited in the successful consequences of the arrangements, civil and military, which he adopted and executed at this period, the applauding voice of public sentiment, expressed at the end of the war by the legislature, and the solid condition of the state treasury, unimpaired by the expenditure demanded for the occasion, bore ample testimony.

A considerable alarm had arisen for the safety of Portsmouth, and the public property in the harbour and vicinity of that place, in 1813. At this important naval station, there was a large frigate lying in the harbour; one of the largest ships of the line was on the stocks, nearly completed for launching; besides a considerable quantity of public stores belonging to the United States. The presence of these costly constructions and collected materials for deposite or defence, in the future emergencies of the

war, with the knowledge possessed by the enemy of their military destination, was rather considered as increasing than diminishing the danger of that portion of the state. Commodore Hull had been ordered there, by the national government, the latter part of the year 1813; and in the following March, he called the attention of Governor Gilman to the defenceless situation of the harbour of Portsmouth; communicating his serious apprehensions of the operations of the enemy, who had appointed one of their most active commanders to that station, against the town and country. In April, a further representation was made by Commodore Hull to Governor Gilman, stating, that from the information he had received, he had no doubt that Portsmouth would be attacked, and that the destruction of the 74 and other vessels, would be their object; and that neither the fortifications, nor the force stationed there, were adequate, in his opinion, to the defence. The same month a town, meeting was held in Portsmouth, which manifested a great anxiety on account of the exposed and endangered condition of the place, and made a request of the governor, for a further military force to be detached, for the defence of the town and harbour, in addition to the guards already stationed by his predecessor, Governor Plummer, to keep watch at Little Harbour and other places. This was followed, by a further application from Commodore Hull, in May, stating that he had received such information as he relied on, that an immediate attack on Portsmouth was intended by the enemy; and that if militia were ever wanting for the defence of any place, they were then wanting for the defence of Portsmouth.

To these earnest representations, prompt and personal attention was immediately paid by Governor Gilman. On the receipt of the last from Commodore Hull, accompanied by a despatch from Major General Storer, enclosing the letter of advice which Commodore Hull had received relative to the intended attack on Portsmouth, he adjourned the council, then in session at Concord, with their consent, and immediately repaired to Exeter, to attend to the subject of these communications. He first addressed a request to General Cushing, who had visited the scene of alarm, for a detachment of United States troops, then stationed at Concord; which General Cushing not being able to comply with, Governor Gilman, on the 20th of May, ordered an immediate detachment of eight companies for a service of sixty days, unless sooner discharged, for the protection of Portsmouth. Of this measure, together with the pressing occasion presented by the importunate instances of the inhabitants, and Commodore Hull, he immediately advised the secretary of war; acquainting him also with the deficiency of force existing in the United States forts in the harbour, and suggesting the expediency of an immediate re-enforcement of United States troops. Orders were also issued for a number of militia companies, to be marched within five days to Portsmouth. The militia troops thus detached, were also authorized by him to march with their own consent to any points of defence, without the

jurisdictional limits of the state, which might be judged advisable for the safety of the town and harbour of Portsmouth. Comfortable accommodations were provided for them; the requisite supplies of ammunition and equipments were procured; proper arrangements were directed, through the commissary department, for provisioning the detached troops; and his active and immediate attention as commander-in-chief, was bestowed upon the duties and details of the service, which belonged to him, and in concert with the United States naval commander.

The legislature assembled in June, and, approving what had been done by the governor, made an appropriation of fifty thousand dollars toward defraying the expenses, necessary for the defence of the state, and passed the requisite votes to carry the arrangements into execution. Two companies of United States troops being ordered to reinforce the garrison, and these, with the seamen under Commodore Hull, and a company of seafencibles, authorized by the secretrary at war, to be raised for the further defence of the sea coast of New-Hampshire, being considered by General Armstrong, able, with the artillerists, to make a good defence against the only mode of attack in his view to be apprehended, the principal portion of the militia detached in May was dismissed, and the residue retained for a limited service, to expire in July. Before the expiration of this period of service, however, a request was received from Major General Dearborn, by Governor Gilman, for a specific detachment of militia to be placed in the service of the United States, for the purpose of augmenting the military force in the harbour of Portsmouth for the term of three months, which was complied with by Governor Gilman in an order of July 25th, recommending voluntary engagement as preferable, but requiring absolute obedience to the requisition.

At the approach of autumn, the alarm, which had prevailed in Portsmouth, was revived with additional strength by the recent incursions of the enemy upon the sea coast, and the sudden and successful march upon Washington. A new request was received from General Dearborn for a further military force; a committee was appointed by the town of Portsmouth, composed of Jeremiah Mason, Daniel Webster, and Jno. F. Parrot, with others; and this committee addressed an application to Governor Gilman, to assume the command of the militia detached and assembling by his authority at that place; stating their impression of the imminent danger which threatened the place, and expressing their confidence that his presence would facilitate the speedy organization of the force, and give a greater efficiency to the measures of defence. Detachments were made from a number of regiments in pursuance of the application from General Dearborn, and ordered to march immediately to Portsmouth; and the whole militia of the state were holden to be in readiness to march at a moment's warning. An appeal was made with confidence to the patriotism and exertions of the citizens for the protection and defence of the country, in the general orders issued on the occasion, and answered by the spirit of the state, with a zeal and

alacrity corresponding to the summons, and warranting that well merited reliance, which the experience of the revolution had inspired, on the ready and hardy sons of New-Hampshire.

The emergency on which the militia was called out, contemplating but a short period of service, limited in the first place to fifteen days after their rendezvous, a special request was made by Major General Dearborn, for an additional body of militia, to remain in the service of the United States for the term of two months, if so long required, for the defence of Portsmouth, with the public ships and property in the harbour. Two regiments of infantry and a battalion of artillery were detached, and formed into a brigade, and placed in the service of the United States, for the residue of the season. These details are preserved in the present shape, for the purpose of historical remembrance; the preparation for defence having probably been the means of averting the danger: and the record of these facts being fit to be made for future reference, as a memorial of the character and conduct of the chief magistrate of New-Hampshire, and the spirit of the people of the state, on that interesting occasion.

On the return of peace, Governor Gilman was re-elected for the third year of his second term of office, in 1815, when he declined again to stand as candidate, and carried into effect his intention to withdraw from public service, though strongly solicited to continue a candidate. He met the legislature for the last time at their annual session in June: and, exchanging his congratulations with them on the fortunate event of peace, received the farewell expressions of their favourable regard and approbation. In offering to his reflection the grateful testimony of these sentiments, repeatedly afforded by "a community of enlightened freemen, who well know their rights, and in whose hands they may safely intrust them," the senate of New-Hampshire, in their address to him on this occasion, observed, "the history of the United States will perhaps afford no example since the establishment of our federal government, where any person has, so long as your excellency, enjoyed the confidence and support of the people in the highest office within the gift of their suffrage. The duties of the past year," they remark, "have been more numerous, complex, and arduous, than in any former year of your administration. Permit us to express our entire approbation of the manner in which the respective duties have been discharged."

The house of representatives, in recognising the services rendered by him to the state, upon the same occasion, expressed themselves in the following manner: "The exposed situation of Portsmouth made the requisitions of your excellency on the militia since the last session of the legislature, for the protection and defence of its inhabitants, and national and individual property in its harbour and vicinity, indispensably necessary. The conduct of the troops, while in service, and the organization of so many companies of exempts, show with what union, alacrity, and promptitude, people of every description would resort to arms in case of actual invasion: and give us the most convincing evidence of our ability to defend our families and soil against the attack of an invading enemy. The

attention of your excellency," they add, "to the state of the troops, your care to relieve their various wants, when suddenly called into service, the measures adopted in defence of our maritime frontier; your earnest and varied endeavours to advance the pay to those called out under the authority of the United States, immediately on their discharge, all deserve and receive the approbation and gratitude of your fellow-citizens."

It is natural to infer that Governor Gilman cherished a deep interest in every thing concerning the proper consideration belonging to the public character of this patriotic member of the confederacy. Having been for thirty years from the commencement of the revolutionary conflict, almost constantly engaged in public duties assigned to him, either in its service or as one of its citizens, his own reputation, as well as the credit of those with whom he had acted or associated throughout his long period of public life, as faithful servants of the community, and witnesses of his own official conduct, became identified with the value of those testimonials, which had been conferred on him and them, by the voice of his native state.

He held it to be a safe maxim for a republican government, that "the greatest things, and the most praiseworthy that can be done for the public good, are not what require great parts, but great honesty." Believing the state to abound with men of greater abilities, he had no original wish to undertake the office of chief magistrate; and he would cheerfully have declined to continue a candidate had he been left at liberty: but the circumstances of our national affairs with foreign governments, strong attachment to our federal government, and a firm belief that it had been administered with as much wisdom and integrity in its primitive stages, as there was reason to expect it ever would be, made it incumbent, in his sense of public duty, to contribute that support to the whole system, which might consist in equal accordance with the laws of the state and the union: believing that he was thereby best promoting the prosperity and happiness of his fellow citizens. Something may be conceded to the ancient faith and high feeling of a federalist, as he pronounced himself, of the Washington school, and to the profound conviction from which he never departed, that those principles upon which the federal government was put in operation, were best calculated for maintaining the honour and dignity of our country; for preserving the union of the states, and the peace, liberty and safety of its citizens; and the obligations which he conceived to be thereby enjoined on him to promote those principles so far as he consistently might in strict conformity to the constitution and laws of our national and state governments. With these sentiments, which underwent no change with that of the federal administration, and with an unabated force of conviction and fidelity on his part, he advised the representatives of the state in congress to give the same support to government which they had ever done; and although, in the change which afterwards took place, and continued for a period, in the political sentiments of the state, when he was called upon by the form of the resolutions adopted by the legislature for an expression of unlimited confidence in the existing

administration of the national government, and "in the justice, benevolence, and wisdom of the president of the United States," he declared himself to be unprepared to unite with the two branches in the whole extent of what, on their part, he was willing the resolutions should impart; still he declared his perfect readiness to co-operate with them in all constitutional measures for correcting the evil tendency of licentious and disorganizing sentiments, communicated, as they complained, through the medium of the press, and to do all in his power for the preservation of the union, and support of such measures as should be best calculated to promote the general welfare. Without compromising these principles by any act or expressed opinion of his, he retired from office, avoiding any sacrifice of consistency or self-respect, to cherish the consciousness of having discharged his duty. On his re-accession to the chair, after the declaration of war, without professing any gratuitous confidence, in the then administration of the federal government, he avowed himself to be a zealous supporter of our national and state systems of government, and regarding the duties of the office to which he was recalled, sufficient, even in common times, to fill with anxiety the mind of one who had no object in view but the public welfare, he recurred to the rule and standard of the administration of Washington, for those principles of public policy, which, being stamped with the same dignity and energy of conduct exhibited at that period, would not fail to insure to our government proper respect abroad, and establish the country in the full enjoyment of peace. The integrity of these principles, were uncompromitted by him during the final period of his administration; and while he was, by constitutional traits of character, as well as the rectitude of his moral judgment, incapable of adopting any measures that should tend to bring damage or discredit to the state; and while the prudence and independence of his former administration of affairs continued to be pledges of those determined qualities, which the condition of the times and the occasion required, at the head of the state; the peculiar circumstances under which he was called to act during the latter part of his second period of office, enabled him to render to the state a yet more important and efficient service, in the constitutional capacity with which he was invested. Information originally existing, and circumstances afterward transpiring, warrant the persuasion, so strongly entertained at the time of peace, that by the spirited and judicious arrangements adopted for defence on that occasion, in harmonious concert between the state and national powers, and by the compact front presented to the enemy, by their united forces, the territory of New-Hampshire was saved from violation by a foreign foe, its blood and treasures preserved, and the property of the United States protected from destruction. Although happily there was no occasion to try the final test to the virtue of those principles, upon which the state was aroused to action; the example stands forward in the history of the Union to hold out no encouragement to the common enemy, to profit by any suspected vice in our constitutions; and to illustrate to the satisfaction of every lover of American law and

liberty, the entire compatibility of the utmost freedom, and honest difference of political opinions, with unity and energy of action, on any serious occasion of peril and alarm.

THE EARL OF LIVERPOOL.

December 4, 1829. At Combe Wood, near Kingston, aged 58, Robert Banks Jenkinson, second Earl of Liverpool, and Baron Hawkesbury, and late First Lord of the Treasury of Great Britain.

This distinguished statesman was born June 7, 1770, the only issue of the first marriage of Charles, first Earl of Liverpool, with Amelia, daughter of William Watts, Esq. governor of Fort William, in Bengal.

His first school was one on Parsons Green, Fulham. At the age of thirteen, he was removed to the Charter-house; and thence he became an inmate of Christ-church, Oxford, where he was created M. A. May 19, 1790, and where he formed an intimacy with the late Mr. Canning, of an unusually permanent character.

In the mean time, his father availed himself of the opportunity to sow the seeds of that attachment to state affairs, and that acquaintance with those models and means of political government, which have since sprung up into a harvest of utility to his country, during a season of the most pressing importance. A catalogue of the best writers on the different branches of public economy was put into his hands, and a selection from their purest and most perfect works was prepared for him, to blend with his other college exercises. Commerce and finance were especially attended to; and while the more abstract departments of knowledge were not neglected, chief attention was paid, by both father and son, to the more practical and popular.

Mr. Jenkinson paid a visit to the metropolis of France, about the period of the breaking out of the revolution. He was at Paris when the Bastile was demolished by the mob, and, it is said, was an eye-witness to many of the worst excesses which the streets of the city exhibited at that time. Nor was he an idle spectator of what was then going forward. Intimately acquainted with Mr. Pitt, and, in all probability, requested by him to watch the progress of the revolution, and communicate every fresh form which it assumed, Mr. Jenkinson's residence at Paris was, at that time, of essential service to the British government.

At the general election of 1790, Mr. Jenkinson was returned member both for Appleby and Rye. He made his election for the latter, for which Cinque Port he was also returned at the three subsequent elections of 1796, 1801, and 1802; that is, until summoned to the House of Peers. His election took place full twelve months before his age allowed him to sit in the House, and he returned to pass the intervening time in acquiring fresh continental information. At the commencement of the session at the close of 1791, having reached his 21st year, he took his seat under the avowed patronage of the minister, and early in the following year, made his first speech, in opposition to the resolutions of Mr. Whitbread, on the question of the Empress Catharine persisting in her claim to Ochzakow and the adjoining district.

His address manifested a profound knowledge, not only of the subject in dispute between Russia and Turkey at that juncture, but also of the general affairs and prospects of Europe, and the duty of England with reference to the continental nations.

When, on the 15th of December following, 1792, Mr. Fox moved an address to the king, praying "that his majesty would be graciously pleased to give directions that a minister might be sent to Paris, to treat with those persons who exercised provisionally the functions of the executive government of France, touching such points as might be in discussion between his majesty and his allies, and the French nation," Mr. Jenkinson, in the temporary absence of Mr. Pitt, (who had vacated his seat in the house of commons, by accepting the Wardenship of the Cinque Ports,) replied to Mr. Fox, in a speech of great animation and power.

Mr. Fox's motion was rejected without a division. The talents and efforts of Mr. Jenkinson, on this occasion, were warmly complimented by Mr. Burke. From that time, he rapidly rose in the consideration of all parties; and began to take a prominent part in combating the arguments of the whig opposition. In April, 1793, he was appointed one of the commissioners of the India Board, the duties of which situation he performed until 1806.

When Mr. Grey, on the 6th of May, 1793, brought forward his memorable petition on the subject of parliamentary reform, Mr. Jenkinson stood foremost in the rank of its opposers, asserting that the house of commons, constituted as it was, had answered the end for which it was designed.

Upon commercial subjects, Mr. Jenkinson might be expected, in the language of Mr. Sheridan, to have some claims to "hereditary knowledge." He always entered upon them with confidence; and, on Mr. Grey's motion in the house of commons, March 10, 1796, for an inquiry into the state of the nation, he took an able view of the effect of the war upon British commerce, from its commencement, and contended that, notwithstanding the weight of so great a war, the commercial situation of Great Britain was more prosperous than at any antecedent period.

On the 28th of May, 1796, Mr. Jenkinson participated in the honours of his family, so far as to exchange that appellation, for his father's second title, Lord Hawkesbury; his father being, at that time, created Earl of Liverpool. In 1799, Lord Hawkesbury was appointed master worker of the mint, which he held until his higher preferment in March, 1801.

After the temporary retirement of Mr. Pitt from power, in 1801, the new ministry, at the head of which was Mr. Addington, was announced on the 14th of March. Lord Hawkesbury was appointed to the important office of secretary of state for the foreign department, and actively engaged in the debates which ensued.

The great business of the succeeding summer and autumn, was the adjustment of preliminaries of peace with France; and Lord Hawkesbury, as foreign secretary, was intrusted with the interests of Great Britain in the negotiation.

On Lord Hawkesbury devolved, at this period, much of what is

called the management of the house of commons, and of course he spoke on every topic involving the character of the administration; but, at the opening of the next session, in December, 1803, in order to strengthen the ministry in the house of lords, he was summoned by writ to that house, to sit in his father's barony.

Lord Hawkesbury was not unfriendly to the United States, and shortly before Mr. King's return to this country, a convention was signed by him, definitively adjusting the northern and eastern boundary lines of the United States, in a manner advantageous to us. He also assented to an article, renouncing all pretensions, on the part of Great Britain, to impress any person of whatever country, out of a vessel under the American flag. The convention, however, was rejected by Mr. Jefferson, from a mistaken idea of its effect on the boundary of Louisiana, and the article relative to impressment was not executed, through the opposition of Lord Stowel.

On the 12th of May, 1804, it was announced that Mr. Addington had resigned. Mr. Pitt returned to the head of administration; and Lord Hawkesbury received the seals of the home department.

On the death of Mr. Pitt, in Jan. 1806, his late majesty honoured him, in the first instance, with his confidence and commands, with respect to the formation of a new ministry; but Lord Hawkesbury, well knowing the situation and relative strength of public parties, declined the offer.

On the return of Mr. Pitt's friends to power in the following year, Lord Hawkesbury resumed his situation in the cabinet as secretary of state for the home department; still declining any higher, and especially avoiding the highest office. In the defence of all the great measures of government,—particularly the expedition to Copenhagen, and the celebrated orders in council,—he took a prominent part.

By the death of his father, in 1808, he became the head of his family, as second Earl of Liverpool.

When the quarrel and subsequent duel between Lord Castlereagh and Mr. Canning induced them to resign their situations in the government, and the Duke of Portland to withdraw from being its nominal head, Mr. Percival, still finding the Earl of Liverpool averse to the premiership, united in name, as he had already done in effect, the two offices of first Lord of the Treasury and Chancellor of the Exchequer. The Earl of Liverpool, however, consented, in this new arrangement, to become secretary of state for the war department.

At length, an event as unexpected as it was calamitous, the assassination of Mr. Percival, on the 11th of May, 1812, left the ministry in so disjointed a state, that the Earl of Liverpool yielded to the request of the Prince Regent, to place himself at its head. So reluctant, however, was he, to the last, to become the chief minister of the realm, that he did not consent until Marquis Wellesley, and Lords Grey and Grenville, had decidedly declined the offer.

No man ever rose to an exalted station by more gradual or more natural steps, than those by which the Earl of Liverpool attained the

premiership. He had now been in parliament twenty years, taking in each house successively a leading part in every debate of national importance; and he had been, during more than half that period, in the confidential service of the crown.

On the 8th of June, 1812, he was appointed first commissioner of the treasury. The only additions to the ministry, on the occasion, were LordSidmouth, and Mr. Vansittart, now Lord Bexley.

On the 9th of June, 1814, the Earl of Liverpool was elected a knight of the most noble order of the Garter.

After the animated debates on the subject of the second regency, the premier had glided, by an easy transition from the councils of the father to those of the son; and when the reign of the former was closed by death, the changes frequently consequent on such occurrences, were neither expected nor witnessed. When the premier and the other ministers resigned their seals, *pro formâ*, on the morning after the king's demise, they were severally reinstated in their respective offices.

The Earl of Liverpool's last appearance in public was in February, 1827. The two last motions he made in the house of peers, were personally connected with the royal family—those of moving an address of condolence to his majesty, on the death of the Duke of York, and for a further provision for the duke and duchess of Clarence. The latter duty was performed on the 16th of February. He retired to rest at Fife House at his usual hour, and apparently in good health. On the following morning, Saturday, the 17th of February, he took his breakfast alone, in his library, at ten o'clock. At about that hour also, he received the post letters. Some time after, his servant, not having, as usual, heard his bell, entered the apartment, and found him stretched on the floor, motionless and speechless. From his position, it was evident that he had fallen in the act of opening a letter. It appeared that he had been seized by a fit, both of an apopletic and a paralytic nature, which affected the whole of his right side. As soon as his situation would admit, he was removed to his seat in Combe Wood. There he remained for the nearly two remaining years of his life, with various fluctuations of his disease, although at no time with the slightest prospect of convalescence.

He had been for some days in his ordinary state, and no symptoms calculated to excite immediate apprehension had occurred, when, on Thursday, the 4th of December, 1828, he was attacked with convulsions and spasms soon after breakfast, and before Mr. Sandford, a medical friend in the neighbourhood, could arrive, his lordship had breathed his last. The countess, his brother, and Mr. Child, his steward, were present in the apartment.

If the Earl of Liverpool was not a man of brilliant genius, or lively fancy, he was possessed of powerful talents, sound principles, and unimpeachable integrity. From his youth, he abstained from mixing in the common-place business of the world; he had no relish for those amusements and occupations which other men pursue with such

eagerness; he looked upon life as a gift bestowed upon him, with the condition that it should be entirely devoted to the service of his country. He combined, in an extraordinary degree, firmness with moderation. His measures were the result of deep deliberation; but when once adopted, were pursued with inflexible resolution, and despondency formed no feature of his character.

Lord Liverpool's eloquence, if it did not reach the highest point of excellence, always impressed the hearer with a conviction of the sincerity and the patriotism of the speaker. In debate, he was vehement, but never intemperate. He did not seem to entertain one angry feeling towards his parliamentary antagonists, however wanton their attacks, or undeserved their insults; and his courteous, though dignified deportment, unruffled by the coarsest personalities which could be vented against him, frequently disarmed his fiercest adversary.

TIMOTHY PICKERING.

January 29, 1829. At Salem, Massachusetts, Timothy Pickering, aged 84.

Timothy Pickering was born in Salem, on the 17th July, 1746, and was descended from a respectable family, who were among the earliest emigrants. He received a liberal education, and was graduated at Harvard University, in 1763, at the moment when the peace between Great Britain and France had liberated the colonies from a harassing war, and left them at leisure to investigate and ascertain their rights in relation to the mother country. The controversy, that soon arose, engrossed his feelings, and enlisted all the faculties of his mind on the side of his country. He soon became the champion and leader of the whigs in the vicinity of Salem.

When, in 1775, the British parliament, by an act usually called the Boston Port-Bill, shut up the capital of Massachusetts from the sea, thereby prostrating its active and extensive commerce, the seat of the provincial government was removed from Boston to Salem. Sympathizing with the sufferers of Boston, the inhabitants of Salem, in full town-meeting, voted an address to the new governor, General Gage; the great object of which was, so far as an expression of their sentiments would go, to procure relief for their brethren in Boston. That address was written by Colonel Pickering; it concluded with these remarkable words: "By shutting up the port of Boston, some imagine that the course of trade might be turned hither, and to our benefit: but nature, in the formation of our harbour, forbid our becoming rivals in commerce with that convenient mart; and were it otherwise, we must be dead to every idea of justice, lost to all feelings of humanity, could we indulge one thought to seize on wealth, and raise our fortunes on the ruins of our suffering neighbours."

On the 19th of April, 1775, the battle of Lexington took place. About nine o'clock in the morning, Colonel Pickering being in his office, (the registry of deeds for the county of Essex,) a captain of militia, from the adjacent town of Danvers, came in, and informed him, that a man had ridden into that town, and reported that the British troops had

marched from Boston to Lexington, and attacked the militia. This officer, whose company belonged to Colonel Pickering's regiment, asked for orders, and received a verbal answer, that the Danvers companies should march without waiting for those of Salem.

Immediately Colonel Pickering went to the centre of the town, and met a few of the principal inhabitants. A short consultation ensued. Those who knew the distance of Lexington from Salem, and its relative situation to Boston, observed, that the British troops would certainly have returned to Boston long before the Salem militia could reach the scene of the reported action; and that to march would therefore be useless. It was nevertheless concluded to assemble the militia, and commence the march; and for this sole reason,—that it would be an evidence to their brethren in the country, of their disposition to co-operate in every measure which the common safety required. This idea, however, of the fruitlessness of their march, was so predominant, that they halted a short time, when about two miles from the town; expecting every moment intelligence that the British troops had returned. But receiving none, they resumed their march, and proceeded to Medford, which was about five miles from Boston. Here Colonel Pickering first received certain information that the British troops were still on their march, and on a route which rendered it possible to meet them. He hastened the march of the militia on the direct road to Charlestown and Boston; until on an elevated part of the road, the smoke was seen from the fire of a small number of militia muskets discharged at a distance, at the British troops. He halted the companies, and ordered them to load, in the full expectation of coming to an engagement. At that moment a messenger arrived from General Heath, who informed Colonel Pickering that the British troops had their artillery in their rear, and could not be approached by musketry; and that the general desired to see him. Leaving the companies in that position, he went across the fields and met General Heath. They soon after saw the British troops ascend the high ground called Bunker's Hill. It was about sunset. The next day they entered Boston.

It was before the close of the year 1775, that in organizing the provisional government of Massachusetts, Colonel Pickering was appointed one of the judges of the court of common pleas for Essex, his native county, and sole judge of the maritime court, (which had cognizance of all prize-causes,) for the middle district, comprehending Boston, with Salem, and the other ports in Essex; offices which he held, until he accepted an appointment in the army.

In the fall of 1776, the army under General Washington's command, being greatly reduced in numbers, a large re-enforcement of militia was called for; 5000 from Massachusetts. Colonel Pickering took the command of the regiment of 700 men furnished from Essex. The quota of Salem was composed of volunteers.

This tour of militia duty was performed in the winter of 1776—7; terminating at Boundbrook, in New-Jersey; General Washing-

ton's head-quarters being at Morristown.

Soon after his return home, Colonel Pickering received an invitation from General Washington, to take the office of adjutant-general. Colonel Lee had been recommended by congress, to the commander-in-chief, for that office, but he deemed it proper to offer the office first to Colonel Pickering. The office was at first declined, but afterwards, upon the recommendation of Colonel Lee himself, it was accepted by Colonel Pickering, who repaired to the army, and joined it at Middlebrook, New-Jersy.

General Howe having embarked his army at New-York, to proceed, as it was understood, either to Delaware or Chesapeake Bay, General Washington's army marched from New-Jersey, to the state of Delaware; and thence into the adjacent part of Pennsylvania, to oppose the British army, then marching from the head of Elk for Philadelphia. On the 14th of September, 1777, the battle of Brandywine took place. After carrying General Washington's orders to a general officer at Chadsford, Colonel Pickering repaired to the right, where the battle commenced; and remained by the general's side to its termination at the close of the day.

On the 4th of October following, General Washington attacked the British troops at Germantown. After the right wing, commanded by General Sullivan, had for some time been briskly engaged, General Washington sent Colonel Pickering forward with an order to that officer. Having delivered it, he returned to rejoin the commander-in-chief. It had been found that a party of the British troops had taken post in a large and strong house, since well known by the name of Chew's house, on which the light field artillery of the Americans could make no impression. This house stood back a few rods from the road. Colonel Pickering first discovered the enemy to be there by their firing at him from the windows on his return to General Sullivan.

On rejoining General Washington, Colonel Pickering found the question was agitated, "Whether the whole of the troops then behind, should pass on regardless of the enemy in Chew's house, or summon then to surrender." A distinguished officer urged a summons. He said it would be "unmilitary to leave a castle in our rear." Colonel Pickering answered—"doubtless that is a correct general maxim; but it does not apply in this case. We know the extent of this castle, (Chew's house;) and to guard against the danger from the enemy's sallying out and falling on the rear of our troops, a small regiment may be posted here to watch them; and if they sally out, such a regiment will take care of them. But, to summon them to surrender will be useless. We are now in the midst of the battle; and its issue is unknown. In this state of uncertainty, and so well secured as the enemy find themselves, they will not regard a summons; they will fire at your flag." However, a subaltern officer, with a white flag and drum, was sent with a summons. He had reached the gate at the road, when a shot from a window gave him a wound, of which he died.

In December of the same year, the army marched to Valley Forge, and took up their winter quarters in log huts, which they erected at that place.

Before this, the congress, then sitting at Yorktown in Pennsylvania, had elected Colonel Pickering a member of the continental board of war. General Gates and General Mifflin were elected members of the same board, and before the expiration of the winter, they all repaired to Yorktown, where the board sat.

While acting at the board of war, on the 21st of January, 1780, Colonel Pickering was chosen, with General Schuyler, commissioners to superintend and reform the staff department. General Schuyler having declined, General Mifflin afterwards acted with Colonel Pickering, in the execution of the duties intrusted to these commissioners, and on the 14th of April following, they received the thanks of congress for the able and attentive performance of their duties.

Colonel Pickering continued to act as a member of the board of war, until the 5th of August, 1780, when he was elected quarter master general, as successor to General Greene, who had resigned that office. Congress had just before re-organized the department of quarter master general, and the footing on which it was placed, occasioned so much dissatisfaction to General Greene, and he saw so little probability of discharging its duties, either with credit to himself, or with benefit to the country, that he addressed the following letter to the president of Congress.

CAMP PRECANESS, }
26th July, 1780. }

SIR—His excellency, General Washington, has just transmitted me a plan for conducting the quarter master's department, agreed to in congress, the fifteenth instant, wherein I am continued as quarter master general, and directed to make the necessary appointments in the department, agreeably thereto, as soon as possible.

It was my intention, from the peculiar circumstances of our own affairs—and I have long since communicated it to the commander-in-chief, and the committee of congress—to have continued to exercise the office of quarter master general, during the active part of this campaign, provided matters were left upon such a footing as to enable me to conduct the business to satisfaction; and in order to remove every shadow of suspicion that might induce a belief that I was influenced by interested motives, to make more extensive arrangements than were necessary, I voluntarily relinquished every kind of emolument for conducting the business, save my family expenses.

It is unnecessary for me to go into the general objections I have to the plan:—it is sufficient to say, that my feelings are injured, and the officers necessary to conduct the business are not allowed, nor is proper provision made for some of those that are. There is but one assistant quarter master general, who is to reside near congress, and one deputy, for the main army, allowed in the system. Whoever has the least knowledge of the business in this office, and the field duty which is to be done, must be fully convinced, that it is impossible to perform it without much more assistance than is allowed in the present arrangement. Whether

the army is large or small, there is no difference in the plan, though the business may be occasionally multiplied threefold.

But, however willing I might have been, heretofore, to subject myself to the fatigue and difficulties attending the duties of this office, justice to myself, as well as to the public, constrains me positively to decline it, under the present arrangement, as I do not choose to attempt an experiment of so dangerous a nature, where I see a physical impossibility of performing the duties that will be required of me. I am, therefore, to request congress will appoint another quarter master general, without loss of time, as I shall give no order in the business, further than to acquaint the deputies with the new system, and direct them to close their accounts up to the first of August coming.

The two principal characters on whom I depended for support, and whose appointment, under the former arrangement, I made an express condition to my accepting the office, are now left out, and both have advertised me, that they will take no further charge of the business; and I am apprehensive that many others, who have been held by necessity and not of choice, will avail themselves of this opportunity to leave an employment, which is not only unprofitable, but rendered dishonourable.

Systems, without agents, are useless things: the one should be taken into consideration in framing the other. Administration seem to think it far less important to the public interest to have this department well filled, and properly arranged, than it really is, and as they will find it by future experience.

My best endeavours have not been wanting, to give success to the business committed to my care; and I leave the merit of my services to be determined hereafter, by the future management of it, under the direction of another hand.

My rank is high, in the line of the army; and the sacrifices I have made, on that account, together with the fatigue and anxiety I have undergone, far overbalance all the emoluments I have derived from the appointment; nor would double the consideration induce me to tread the same path over again, unless I saw it necessary to preserve my country from utter ruin and a disgraceful servitude.

I have the honour to be, &c.

NATHL. GREENE,
Q. M. General.

His Excellency,
Samuel Huntingdon, Esq.
President of Congress.

This plain and frank letter occasioned, at first, some feeling in congress, but it was somewhat allayed by an inquiry, on the part of one of the Connecticut delegation, whether it was not possible, that the reasons urged by General Greene, were founded in truth. It was, however, now too late to retract; and, as the resignation was decisive, nothing remained except to choose a successor to a post thus environed with difficulties. Col. Pickering was appointed on the 5th of August; and it is a subject of no ordinary praise, that he performed its complicated and arduous duties, so as to acquire the confidence of Washington; and that its extensive and intricate accounts were settled after the termination

of the war, to the satisfaction of congress.

From the year 1790 to 1794, Colonel Pickering was charged, by General Washington, (then president of the United States,) with several negotiations with the Indian nations on our frontiers. In 1798, he was appointed on a joint commission from Gen. Lincoln and Beverly Randolph, Esq. of Virginia, to treat of peace with the western Indians: and, in 1794, he was appointed sole agent to adjust all disputes with the Six Nations, which were terminated by a satisfactory treaty.

In the year 1791, Gen. Washington appointed him post-master general. In this office he continued till the close of the year 1794; when, on the resignation of General Knox, he was appointed secretary of war. In August, 1795, Mr. Edmund Randolph having resigned the office of secretary of state, General Washington gave Colonel P. the temporary charge of that department also. Some time before the meeting of congress, which was in December following, he also tendered to Colonel Pickering the office of secretary of state, which was declined, but when congress assembled, Washington having nominated him to the senate, and the senate approving the nomination, he accepted the office. He continued in this office until May, 1800, when he was removed by President Adams, having differed with the president on the policy of his administration, and determined to act with General Hamilton.

Being in debt for new lands purchased some years before, and having no other resources—as soon as he was removed from office, in 1800, he carried his family from Philadelphia into the country; and, with one of his sons, went into the back woods of Pennsylvania, where, with the aid of some labourers, they cleared a few acres of land, sowed wheat, and built a log hut, into which he meant the next year to remove his family. From this condition he was drawn by the kindness of his friends in Massachusetts. By their spontaneous liberality, in taking a transfer of new lands in exchange for money, Col. Pickering was enabled to pay his debts, return to his native state, and to purchase a small farm in Essex county, on which he lived many years, cultivating it with his own hands.

At the close of the year 1801, Colonel Pickering returned to live in Massachusetts. In 1803, the legislature appointed him a senator to represent the state in congress, for the residue of the term of Dwight Foster, Esq. who had resigned. In 1805, he was again elected senator, for the term of six years.

Colonel P. continued to sustain the office of senator till 1811. Soon after, he was chosen, by the legislature, a member of the executive council, and, during the late war, when apprehensions were entertained that the enemy contemplated assailing our towns and cities, he was chosen a member of the board of war, for the defence of the state. In 1814, he was chosen a representative in congress, and held his seat till March, 1817.

In his retirement, he enjoyed the respect and esteem of his contemporaries, while his devotion to his favourite rural pursuits, his extensive correspondence with eminent and worthy men in various parts of our country; his love of literature and science, and his zeal in promotion

of the interests of our best institutions, furnished his mind with active employment.

The activity of his life, and the magnitude and variety of his public labours, left him little leisure for solitary and continued application to the pursuits of science and literature. He made no pretensions to either,—yet few public men possessed knowledge so various and extensive. The productions of his pen bear testimony to his ability, power, elegance, and vigour as a writer.

In public life, he was distinguished for energy, fidelity, firmness, promptitude, perseverance, and disinterestedness.

His manners were plain and simple, his morals pure and unblemished, and his belief and profession of the Christian religion was, through a long life, accompanied with practice and conduct, in accordance with its divine precepts.

When the last indisposition of Colonel Pickering induced him to call a physician, he remarked that that was the first occasion he had had for the services of that profession since the siege of Yorktown. Till the last moment of his life, he enjoyed the possession of his mental faculties in unabated strength and vivacity.

SIR HUMPHREY DAVY.

May 30th, 1829.—At Geneva, Sir Humphrey Davy, aged 50.

The name of Davy is of ancient respectability in the West of England. Sir Humphrey's paternal grandfather had considerable landed property in the parish of Ludgvan, in Cornwall; and his father, Robert Davy, possessed a paternal estate opposite St. Michael's Mount, called Bartel, which, although small, was amply competent for the supply of his limited desires. It is probable, therefore, that his profession, which was that of a carver in wood, was pursued by him as an object rather of amusement than of necessity, although in the town and neighbourhood of Penzance there remain many specimens of his art; and among others several chimney-pieces, curiously embellished by his chisel.

Sir Humphrey Davy was born at Penzance, in Cornwall, on the 17th of December, 1778. Having received the rudiments of a classical education under Dr. Cardew of Truro, he was placed with a respectable professional gentleman of the name of Tonkin, at Penzance, in order that he might acquire a knowledge of the profession of a surgeon and apothecary.

It is not difficult to understand how it happened, that a person, endowed with the genius and sensibilities of Davy, should have had his mind directed to the study of mineralogy and chemistry, when we consider the nature and scenery of the country in which accident had planted him. Many of his friends and associates must have been connected with mining speculations; *shafts*, *cross courses*, *lodes*, &c. were words familiarized to his ears; and his native love of inquiry could not have long suffered such terms to remain as unmeaning sounds. Nor could he wander along the rocky coast, nor repose for a moment to contemplate its wild scenery, without being invited to geological inquiry by the genius of the place; for, were that science to be personified, it would be im-

possible to select a more appropriate spot for her local habitation and favoured abode.

This bias he cultivated till his fifteenth year, when he became the pupil of Dr. Borlase of Penzance, an ingenious surgeon, intending to prepare himself for graduating as a physician at Edinburgh. At this early age, he laid down for himself a plan of education, which embraced the circle of the sciences; and by his eighteenth year he had acquired the rudiments of botany, anatomy, and physiology, the simpler mathematics, metaphysics, natural philosophy, and chemistry. But chemistry soon arrested his whole attention. As far as can be ascertained, the first original experiment performed by him at Penzance was for the purpose of investigating the nature of the air contained in the bladders of sea-weed. His instruments, however, were of the rudest description, manufactured by himself out of the motley materials which fell in his way; the pots and pans of the kitchen were appropriated without ceremony, and even the phials and gallipots of his master were without the least remorse put in requisition.

Before the formation of the Geological Society of London, which has been the means of introducing more rational and correct views in the science over which it presides, geologists were divided into two great parties,—Neptunists and Plutonists; the one affirming that the globe was indebted for its form and arrangement to the agency of water, the other to that of fire. It so happened, that the professors of Oxford and Cambridge ranged themselves under opposite banners: Dr. Beddoes was a violent and uncompromising Plutonist, while professor Hailstone was as decided a Neptunist. The rocks of Cornwall were appealed to as affording support to either theory; and the two professors, who, although adverse in opinion, were united in friendship, determined to proceed together to the field of dispute, each hoping that he might thus convict the other of his error. The geological combatants arrived at Penzance; and Davy became known to them, through the medium of Mr. Gilbert. Mr. Watt was also enthusiastic in his praise; and it so happening that at that time Dr. Beddoes had just established at Bristol his "Pneumatic Institution," for the purpose of investigating the medical powers of the different gases, he proposed to Mr. Davy, who was then only nineteen years of age, but who, in addition to the recommendations that have been mentioned, had prepossessed the professor in his favour by an essay in which was propounded a new theory of heat and light, to suspend his plan of going to Edinburgh, and to undertake the superintendence of the necessary experiments. This proposal Davy eagerly accepted.

Davy was now constantly engaged in the prosecution of new experiments; in the conception of which, as he himself candidly informs us, he was greatly aided by the conversation and advice of his friend Dr. Beddoes. He was also occasionally assisted by Mr. W. Clayfield, a gentleman ardently attached to chemical pursuits, and whose name is not unknown in the annals of science; indeed it appears that to him Davy was indebted for the invention of a mercurial air-holder, by which he was ena-

bled to collect and measure the various gases submitted to examination. In the course of these investigations, the respirability and singularly intoxicating effects of nitrous oxide were first discovered; which led to a new train of research concerning its preparation, composition, properties, combinations, and physiological action on living beings; inquiries which were extended to the different substances connected with nitrous oxide, such as nitrous gas, nitrous acid, and ammonia; when, by multiplying experiments, and comparing the facts they disclosed, Davy ultimately succeeded in reconciling apparent anomalies; and, by removing the greater number of those difficulties which had obscured this branch of science, was enabled to present a clear and satisfactory history of the combinations of OXYGEN and NITROGEN.

These interesting results were published in a separate volume, entitled, "Researches, Chemical and Philosophical, chiefly concerning Nitrous Oxide and its Respiration; by Humphrey Davy, Superintendant of the Medical Pneumatic Institution." Of the value of this production, the best criterion is to be found in the admiration which it excited; its author was barely twenty-one years old, and yet, although a mere boy, he was hailed as the Hercules in science, who had cleared an Augean stable of its impurities.

On obtaining the appointment of Professor at the Royal Institution, Mr. Davy gave up all his views of the medical profession, and devoted himself entirely to chemistry.

In 1802, Mr. Davy, having been elected Professor of Chemistry to the Board of Agriculture, commenced a series of lectures before its members; which he continued to deliver every successive session for ten years, modifying and extending their views, from time to time, in such a manner as the progress of chemical discovery required. These discourses were published in the year 1813, at the request of the president and members of the board; and they form the only complete work on the subject of agricultural chemistry.

He has treated the interesting subject of manures with singular success; showing the manner in which they become the nourishment of the plant, the changes produced in them by the processes of fermentation and putrefaction, and the utility of mixing and combining them with each other. He has also pointed out the chemical principles upon which depends the improvement of lands by burning and fallowing; he has elucidated the theory of convertible husbandry, founded on regular rotations of different crops.

In the year 1803, Davy was elected a Fellow of the Royal Society; he subsequently became its secretary, and lastly its president.

The first memoir presented to the Royal Society by Mr. Davy, was read on the 18th of June, 1801; and is entitled, "An Account of some Galvanic Combinations, formed by the Arrangement of Single Metallic Plates and Fluids, analogous to the new Galvanic Apparatus of Volta; by Mr. Humphrey Davy, Lecturer on Chemistry in the Royal Institution; communicated by Benjamin, Count of Rumford, V.P.R.S."

An interval of nearly five years now elapsed before Davy threw any further light upon this branch

of science; but his energies had not slumbered; he had been engaged in experiments of the most arduous and complicated description; and in presenting their results, he unfolded the mysteries of Voltaic action. This grand display of scientific light burst upon Europe like a meteor, throwing its radiance into the darkest recesses, and opening to the view of the philosopher new and unexpected regions. The memoir in which these discoveries were announced constituted the Bakerian lecture; and was read before the Royal Society on the 20th November, 1806. We shall endeavour to offer as popular a review of its contents as the abstruse nature of the subject will allow. It had been observed, during some of the earliest chemical experiments with the Voltaic pile, that when the purest water was submitted to the action of a current of electricity, acid and alkaline matter were separated at the opposite electrified surfaces. A fact so extraordinary necessarily excited various conjectures; and many believed that the bodies were actually generated by the action of the pile. Davy, however, soon negatived so unphilosophical a conclusion, and showed that they merely arose from the decomposition of the materials employed: he found, for instance, that the glass vessel, at its point of contact with the wire, was corroded; a fact which sufficiently explained the source of the alkali; while the animal or vegetable materials, employed as conductors, might be readily supposed to furnish the acid. He accordingly proceeded to work with cups of agate; and, at the suggestion of Dr. Wollaston, who again acted as a Mentor, he formed the connecting parts of well-washed asbestos. Thus then was every source of fallacy connected with the apparatus removed; but still the same production of saline matter appeared. What could be its origin? He repeated the experiments in cups of gold, and examined the purity of his water by evaporation in vessels of silver. At length he succeeded in recog nising the source of this matter; it was of foreign origin, partly derived from the contents of the water, and partly from new combinations of gaseous matter. This was curious, but, after all, a discovery in itself of insignificant value, when compared with those which immediately flowed from it. The acid and alkaline matter then produced, it has been already stated, collected in the water round opposite poles, the former always appearing at the positively electrified, the latter at the negatively electrified surface. Was this a universal law? It was necessary to decide this question by more extended inquiries. The first series of experiments which he instituted for this purpose, embraced the decomposition of solid bodies, insoluble, or difficultly soluble in water. From the effects of the electrical agency on glass, already mentioned, he very reasonably expected that various earthy compounds might thus undergo changes under similar circumstances: and his conclusion was just. From sulphate of lime he obtained sulphuric acid in the positive, and a solution of lime in the negative cup. These experiments were extended to a great variety of other compounds, such as sulphate of strontia, fluate of lime, sulphate of baryta, &c., and with parallel results. Having thus far established the general law, he proceeded to inquire into

the mode and circumstances under which these constituent parts were transferred to their respective poles; and he discovered, first, that acid and alkaline bodies, during the time of their electrical transfer, would pass through water containing vegetable colours, without affecting them, or combining with them; and, secondly, that such bodies would even pass through chemical menstrua having stronger attractions for them, thereby showing that the same power which destroyed elective affinity in the vicinity of the metallic points, would likewise destroy or suspend its operation, throughout the whole of its circuit. Thus, proceeding step by step, with philosophic caution and unwearied perseverance, did he develope all the particular phenomena and details of his subject; his genius then took flight, and with an eagle's eye caught the plan of the whole. A new science was created; and so important and extensive were the applications of its principles in producing chemical composition and decomposition, that it justly derived the name of Electro-Chemistry. Its illustrious author, reasoning upon the phenomena it displayed, arrived at the plausible conclusion, that the power of electrical attraction and repulsion must be identical with chemical affinity. If this be true, we at once obtain a solution of the problem, and can explain the action of the electric fluid in disuniting the elements of chemical combinations; for it is evident, that if two bodies be held together by virtue of their electrical states, by changing their electricity we shall disunite them. In this view of the subject, every substance, it is supposed, has its own inherent electricity, some being positive, others negative.—When, therefore, bodies in such opposite states are presented to each other, they will combine.

We proceed to consider the splendid discovery of the composition of the fixed alkalies, which was announced in Davy's second Bakerian Lecture, read before the Royal Society in 1807; and which was the direct result of an application of the laws of Voltaic decomposition, so admirably developed in his lecture of the preceding year.

The fixed alkalies, as well as the earths, had formerly been suspected to contain metallic bases; but as no proof, nor even experimental indication of the fact, could be obtained, the idea was by many entirely abandoned; and, with regard to the former of these bodies, the supposition of their being compounds of hydrogen was considered more plausible, inasmuch as they maintained a striking analogy in sensible qualities, as well as in chemical habitudes, to ammonia, whose composition had been fully established; while the supposed relations between hydrogen and oxygen, the acknowledged principle of acidity, added strength to the conjecture. Still, all the chemists in Europe had in vain attempted to effect their decomposition; they had been tortured by every variety of experiment which ingenuity could suggest or perseverance accomplish, but all in vain: nor was the pursuit abandoned, until indefatigable effort had wrecked the patience and exhausted every resource of the experimentalist.

We have already explained the important fact, established by Davy, that during the development of principles from their various combinations, by Voltaic action, an

attraction invariably subsists between oxygen and the positive pole, and inflammable matter and the negative pole; thus, in the decomposition of water, its oxygen was constantly transferred to the former, and its hydrogen to the latter. Furnished with such data, Davy proceeded to submit a fixed alkali to the most intense action of the Galvanic pile; believing that if it contained any hydrogen, or other inflammable basis, it would be separated at its negative extremity, and if any oxygen, that it would appear at the opposite end. His first attempts were made on solutions of the alkalies; but, notwithstanding the intensity of the electric action, the water alone was decomposed, oxygen and hydrogen being disengaged with violent effervescence, and transferred to their respective poles. The presence of water thus appearing to prevent the desired decomposition, potass, in a state of igneous fusion, was submitted to experiment; when it was immediately evident that combustible matter of some kind, burning with a vivid light, was given off at the negative wire. After various trials, during the progress of which the numerous difficulties which successively arose were as immediately combated by ingenious manipulation, a small piece of potass, sufficiently moistened by the breath to impart to it a conducting power, was placed on an insulated disc of platina, and connected with the negative side of the battery in a state of intense activity, and a platina wire communicating with the positive side, was at the same instant brought into contact with the upper surface of the alkali. The potass began to fuse at both its points of electrization; a violent effervescence commenced at the upper or positive surface, while at the lower or negative, instead of any liberation of electric matter, which must have happened had hydrogen been present, small globules having the appearance of quicksilver were disengaged, some of which were no sooner formed than they burnt with explosion and bright flame. The gaseous matter developed at the positive pole, was soon identified as oxygen; but to collect the metallic matter at the opposite extremity, in a sufficient quantity for a satisfactory examination, was not so easy; for such was its attraction for oxygen, that it speedily reverted to the state of alkali by recombining with it. After various trials, Davy found that recently-distilled naphtha presented a medium in which it might be preserved, by covering the metal with a thin transparent film of fluid, which defended it from the action of the air, and at the same time allowed an accurate examination of its physical qualities. Thus provided, he proceeded to investigate the properties of the body; giving to it the name of potassium, and which may be described as follows. It is a white metal, instantly tarnishing by exposure to air; at the temperature of 70° Fahrenheit, it exists in small globules, which possess the metallic lustre, opacity, and general appearance of mercury; so that when a globule of mercury is placed near one of the potassium, the eye cannot discover any difference between them. At this temperature, however, the metal is only imperfectly fluid; but when gradually heated, it becomes more and more fluid; and at 150°, its fluidity is so perfect, that seve-

ral globules may easily be made to run into one. By reducing its temperature, it becomes at 50° a soft and malleable solid, which has the lustre of polished silver; it is soft enough, indeed, to be moulded like wax. At about the freezing point of water, it becomes hard and brittle, and exhibits when broken a crystallized texture of perfect whiteness and high metallic splendour. It is also a perfect conductor of both electricity and heat. Thus far, then, it fulfils every condition of a metal; but we have now to mention a quality which has been as invariably associated with the idea of a metal as lustre; and its absence, therefore, in potassium, has given rise to a question whether, after all, it can with propriety be classed under this denomination;—we allude to great specific gravity. Instead of possessing that ponderosity which we should have expected in a body otherwise metallic, it is so light as to swim, not only upon the surface of water, but upon that of naphtha, by far the lightest fluid in nature. Thrown upon water, it instantly decomposes the fluid, and an explosion is produced with a vehement flame; an experiment which is rendered more striking if, for water, ice be substituted. In this latter case it instantly burns with a bright flame, and a deep hole is made in the ice, filled with a fluid, which is found to be a solution of potass. It is scarcely necessary to state that this phenomenon depends upon the very powerful affinity which the metal possesses for oxygen, enabling it even to separate it from its most subtle combinations. The evidence afforded of the nature of the fixed alkali, potass, is thus rendered complete. It is a metallic oxide, or, in other words, a body composed of oxygen, and a metal of the most singular description, so light as to swim upon water, and so inflammable as to catch fire by contact with ice!

From these observations it will be immediately perceived, that the decomposition of the fixed alkali placed in the hands of the experimentalist a new instrument of analysis, scarcely less energetic or of less universal application than the power from which the discovery emanated. So strong is the affinity of potassium for oxygen, that it discovers and decomposes the small quantities of water contained in alcohol and ether. But, perhaps, the most beautiful illustration of its deoxidizing power, is shown in its action on fixed air, or carbonic acid; when heated in contact with that gas, it catches fire, and by uniting with its oxygen becomes potass, while the liberated carbon is deposited in the form of charcoal.

Upon submitting soda to the electric battery, under circumstances such as those we have already described, a bright metal was obtained similar in its general character to potassium, but possessing distinctive peculiarities which it is not necessary to detail: to this substance Davy gave the name of sodium.

These important discoveries were followed up by an investigation into the nature of the earths; and the results were communicated in a paper, read before the Royal Society on the 30th of June in the same year. It appears that this investigation required still more refined and complicated processes than those which had succeeded with the fixed alkalies, owing to

the infusible nature of the earths; the strong affinity of their bases for oxygen made it unavailing to act upon them in solution in water; and the only methods that proved successful, were those of operating upon them by electricity in some of the combinations, or of combining them at the moment of their decomposition by electricity, in metallic alloys, so as to obtain evidences of their nature and properties. It is impossible to follow the philosopher through all the intricate paths of this investigation: suffice it to say, that, although he was unable to produce the metallic bases of the earths in the same unequivocal form as he produced those of the alkalies, he furnished sufficient evidence of their being metallic oxides.

Sir Humphrey Davy's Bakerian Lecture of 1808, entitled, "An Account of some new Analytical Researches on the Nature of certain Bodies, particularly the Alkalies, Phosphorus, Sulphur, Carbonaceous Matter, and the Acids hitherto undecomposed; with some general Observations on CHEMICAL THEORY," abounds in elaborate experiments with the Voltaic apparatus, made with the hope of extending our knowledge of the principles of bodies, by the new powers and methods arising from the application of electricity.

Shortly after the close of the war, the commissioners of the navy, fully impressed with the evil arising from the destructive influence of sea-water upon the copper sheathing of his majesty's ships of war, applied to the council of the Royal Society, in the hope that some plan might be suggested for arresting, if not for preventing, the decay of so expensive an article. Sir H. Davy charged himself with the inquiry; and presented its results in a paper, which was read before the society on the 22d of January, 1824, and which was continued in another communication dated 17th of June, 1824, and concluded in a third, read 9th of June, 1825. We shall endeavour briefly to state the principal facts elicited by this inquiry. We have already stated, that Davy had advanced the hypothesis, that chemical and electrical changes were identical, or dependant upon the same property of matter; and that he had shown that chemical attractions may be exalted, modified, or destroyed, by changes in the electrical states of bodies; that substances will only combine when they are in different electrical states; and that, by bringing a body, naturally positive, artificially into a negative state, its usual powers of combination are altogether destroyed: it was, in short, by an application of this very principle that he decomposed the alkalies; and it was from the same energetic instrumentality that he now sought a remedy for the rapid corrosion of copper sheathing. When a piece of polished copper is suffered to remain in sea-water, the first effects are, a yellow tarnish upon the surface, and a cloudiness in the water, which take place in two or three hours: the hue of the cloudiness is at first white, and it gradually becomes green. In less than a day a bluish-green precipitate appears in the bottom of the vessel, which constantly accumulates; this green matter appears principally to consist of an insoluble compound of copper (a sub-muriate) and hydrate of magnesia. Reasoning upon these phenomena, Davy arrived at the conclusion that copper could

act upon sea-water only when in a positive state; and since that metal is only weakly positive in the electro-chemical scale, he considered that, if it could be only rendered slightly negative, the corroding action of sea-water upon it would be null.

A piece of zinc, as large as a pea, on the point of a small iron nail, was found fully adequate to preserve forty or fifty square inches of copper; and this, wherever it was placed, whether at the top, bottom, or in the middle of the sheet of copper, and whether the copper was straight or bent, or made into coils. And where the connexion between the different pieces of copper was completed by wires, or thin filaments of the fortieth or fiftieth of an inch in diameter, the effect was the same; every side, every surface, every particle of the copper remained bright, whilst the iron, or the zinc, was slowly corroded. A piece of thick sheet copper, containing, on both sides, about sixty square inches, was cut in such a manner as to form seven divisions, connected only by the smallest filaments that could be left, and a mass of zinc, of the fifth of an inch in diameter, was soldered to the upper division. The whole was plunged under sea-water; the copper remained perfectly polished. The same experiment was made with iron; and after the lapse of a month, in both instances, the copper was found as bright as when it was first introduced, whilst similar pieces of copper, undefended, in the same sea-water, underwent considerable corrosion, and produced a large quantity of green deposite in the bottom of the vessel. It remained only that the experiments should be conducted on a large scale. The lords commissioners of the navy, accordingly gave Sir Humphry permission to ascertain the practical value of his discovery, by trials upon ships of war; and the results, to use his own expression, even surpassed his most sanguine expectations. Sheets of copper, defended by from 1–40th to 1–1000th part of their surface of zinc, malleable and cast iron, were exposed, for many weeks, in the flow of the tide, in Portsmouth harbour, their weights having been ascertained before and after the experiment. When the metallic protector was from 1–40 to 1–110, there was no corrosion nor decay of the copper; with small quantities it underwent a loss of weight. The sheathing of boats and ships, protected by the contact of zinc, cast and malleable iron, in different proportions, compared with that of similar boats and sides of ships unprotected, exhibited bright surfaces, whilst the unprotected copper underwent rapid corrosion, becoming first red, then green, and losing a part of its substance in scales. In overcoming one evil, another, however, has been created; by protecting the copper, the accumulation of sea weeds and marine insects has been favoured, and the ships thus defended by iron or zinc have become so foul, as scarcely to continue navigable. This would seem to depend upon several causes, especially upon the deposition of saline and calcareous matter, arising from the decomposition of marine salts. Had Davy's health remained unimpaired, his genius would, without doubt, have suggested a remedy; but he unfortunately declined in health, at the

very moment his energies were most required. Future philosophers may propose successful expedients to obviate the evil, but the glory of the discovery will justly belong to him who first developed the principle. Whether or not that principle can be rendered subservient to the protection of copper sheathing, it must at least be admitted that the results obtained by him are of the most interesting description, and capable of various useful applications; several of which he has himself suggested, whilst others have been discovered by the ingenuity of contempory chemists. By introducing a piece of zinc, or tin, into the iron boiler of the steam engine, we may prevent the danger of explosion, which generally arises, especially where salt water is used, from the wear of one part of the boiler. Another important application is in the prevention of the wear of the paddles, or wheels, which are rapidly dissolved by salt water. Mr. Pepys has extended the principle, for the preservation of steel instruments, by guards of zinc; and razors and lancets have been thus defended with perfect success.

In 1812 Mr. Davy married. The object of his choice was Jane, daughter of Charles Kerr, of Kelso, and widow of Shuckburgh Ashby Apreece.

We now arrive at one of the most important results of Sir Humphrey Davy's labours, viz. the invention of the safety lamp for coal mines, which has been generally and successfully adopted throughout Europe. This invention has been the means of preserving many valuable lives, and preventing horrible mutilations, more terrible even than death. The general principle of the discovery may be described as follows:—

The common means formerly employed for lighting the dangerous part of the mines consisted of a steel wheel revolving in contact with flint, and affording a succession of sparks: but this apparatus always required a person to work it, and was not entirely free from danger. The fire-damp was known to be light carburetted hydrogen gas; but its relations to combustion had not been examined. It is chiefly produced from what are called blowers or fissures in the broken strata, near dykes. Sir Humphrey made various experiments on its combustibility and explosive nature; and discovered, that the fire-damp requires a very strong heat for its inflammation; that azote and carbonic acid, even in very small proportions, diminished the velocity of the inflammation; that mixtures of the gas would not explode in metallic canals or troughs, where their diameter was less than one seventh of an inch, and their depth considerable in proportion to their diameter; and that explosions could not be made to pass through such canals, or through very fine wire sieves, or wire gauze. The consideration of these facts led Sir Humphrey to adopt a lamp, in which the flame, by being supplied with only a limited quantity of air, should produce such a quantity of azote and carbonic acid as to prevent the explosion of the fire-damp, and which, by the nature of its apertures for giving admittance and egress to the air, should be rendered incapable of communicating any explosion to the external air. These

requisites were found to be afforded by air-tight lanterns, of various constructions, supplied with air from tubes or canals of small diameter, or from apertures covered with wire-gauze, placed below the flame, through which explosions cannot be communicated, and having a chimney at the upper part, for carrying off the foul air. Sir Humphrey soon afterwards found that a constant flame might be kept up from the explosive mixture issuing from the apertures of a wire-gauze seive. He introduced a very small lamp in a cylinder, made of wire-gauze, having six thousand four hundred apertures in the square inch. He closed all apertures except those of the gauze, and introduced the lamp, burning brightly within the cylinder, into a large jar, containing several quarts of the most explosive mixture of gas from the distillation of coal and air; the flame of the wick immediately disappeared, or rather was lost, for the whole of the interior of the cylinder became filled with a feeble but steady flame of a green colour, which burnt for some minutes, till it had entirely destroyed the explosive power of the atmosphere. This discovery led to a most important improvement in the lamp, divested the fire-damp of all its terrors, and applied its powers, formerly so destructive, to the production of a useful light. The coal owners of the Tyne and Wear evinced their sense of the benefits resulting from this invention, by presenting Sir Humphrey with a handsome service of plate worth nearly 2000*l*., at a public dinner at Newcastle, October 11, 1817.

In 1813, Sir Humphrey was elected a corresponding member of the Institute of France, and vice-president of the Royal Institution. He was created a Baronet, October 20, 1818. In 1820, he was elected a foreign associate of the Royal Academy of Sciences at Paris, in the room of his countryman Watt; and in the course of a few years, most of the learned bodies in Europe enrolled him among their members.

Many pages might be occupied with the interesting details of Sir Humphrey Davy's travels in different parts of Europe for scientific purposes, particularly to investigate the causes of volcanic phenomena, to instruct the miner of the coal districts in the application of his safety lamp, to examine the state of the Herculaneum manuscripts, and to illustrate the remains of the chemical arts of the ancients. The results of all these researches were published in the transactions of the Royal Society for 1815, and are extremely interesting. The concluding observations, in which he impresses the superior importance of permanency to brilliancy, in the colours used in painting, are especially worthy the attention of artists. On his examination of the Herculaneum manuscripts at Naples, in 1818–19, he was of opinion they had not been acted upon by fire, so as to be completely carbonized, but that their leaves were cemented together by a substance formed during the fermentation and chemical changes of ages. He invented a composition for the solution of this substance, but he could not discover more than 100 out of 1265 manuscripts, which presented any probability of success.

Sir Humphrey returned to England in 1820, and in the same year his respected friend, Sir Joseph Banks, President of the Royal So-

ciety, died, when he was elected his successor. Sir Humphrey retained his seat till the year 1827, when, in consequence of procrastinated ill health, he resigned his seat as President of the Royal Society.

Sir Humphrey Davy was, in every respect, an accomplished scholar, and was well acquainted with foreign languages. He always retained a strong taste for literary pleasures; and his philosophical works are written in a perspicuous and popular style, by which means he has contributed more to the diffusion of scientific knowledge than any other writer of his time. His three principal works are, "Chemical and Philosophical Researches," "Elements of Chemical Philosophy," and "Elements of Agricultural Chemistry," and the two last are excellently adapted for elementary study.

The results of his investigations and experiments were not pent up in the laboratory or lecture-room where they were made, but by this valuable mode of communication, they have realized, what ought to be the highest aim of science, the improvement of the condition and comforts of every class of his fellow-creatures. Thus, beautiful theories were illustrated by inventions of immediate utility, as in the safety lamp for mitigating the dangers to which miners are exposed in their labours, and the application of a newly-discovered principle in preserving the life of the adventurous mariner.

Apart from the scientific value of Sir Humphrey's labours and researches, they are pervaded by a tone and temper, and an enthusiastic love of nature, which are as admirably expressed as their influence is excellent. We trace no mixture of science and scepticism. —The same excellent feeling breathes throughout "Salmonia, or Days of Fly-fishing," a volume published in 1828, and one of the most delightful labours of leisure ever seen. Not a few of the most beautiful phenomena of nature are here lucidly explained, yet the pages have none of the varnish of philosophical unbelief.

Sir Humphrey spent nearly the whole of the summer of 1828 in fowling and fishing in the neighbourhood of Laybach; and it has been related by a gentleman who accompanied him on a shooting excursion, that the relative weight of the various parts of each bird, the quantity of digested and undigested food, &c. were carefully noted down by the observant naturalist. It is believed that he was preparing for a large work on natural history.

The great philosopher closed his mortal career at Geneva. He had arrived in that city only the day before, namely, Friday, the 29th of May, 1829; having performed his journey from Rome by easy stages, without feeling any particular inconvenience, and without any circumstances which denoted so near an approach to the payment of the last debt of nature. During the night, however, he was attacked with apoplexy; and he expired at three o'clock on the morning of the 30th.

JOHN JAY.

May 17th, 1829. At Bedford, Westchester county, N. Y. John Jay, formerly Chief Justice of the United States, in the 85th year of his age.

Mr. Jay's ancestors were, originally, from France. His grandfather, Augustus Jay, was the third son of Pierre Jay, an opulent merchant of Rochelle. Pierre was a Huguenot, who, on the revocation of the edict of Nantz, fled to England. Augustus Jay was educated in England, and was absent on a voyage when his famity were driven from France. Upon his return, he joined his father in England. Many of the French emigrants were, at this time, emigrating to South Carolina; and Augustus embarked for that part of the American continent; but, disliking the climate of Carolina, he removed to New-York. In this province, he, for a while, established himself in business, at Esopus, on the Hudson. He afterwards removed to the city of New-York, where, in 1697, he married Anne Maria, daughter of Balthasar Bayard. He died, much respected, at the advanced age of 85, leaving three daughters, and one son, Peter, born in 1704, who in 1728, married Mary, daughter of Jacobus Van Cortlandt, of New-York. Peter, the father of John Jay, continued in New-York until about the year 1746, when he retired to his estate, at Rye. Here he remained, till the approach of the British army, at the commencement of the revolutionary war, forced him to remove. He died at Poughkeepsie, in the year 1782.

John Jay, the son of Peter, was born in the city of New-York, on the 12th day of December, 1745, old style. When eight years old, he was sent to a grammar school, kept by the Rev. Mr. Stoep, rector of the French Episcopal Church at New-Rochelle, where he commenced the study of the Latin language, and remained until 1756, when he was taken home to receive instruction from a Mr. Murray, who was employed as a private tutor in the family. In the month of August, 1760, he entered King's, (now Columbia) College, then lately founded in the city of New-York. Dr. Johnson was, at that time, president of the college. Under his supervision, and that of his successor, Dr. Cooper, he became an excellent Latin scholar, and together with the late Richard Harison, read Grotius with Porfessor Cutting. He had, from his infancy, been unable to pronounce certain letters; and acquired, besides, a habit of reading in a hurried and unintelligible manner. By attention and perseverance, he finally overcame these habits. After taking his bachelor's degree, May 15th, 1764, he entered the office of Benjamin Kissam, and, October 26th, 1768, was admitted to the bar.

The next year he was appointed secretary to the commissioners named by the king for settling the dispute in relation to the boundaries between the provinces of New-York and New-Jersey.

In the year 1774, Mr. Jay married Sarah Livingston, the daughter of William Livingston, afterwards governor of New-Jersey. He had, by this time, acquired great reputation as a lawyer, and was employed in the most important causes, not only in New-York, but in the adjacent provinces of Connecticut and New-Jersey. He began, also, to be looked up to by his fellow-citizens, as one who was to direct and guide them through the contest which seemed to be approaching. The American revolution found him singularly well fitted for his country's service, by a rare union of the dignity and

gravity of manhood, with the zeal and energy of youth. After having acted a few months as a member of the general committee of safety in the city of New-York, Mr. Jay was elected, in 1774, by the citizens of N. York, Westchester, Albany, and Duchess counties, as one of their delegates, and took his seat in the first American congress. At the opening thereof, Sept. 5th, the high estimation in which he was held, even in this illustrious body, was evinced, by his being placed on a committee with Mr. Lee and Mr. Livingston, to draft an address to the people of Great Britain; and the eloquent production they reported was written by Mr. Jay himself. In the spring of 1775, he was chosen a member of the provincial convention of New-York, and by that body was chosen, the second of April, a delegate to the continental congress, which was to assemble the 10th of May, 1775. Mr. Jay hastened to take his seat in congress, and was immediately appointed chairman of a committee to prepare an address to the people of Canada. He was shortly after chosen, June 3d, with Franklin, Dickenson, Johnson and Rutledge, to draft a petition to the king. Within a fortnight after this, he was again appointed, with the same colleagues, except Dickenson, whose place was supplied by Mr. Livingston, to prepare a declaration for General Washington, upon assuming the command of the army in the name of congress. On the 12th of July, 1775, he is one of a committee to provide for the protection of the trade of the colonies, and was re-appointed, on the same committee, in the adjourned congress, which met the ensuing September. He was also on the committee to examine the qualifications of persons applying for military commissions; and with Franklin, Jefferson, Deane, and Hooper, composed the committee to prepare the instructions for the provisional government, to whose care the public affairs were to be committed, upon the adjournment of congress. He was also, with Franklin, Harrison, Johnson, and Dickenson, on the committee of secret correspondence with the friends of the colonies in foreign countries. This important committee was appointed the 29th November, 1775, and was the origin of the future department of foreign affairs. He was on various other committees; and it may be safely asserted that, while in congress, no members, except Franklin and John Adams, were appointed to more numerous and important duties. From his gifted mind proceeded many of those celebrated state papers, whose grave eloquence commanded the admiration of Europe, whilst, by the evidence which they furnished of the wisdom and talent that guided the councils of the United States, they contributed to their ultimate success, as much as the most signal triumphs of their arms.

Whilst in this congress, Mr. Jay was appointed, by the provincial convention of New-York, colonel of the second regiment of the city militia; but before he was released from the more arduous and pressing duties imposed upon him, the city itself had fallen into the hands of the enemy.

In the month of May, 1776, he was recalled from congress by the provincial convention, to aid in forming the government for the province, which, in pursuance of a recommendation of the general congress, it had determined to adopt.

To the urgent demands for Mr. Jay's presence in his own province, it is owing that his name does not appear among the signers to the declaration of independence.

Immediately upon his return, he was put in requisition. On the 13th of June, he was placed on the committee to take up disaffected persons; and, on the 21st of the same month, appointed chairman of the committee of safety. The 9th of July he reported resolutions approving of the declaration of independence.

Shortly after this, New-York became the principal theatre of action. A numerous party of Tories existed in the state, and its central position, together with other considerations, rendered it the object of the enemy's attack.

After a disastrous defeat, General Washington was obliged to evacuate the city, and finally to retreat to the Highlands. The lower part of the state was relinquished to the undisputed possession of the British army, whose winter quarters were extended through New-Jersey to the Delaware.

The American army was obliged to seek refuge behind the Delaware, and the provincial congress of New-York retired to Poughkeepsie, protected from the enemy more by the difficulties of the Highlands, than by the American forces.

In this trying conjuncture, when the hopes of America seemed at the lowest ebb, Mr. Jay never wavered, but assumed a tone corresponding to the emergency. The 11th of December, 1776, he was appointed chairman of the committee to detect and suppress conspiracies against the country, and proposed that it should be deemed high treason to oppose the American cause.

On the 23d of the same month, a few days before the battle of Trenton, he prepared an address from the convention to the people of the state of New-York, exhorting them to act with vigour and courage in that critical emergency. Whilst performing these duties, and amidst these distracting exigencies, he was engaged in preparing a constitution for the government of the state, and, on the 12th of March, 1777, he reported to the convention the draft of that instrument. Under this constitution, the government of the state was administered for nearly half a century, during which, the community rapidly advanced in prosperity and happiness. Many of its original and distinctive provisions were adopted in the constitutions of other members of the Union; and the changes which have been subsequently made in that instrument have not, in the opinion of many intelligent judges, improved the chances of the community for an able and enlightened administration of the government. Upon the organization of the state government, May 3d, 1777, Mr. Jay was appointed chief justice, which office he held until August 18th, 1779, when he resigned, finding himself unable to perform its duties, in consequence of the more imperious duties devolved upon him as president of congress.

His moral courage, and the decision and determination with which in his judicial capacity, he carried the laws into effect against the domestic enemies of the state, imparted confidence to his fellow citizens, and materially tended to

strengthen the Whigs in this divided member of the confederacy.

The 10th of November, 1778, he was again chosen a delegate to the continental congress, and took his seat on the 7th of the next month. Three days afterwards, he was chosen president of congress, on the resignation of Mr. Laurens. While in that station, he prepared, pursuant to a resolution of congress, passed September 8th, 1779, an address to their constituents, on the state of the public finances, in which he exhorted the people, in the most glowing terms, to enable congress to keep its faith, and to carry through the contest so gloriously begun.

On the 27th of the same month he was appointed minister plenipotentiary to the court of Spain, and resigned the chair of congress, with the thanks of that body for the manner in which he had discharged the duties of his office. He left the United States in the American frigate Confederacy, accompanied by Mr. Gerard, the French minister. In consequence of the loss of her bowsprit and all her masts, in a gale of wind off the banks of Newfoundland, the frigate was compelled to steer for Martinique, where she arrived, in a very disabled state, on the 19th of December, 1779. The French authorities here despatched them, in the French frigate Aurora, to Spain, and they arrived at Cadiz, January 22d, 1780. Upon the invitation of the Spanish minister, who had been informed of his arrival by Mr. Carmichael, the secretary of legation, Mr. Jay was invited to Madrid, where he arrived the 4th of April, and entered upon the business intrusted to him.

The objects which congress had in view, in this mission, were to obtain from Spain an acknowledgment of our independence, to form a treaty of alliance, and to procure pecuniary aid.

On the two first points, the Spanish minister had determined, before acceding to the secret convention with France, preparatory to the war with England, against the wishes of the United States; but still with the design of ascertaining the views of the United States, in relation to their western boundary, and probably in the hope of obtaining some admissions concerning it, and even the relinquishment of territorial claims, he entered upon the negotiation, but made no proposition, nor statement of the claims of Spain, and by all the arts of diplomacy, avoided coming to any definite conclusion. Among other obstacles which he threw in the way, to the formation of a treaty, were his objections to the claims of the United States to the navigation of the Mississippi, from the point where it leaves the territory of the United States to the sea. Mr. Jay entertained some hopes of bringing Spain to an equitable arrangement on this head, but congress had, on the 15th of July, 1781, passed a resolution, permitting him to yield the navigation of this river, although with closed doors. Mr. Jay soon discovered from the conduct of Count Florida Blanca, the Spanish minister, that he was acquainted with its passage. Believing it useless, therefore, to keep back the proposition, he made the offer, but limited it to the present time, apprizing the Spanish minister, that if a treaty should not be concluded with Spain, before a general peace took place, the motives to that relinquishment would

end, and that the govrenment of the United States would not consider itself bound to make a similar proposition. Although this limitation to the offer had not been dictated by congress, its policy was so clear, that a resolution was passed April 30th, 1782, approving this limitation to the proposition, and declaring that after the peace, all motive for the sacrifice would be taken away. As the influence of France was then generally supposed to be very powerful at the court of Madrid, Mr. Jay deemed it extraordinary, that the latter should refuse to acknowledge our independence, at a time when it had already been acknowledged by the French government. In the spring of 1782, Mr. Jay communicated to congress his suspicions, that the government of France had interfered to prevent the accomplishment of this part of the object of his mission. An examination into the official correspondence of the French government, has excited some doubt whether these suspicions, although natural, were well founded, and the conduct of Spain, on that point, may perhaps be accounted for, to the entire exculpation of our earliest ally. The policy of Spain, towards the New World, has always been narrow, short-sighted, and exclusive, and, deeming her acknowledgement of our independence, an object of great importance to the United States, she was willing to compel them to purchase that acknowledgement, by territorial cessions, or rather by relinquishing territorial claims. By this course, she would gratify her absurd vanity, increase her colonial possessions, augment their security, and partly justify her departure from the abstract principle of colonial dependence. The preamble of the secret convention, between France and Spain, made shortly before the declaration of war, by the latter power, sets forth that France was desirous that Spain should acknowledge the independence of this country, but that Spain, though willing that that object should be effected, and resolved to unite in the war with France, still from motives of her own, had declined making such acknowledgment. This preamble, if sincere, would prove that the influence of France was fairly exerted with Spain, to induce her to acknowledge our independence, and that the refusal of that power, proceeded from a latent dislike to the existence of an independent power, on this side of the Atlantic. To a similar policy, may be attributed the defeat of Mr. Jay's application for pecuniary aid. At an early period of the official intercourse between Mr. Jay, and the Spanish minister, he was authorized by that minister to accept certain bills of exchange, drawn upon him by order of congress, under the pressure of necessity, and in the expectation of obtaining a subsidy or loan from Spain.

He was indeed told, that it was inconvenient to advance the money at that time, but that, before the beginning of the next year, the king would be able to advance from £25,000 to £40,000, and in the mean time, the holders of the bills should be satisfied, by the engagement of the Spanish government to pay them. Relying upon this assurance, Mr. Jay accepted such bills, drawn upon him, by order of Congress, as were presented. Before, however, all the bills authorized to be drawn on Mr.

Jay, amounting to £100,000, had been negotiated, and, indeed, before any of them became due, the disinclination of the Spanish government to comply with its promises was so clearly manifested, that, at the request of Mr. Jay, congress resolved to sell no more of the bills so authorized. The difficulty now was, to provide for those bills already accepted. After much solicitation, Mr. Jay obtained from the Spanish minister $150,000, which had been specifically promised, but could not procure any assistance with regard to other accepted bills, amounting to about $100,000. This pitiful sum, the Spanish minister refused to advance on the credit of the United States, although the bills had been accepted on the strength of his assurances. Every device and artifice was resorted to on his part to avoid a direct refusal, in the expectation, that Mr. Jay would be enabled to redeem the bills, through the assistance of Dr. Franklin or Mr. Adams. At length, Mr. Jay, disgusted with his insincerity and meanness, determined to permit the bills to be protested, assigning the true reason in the body of the protest. Fortunately a few days afterwards, he was enabled, through Dr. Franklin, to take up the protested bills, and to save the credit of the United States in Europe.

Throughout this trying business, Mr. Jay discovered equal good sense, prudence, firmness, and sagacity, and effectually disappointed the Spanish government, who sought to extort some concessions from the country, as an equivalent for relief from pecuniary distress. Early in the summer of 1782, he was appointed one of the commissioners to negotiate a peace with England, and was authorized to continue the negotiation with Spain; Count de Aranda, the Spanish ambassador at the French court, being empowered to conduct it, on the part of his own country. The Count de Aranda first sought to obtain our views, concerning the boundary line of the United States. Mr. Jay replied, that the boundary between the United States, and the Spanish dominions, was a line drawn from the head of the Mississippi, through the middle thereof, to the thirty-first degree of north latitude, and from thence to the boundary line between Florida and Georgia. The count objected to this boundary, and contended that the western country had never been claimed by the United States, and if it did not belong entirely to Spain, it belonged to the independent nations of Indians who occupied it. Mr. Jay desired the count to trace on a map, the boundary claimed by Spain, which he did. This line ran from the confines of Georgia, to the confluence of the Kanhawa river with the Ohio, then around the western shores of Lake Erie, and Huron, and thence around Lake Michigan to Lake Superior. On this subject, Mr. Jay consulted with Dr. Franklin, who was not joined with him in this negotiation, but who agreed with him, that the Mississippi ought to be insisted on as a boundary, and Mr. Jay informed Count de Aranda, that he had no authority to cede any territory east of it. At this interview with the Spanish minister, Mr. Jay exhibited his commission, and as usual delivered a copy of it. Count de Aranda, however, did not produce his. To have done so, would have been a tacit acknowledgement of our in-

dependence, which he was not authorized by his court to make. Finding that this omission on the part of the Count de Aranda was intentional, Mr. Jay declined any further negotiation with him. In the beginning of September, things being in this situation, Mr. Jay was invited to a conference with M. de Rayneval, secretary to the Count de Vergennes, the prime minister of France, who entered into a discussion of our claims to the western countries, and the next day, sent Mr. Jay a memoir on the subject, enclosed in a letter, urging him to treat with the Spanish minister, without insisting on seeing his powers. The memoir was entitled, "Ideas on the manner of determining, and fixing the limits between Spain and the United States, on the Ohio and Mississippi." The memoir asserts, that the United States had no claims to the western country, except those derived through Great Britain; and then endeavours to prove, that Great Britain never had any claims to it. It goes on to state, that, with regard to the lands situated to the northward of the Ohio, their fate would have to be decided by the court of London. Mr. Jay under the influence of suspicions, naturally excited by this conduct, wrote to congress, expressing his conviction, that the French court would, at a peace, oppose the extension of our boundary to the Mississippi, and our claim to the navigation of that river; that they would probably support the British claim to all the country above the thirty-first degree of latitude, and certainly to all the country north of the Ohio; and unless we would consent to divide our territories with Spain, that France would aid her in negociating with Great Britain, for the territory she wanted, and agree that the residue should belong to the last mentioned power. Mr. Jay also wrote at the same time, to the Count de Aranda, that he was not authorized to make cessions of territory, but possessed full powers to conclude a treaty of amity, commerce and alliance, with Spain. The count replied, that he had sufficient powers to treat and confer, and was ready to proceed. About a fortnight afterwards, he met the Count de Aranda, at the house of the Count de Vergennes. The Spanish minister asked, when they should proceed to business. Mr. Jay replied, whenever he communicated his powers to treat. Count de Aranda inquired, whether Count Florida Blanca, former minister of Spain, had not informed him that he, the Count de Aranda, was authorized to treat. Mr. Jay admitted the fact, but insisted that it was proper, in conformity to custom, to exchange copies of commissions. Count de Aranda then said, that this could not be expected in the present case, as Spain had not acknowledged our independence. Count de Vergennes here interposed, and observed, that Mr. Jay ought certainly to treat with the Spanish minister; but Mr. Jay positively declined doing so, without his powers were produced. After the departure of the Spanish minister, the Count de Vergennes entered upon the subject of boundaries. Mr. Jay remarked, that the objection of Spain, to our extension to the Mississippi, was of recent origin; for, at the time he was in Spain, Count Florida Blanca gave him to understand, that the success of his negotiation de-

pended on our ceding to Spain, the navigation of the Mississippi, which would be idle, if our territory did not extend to it. The count only smiled, and said he hoped Mr. Jay and the Spanish minister would finally agree. In a subsequent conference with M. de Rayneval, Mr. Jay having urged the recency of the Spanish claims, M. de Rayneval observed, that it was owing to the ignorance of Count Florida Blanca. After the preliminary articles of peace with England were signed and ratified, the Spanish minister informed Mr. Jay that his court was ready to receive him in form, and was desirous that he should return to Madrid, and complete the treaty. Mr. Jay, however, did not return. Notwithstanding the unpleasant situation in which Mr. Jay and the Count de Aranda were placed, as diplomatists, they mutually entertained great respect and esteem for each other. Mr. Jay thought the count the most able Spaniard he had ever met with; and the latter, on taking leave of Mr. Jay, could not avoid complimenting him, on his management of the negotiation committed to him. At the same time, the negotiation of the treaty of peace between Great Britain and the United States was progressing. Mr. Jay arrived in Paris the 23d June, 1782. Dr. Franklin, Mr. Adams, and Mr. Laurens, were joined with him in commission, but Mr. Laurens did not arrive till after the signature of the preliminary articles. Mr. Adams arrived the 26th of October, 1782. Mr. Oswald was appointed, on the part of England, to treat with the United States. On the 25th July, 1782, a warrant was issued by the king of Great Britain, addressed to the attorney general, directing him to prepare a commission to Mr. Oswald, empowering him "to treat, consult of, and conclude with, any commissioner or commissioners named, or to be named by the colonies or plantations in North America; or any body or bodies corporate or politic, or any assembly or assemblies, or description of men, or any person or persons whatever, a peace or truce with the said colonies or plantations, or any part or parts thereof." A copy of this paper was given by Mr. Oswald to Dr. Franklin, who, after showing it to Mr. Jay, sent it to the Count de Vergennes. The count invited Dr. Franklin and Mr. Jay to a conference, which they attended on the 10th of August. The count then stated, that he thought they might proceed to treat with Mr. Oswald, on seeing the original commission, and that the powers were such as might be expected. Mr. Jay remarked, that it would be descending from the ground of independence, to treat under the description of colonies. The count replied, that names were of little importance, and that the acknowledgemnt of our independence could not reasonably be expected to precede the treaty. Dr. Franklin referred to their instructions as a reason for conforming to the count's advice. By these instructions, it appeared that they were to follow, in all things, the advice of the Count de Vergennes, and to do nothing without acquainting him with their intentions. Mr. Jay received these injunctions with great pain, and wrote, on the occasion, to congress, that while he accepted the appointment, in order to prevent the embarrassments and de-

lays which his refusal might occasion, he begged them soon to relieve him from a station, where, in the character of their minister, he must receive and obey, under the name of opinions, the direction of those on whom no American minister ought to be dependent, and to whom, in love to their country, and zeal to her services, he and his colleagues were, at least, equal.

On the resignation of Mr. Fox, suspicions were entertained, both in France and England, as to the sincerity of Lord Shelburne's intention respecting American independence. To counteract these, Lord Shelburne had, previously to the arrival of Mr. Oswald, communicated through Mr. Vaughan to Dr. Franklin, as a proof of the disposition of the British government, an extract of certain instructions to Sir Guy Carleton, dated 25th June, 1782, in which Sir Guy is informed that the king had commanded his ministers to direct Mr. Grenville, "That the independence of America should be proposed by him, in the first instance, instead of making it the condition of a general peace."

Mr. Jay had now a private conference with Mr. Oswald, and pointed out to him the inconsistency of the terms of his commission, with the declaration in the above extract, and explained the injurious consequences which would result to Great Britain from a refusal, on her part, to acknowledge our independence. Mr. Oswald, who, throughout the negotiation, showed great candour, acquiesced in these observations, and desired Mr. Jay to draft a commission which would satisfy him, and yet be consistent with the honour of the king. Mr. Jay accordingly drew such a commission, which, after some corrections by Doctor Franklin, he gave to Mr. Oswald, who approved it, and promised to recommend it to the British government. The next day Mr. Oswald said he thought he was enabled to make such a declaration, and showed Mr. Jay an article of his instructions, authorizing him to acknowledge the independence of the U. States, if the American commissioners were not at liberty to treat on any other terms; but that it would be necessary to obtain the previous consent of the ministry, and he despatched a courier to England for that purpose. The original commission had now arrived, and Mr. Jay and Dr. Franklin waited on the Count de Vergennes to communicate that circumstance to him, agreeably to a part of their instructions, and also to let him know what had passed between them and Mr. Oswald. The count and Mr. Jay again discussed the propriety of a previous acknowledgement of independence, each maintaining the opinion he had formerly advanced.

Mr. Fitzherbert, who was the English minister to France, had a conference with Count de Vergennes the next day, and immediately after despatched a courier to London.

Mr. Oswald received an answer to his despatch, dated 1st September, 1782, approving his conduct, in communicating the extract from his instructions to the American commission, and expressed a hope that they would no longer doubt the intention of the king to acknowledge our full and unconditional independence as an article of treaty. Mr. Jay observed to Mr. Oswald, that the language of the

letter was so inconsistent with the instructions to Sir Guy Carleton, and corresponded so exactly with that held by the Count de Vergennes, that he must attribute it to Mr. Fitzherbert's courier. Mr. Oswald acknowledged that the Count de Vergennes had told Mr. Fitzherbert, that Mr. Oswald's commission had come, and that it would do, and Mr. Oswald did not deny the justness of Mr. Jay's inference; that Mr. Fitzherbert, finding the French court so moderate, had thought it his duty to inform his government of the fact, to prevent its embarrassment by the scruples of the American commissioners. Mr. Jay then explained to Mr. Oswald, what he supposed to be the natural policy of the French court, and proceeded to show that it was the interest of Great Britain to render the United States as independent of France as they were of Great Britain, observing that a new commission, authorizing him to treat with the commissioners of the United States of America, would remove their present objections to treating with him. At the request of Mr. Oswald, Mr. Jay put this proposition in writing. Mr. Jay also prepared a letter to Mr. Oswald, positively refusing to treat, excepting on the ground of acknowledged independence, and assigning the reasons of this determination. The letter was submitted to Dr. Franklin, who thought it too positive, and consequently, as a formal paper, it was not sent. At Mr. Oswald's request, however, Mr. Jay gave him the draft unsigned, which was sent, together with sundry copies of resolutions of congress, evincing their adherence to their independence, by express to London.

These movements were not communicated to the French minister.

On the 11th September, 1782, Mr. Jay obtained a copy of a letter from M. Marbois, the French minister in the United States, to the Count de Vergennes, which Mr. Jay sent to congress. It was dated at Philadelphia, 13th March, 1782, and stated that Mr. Samuel Adams was endeavouring to excite in Massachusetts an opposition to peace, if the eastern states were not, by the treaty, admitted to the fisheries. To defeat these efforts of Mr. Adams, M. Marbois proposed that the king of France should cause to be signified to congress his surprise that the subject of the Newfoundland fisheries should have been included in the additional instructions to the American commissioners; and that the United States should advance their pretensions, without paying regard to the king's rights. He also proposed that the king should promise congress his assistance to procure for them the other fisheries, but without being answerable for his success; intimating, that it was important that this declaration should now be made, since it would be less easy to influence the United States, when they should recover the important posts of New-York, Charlestown and Penobscot.

On the 10th September, 1782, Mr. Jay received information, that the Count de Aranda had had that morning a conference with the Count de Vergennes and M. de Rayneval, immediately after which, the latter had set off for England. Mr. Jay was finally led to conjecture, that the objects of M. de Rayneval's mission to London were to let Lord Shelburne know, that France did not support the

American commissioners in their demand of a previous acknowledgment of independence, and that the offer to acknowledge it in the treaty was sufficient.

2d. To discover whether Great Britain would divide the fisheries with France, to the exclusion of other powers.

3. To apprize Lord Shelburne of the determination of Spain to possess the exclusive navigation of the Gulf of Mexico and of the Mississippi, and to suggest the expediency of such a boundary line as would satisfy Spain, and leave to Great Britain the country north of the Ohio.

4. To ascertain whether peace could be concluded on terms agreeable to France, in order that the negotiation might be stopped, if it could not.

Mr. Jay informed Mr. Oswald of M. de Rayneval's journey, and stated the three first probable objects of his mission. In order to counteract the designs of M. de Rayneval, Mr. Jay prevailed upon Mr. Vaughan, who was attached to the American cause, and intimate with Lord Shelburne, to go immediately to London, for the purpose of conferring with the ministry. To this gentleman he stated, at large, the various considerations which should induce Great Britain to acknowledge our independence, to allow us the fisheries, and to refrain from opposing our extension to the Mississippi, or our navigation of that river. Mr. Vaughan accordingly started for London on the 11th September. These steps were taken without consulting Dr. Franklin, who differed from Mr. Jay in opinion relating to the objects of M. de Rayneval's journey, and who felt himself bound by his instructions in relation to the French minister.* On the 27th September, 1782, the new commission to Mr. Oswald, in conformity with the wishes of the American commissioners, arrived. A draft of preliminary articles was soon made out. The preamble stated them to be the articles agreed on by the American and British commissioners, but added, that the treaty was not to be concluded until Great Britain and France had also agreed on terms of a treaty. The first article acknowledges the thirteen United States to be independent, and describes their boundaries.

The second article provides for the suspension of hostilities, on the conclusion of the proposed treaty.

The third article secures to Great Britain and the United States the privileges, with regard to the fisheries, enjoyed by the subjects of each, before the last war between France and Great Britain.

The fourth article declares, that the navigation of the Mississippi shall for ever be free, from its source to the ocean; and that, in all ports of Great Britain and he United States, the merchant ships of those powers shall enjoy reciprocal protection and privileges. These articles were not submitted

* An examination of the confidential correspondence of the British and French governments, in relation to the negotiations for peace, has been lately made by Jared Sparks, who comes to the conclusion, that Mr. Jay was mistaken respecting the good faith and sincerity of the French ministers.—*Vide 208th pp. of eighth Vol. of the Diplomatic Correspondence of the American Revolution, published, Boston*, 1830.

to Count de Vergennes. On the 23d October, Mr. Oswald received a letter from the British minister, telling him that the extent of our boundaries, and the situation of the loyalists, caused some objection, and that his secretary was on his way to confer with the commissioners. On the following day, in a conference between Dr. Franklin, Mr. Jay, and M. de Rayneval, the latter inquired as to the state of affairs with Mr. Oswald. He was told that difficulties had arisen on the subject of boundaries, and that the British minister's secretary was coming over to confer with them. He asked what boundaries they claimed, and, on being informed, he denied our right to such an extent to the north. He asked what they had demanded as to the fisheries? They told him, a right to them, in common with Great Britain. He said we should not claim more than a coast fishery. They replied, that our people would not be content with that, and Dr. Franklin explained, in full, their great importance to the eastern states. The negotiation was in this state, when, on the 26th October, 1782, Mr. Adams arrived at Paris; and, on the 30th of November following, the preliminary articles were signed. Mr. Adams and Mr. Jay concurred on every point, as did Dr. Franklin, except as to suspecting the good faith of the French ministers, and they all co-operated with the utmost cordiality. They resolved to consult the Count de Vergennes no longer, and he knew nothing of their having agreed with the British minister, till they showed him the treaty already signed. Since the United States were only bound, by their treaty with France, to continue the war until their independence should be acknowledged by Great Britain, and since the preliminary articles were only to be valid in case of a peace between Great Britain and France, the latter had nothing to complain of. But the French minister never forgot nor forgave the conduct of Mr. Jay and Mr. Adams. During this negotiation, Mr. Jay had been seriously unwell, and was advised, by his physicians, to go either to Bath or to Spa. He went to Bath, and the use of the water there restored his health.

In May, 1783, Mr. Jay wrote to congress, requesting that he might not be considered a candidate for the situation of minister to Great Britain, and strongly advised the appointment of John Adams.—The 3d September, of the same year, the definitive treaty was signed, and Mr. Jay determined to resign his commission as minister to Spain, and to return to his own country. He accordingly left Paris in May, 1784, for Dover, where he embarked on the 1st of June, and, on the 24th July, arrived at New-York. Before his arrival, however, he had been selected, by congress, as the successor to Robert R. Livingston, who had been at the head of the department for foreign affairs from its first establishment in 1781.

In June, 1783, having conducted the negotiations for peace with great ability, and having continued at his post until they were brought to a successful result, he resigned, and Mr. Jay was chosen in his stead the 7th of May, 1784, then being on the point of embarking on his return voyage. Mr. Jefferson was chosen the same day, to succeed him as a minister plenipotentiary, for the purpose of negotiating

treaties of commerce with the European powers, in conjunction with Franklin and Adams. While Mr. Jay was secretary of state, the conduct of the foreign correspondence devolved entirely on him. Congress had fallen from the estimation in which it had been held during the continuance of hostilities; and many of the leaders, whose character had given weight to its deliberations, had been called to act in the state governments, or compelled to devote their attention to their private concerns.

The secretary of foreign affairs, therefore, became, in effect, the head of the government, and all subjects of difficulty were referred to him, by congress, for his opinion. The secret journals, published by order of congress, in 1820, prove the constant reference to this officer, of all important matters, and furnish abundant testimony of the ability with which he treated them. Mr. Jay did not accept this appointment, until after having acted in congress a short time, as a delegate from the state of New-York, having been again appointed, October 26th, 1784. He now took an active part in keeping the states together, after they were released from the strong principle of cohesion produced by the war. The country was entering upon a new and untried state. The states were independent, and at peace, but this very condition exposed them to danger. An overwhelming debt had been incurred, for which they were responsible in their collective character as a nation. The public creditors were clamorous for payment. Some of the states, especially the eastern, had contributed more largely than the others, to the expenses of the war, and of course had claims upon the confederacy, for the excess. Georgia and North Carolina, had not yet relinquished their claims upon the great south-western territory, which, as well as the north-western territory, the middle and eastern states contended, was an acquisition, made from the enemy, by the arms of the confederacy, for the common benefit. The English merchants, whose debts they were empowered to prosecute, by the treaty of peace, were seeking to collect them by legal process, and in some of the states, the legislatures interposed, to arrest the arm of the law. Under the pretence, that this violation of the treaty warranted her in refusing to execute its stipulations, Great Britain held in her hands the north-western posts, carried away negroes and other property, contrary to the 7th article of the treaty of peace, and refused to make any compensation. Her true motive, no doubt, was to be in a position to take advantage of any discussions among the states, and to repossess herself of such portion as should secede from the confederacy; and while we were not in a situation to redress ourselves by prompt measures, her agents were instigating the north-western Indians to hostilities, and she was, at the same moment, waging a commercial war upon our navigation, by her restrictive colonial regulations.

Georgia, too, was threatened with devastation, by the Creeks and Cherokees, then powerful nations, and appealed to congress for protection.

Spain also manifested an unfriendly spirit, and while her agents were busy among the south-western

tribes, whom she claimed as allies and subjects, she instituted a similar claim, respecting the Mississippi, to that which is now advanced by Great Britain to the St. Lawrence, i. e. to prohibit all access to the ocean, to the inhabitants on its banks, because it discharged itself into the ocean, through her territory.

In this critical emergency, Mr. Jay assumed the responsible station of secretary for foreign affairs, and became, in effect, the head of the government. His prudence and sagacity, in administering this office, are beyond all praise. Knowing that the country was rapidly acquiring strength, by which she would shortly be enabled vindicate her rights, he advised, to that England should not be required to give a categorical answer, respecting her infractions of the treaty, but, that a compliance with its provisions should be urged upon her government, and at the same time, that the treaty should be scrupulously executed, on the part of the United States. With this view, he drew up, on the 13th October, 1786, a full and elaborate report, concerning the relations between the two countries. After reciting the requisition made by our minister, at the British court, (Mr. Adams,) for the surrender of the north-west posts, and the reply of Lord Carmarthen, (then secretary of state,) complaining of the infractions of the treaty, on the part of the United States, and enclosing a list of the acts of several of the states, in violation of the treaty, Mr. Jay proceeds to inquire,

1st. Whether an individual state has a right to explain, for herself, any particular article, in a national treaty.

2d. Whether any of the acts enumerated are in violation of the treaty.

3d. What measures should be adopted in relation to Great Britain, and,

4th. What measures, in relation to the state which passed the exceptionable acts.

On the 1st point, Mr. Jay reported, that the states had, by an express delegation of power, formed and vested in congress, a perfect, though limited sovereignty, for the general and national purposes specified; that in this sovereignty, they have no concurrent jurisdiction; that a treaty, constitutionally ratified, "was binding on the whole nation," and superadded to the laws of the land, without the consent of the state legislatures; that they were not competent to decide upon their construction; and that all doubts respecting their meaning, were mere judicial questions, to be decided by the courts, according to the rules established, by the laws of nations, for the interpretation of treaties; and, consequently, that no individual state had a right to determine, in what sense any particular article should be understood.

On the 2d point, he was of opinion, that certain acts of several of the states were in violation of the 4th and 6th articles of the treaty, which provide, that there shall be no legal impediment to the recovery of debts, contracted previous to the war, and that there shall be no future confiscations. He then proceeds to inquire, whether these were justified, by the infractions on the part of Great Britain; and here he frankly stated, that the infractions, by the famous

trespass act of New-York,* the act of Pennsylvania against British creditors, and an ordinance of South Carolina respecting confiscations, were prior to any on her part, and rather afforded an excuse to Great Britain than otherwise. As congress, however, had not authorized these violations, the national faith was not yet forfeited. Great Britain had still a claim upon that body, as representing the confederacy, to answer for the conduct of its members; and congress had a right, "to insist and require, that the national faith and national treaties be kept and observed, throughout the union." With the view of properly responding to the claim of Great Britain, Mr. Jay recommended the following resolutions:

1. That the legislatures of the several states cannot of right pass any act or acts for interpreting, explaining, or construing a national treaty, or any part or clause of it; nor for restraining, limiting, or in any manner impeding, retarding or counteracting the operation or execution of the same; for that on being constitutionally made, ratified and published, they become, in virtue of the confederation, part of the law of the land, and are not only independent of the will and power of such legislatures, but also binding and obligatory on them.

2. That all such acts, or parts of acts, as may be now existing in either of the states, repugnant to the treaty of peace, ought to be forthwith repealed; as well to prevent their continuing to operate as violations of that treaty, as to avoid the disagreeable necessity there might otherwise be of raising and discussing questions touching their validity and obligation.

3. That it be recommended to the several states, to make such repeal rather by describing than reciting the said acts; and for that purpose to pass an act, declaring, in general terms, that all such acts and parts of acts repugnant to the treaty of peace, between the United States and his Britannic majesty, or any article thereof, shall be and thereby are repealed; and that the courts of law and equity in all causes and questions, cognizable by them respectively, and arising from, or touching the said treaty, shall decide and adjudge, according to the true intent and meaning of the same, any thing in the said acts, or parts of acts, to the contrary thereof, in any wise notwithstanding.

These resolutions were unanimously agreed to by congress, on the 21st of March, 1787, and a circular letter was also prepared by Mr. Jay to the states, enforcing the principles of the report, which was also unanimously agreed to, on the 13th of April, signed by the president of congress, (Arthur St. Clair.) Besides the conduct of this delicate negotiation, Mr. Jay had confided to him the management of the negotiation with Spain, respecting the Mississippi and the western boundary. Don Diego de Gardoqui; had been appointed the Spanish chargé des affaires near congress, and on the 21st of July, 1785, a commission was granted to

* An act, authorizing acts of trespass to be brought against any, who had, during the continuance of hostilities, committed depredations, or otherwise injured the property of its citizens.

Mr. Jay to conclude a treaty with him, on these disputed questions. The negotiation continued, without coming to any satisfactory result, until the organization of the federal government. It would have been easy to have concluded a commercial treaty between the two countries, on terms very advantageous to the United States; but these concessions, on the part of Spain would have required concessions on our part, respecting boundaries, and the navigation of the Mississippi, which it was not deemed advisable to make. Mr. Jay was inclined, after ineffectually trying for more favourable terms, to the insertion of an article, forbearing the use of the Mississippi, within the Spanish territory, for the space of 20 years, and in this view, he was sustained by the delegations from the eastern and middle states, except that from Delaware, which was absent, and that from Maryland, which, with the four southern states, warmly opposed it. The policy of this course, however, he was afterwards inclined to doubt, and he was always of opinion, that the United States possessed a perfect right to the navigation, which they ought never to surrender.

The whole question, however, was finally referred, on the 16th September, 1788, to the federal government, and continued to be, more or less a subject of discussion, until the purchase of Louisiana.

Mr. Jay, while acting in this important post, became fully sensible of the weakness and imperfections of the government, under the articles of confederation, and consequently warmly advocated all the preliminary measures, which led to the formation and adoption of the federal constitution. He was not a member of the convention, which formed that instrument, from an impression, that so prominent an officer, under the then existing government, should not participate in its public deliberations. He was, however, present at Annapolis, and afforded to its members essential aid, by his advice, in establishing its provisions.

He afterwards, with Hamilton and Madison, wrote those celebrated essays, under the signature of the Federalist, which so powerfully contributed to its adoption by the several states, while by the contemporaneous exposition, which they furnish of its meaning and true construction, as signal a benefit is conferred upon the present and future generations.

He was also chosen a member of the convention of the state of New-York, to decide upon the adoption of the constitution, and efficiently contributed, by his character and influence, to the decision it ultimately formed.

Shortly after the organization of the federal government, on the 26th of September, 1789, Mr. Jay was appointed chief justice of the supreme court of the United States, an office for which he was peculiarly qualified by education, political experience, in the stations he had previously filled, and above all, by that purity of feeling, and fearless and conscientious obedience to principle, which distinguished him throughout life.

While holding the office of chief justice, Mr. Jay was nominated, in 1792, by the federal party in New-York as a candidate for the office of governor, in opposition to George Clinton, who was upheld by the anti-federalists of that day. In the election which ensued, Mr. Jay ob-

tained a majority of the votes, but the canvassers burnt the votes of the counties of Otsego, Tioga, and Clinton, in which Mr. Jay had a majority, on account of some alledged informality in the returns, and Mr. Clinton was declared to be elected. The votes of Otsego indicated a large majority in favour of Mr. Jay, and under the law as it then stood, the ballot boxes themselves, were returned to the secretary of state. The sheriff of Otsego had held over, having been originally appointed for four years, and no successor had been chosen. The canvassers held, that he was not legally a sheriff, and on that ground ordered, by a party vote, the ballots of that, together with two other counties, where the returns were somewhat informal, to be burnt. The official returns, as declared by the commissioners, were for

George Clinton,	8440
John Jay,	8332

This high-handed measure justly excited the indignation of all who were not governed by party feeling; and at the next election, Mr. Clinton, who was in fault chiefly by accepting the office under such circumstances, was compelled to withdraw from the canvass, and Mr. Jay was elected in 1795 over chief justice Robert Yates, by a majority of 1589, receiving 13,481 freehold votes. At the time of his election he was abroad, having been appointed by Gen. Washington, April 19th, 1794, minister plenipotentiary to Great Britain.

Mr. Jay accepted this appointment with great reluctance. It was very improbable that a treaty could be formed upon fair terms, and a failure to adjust the difficulties, which had then so increased as to highly excite the popular feeling, would necessarily be followed by a war. In either alternative, the office was undesirable, but, yielding to the emergency of the times, he departed on his mission.

On his arrival in England, he found the British cabinet inflated with the uninterrupted but deceitful success, which attended her first movements against the revolutionary government of France. Lord Howe had just achieved a signal victory over her enemy.

Landreci had fallen, and the British army in the Netherlands had not yet met with those reverses which finally compelled it to evacuate the Low Countries. Nothing, therefore, was to be expected through the collateral influence of the European relations of England. The negotiation was to be conducted simply upon American grounds. Mr. Jay, however, did not despair, but earnestly devoted himself to the business of his mission.

Such was the effect of his sincerity, joined with a mild but firm temper, and a thorough knowledge of the true interests of both powers, that by the 19th of November of that year, all the subjects of controversy were adjusted, and the difficulties between the two countries settled by the treaty of 1794.

The negotiation of this celebrated treaty forms too large a portion of the political history of that period, to be fully stated in this memoir. Some idea may be formed of its importance, from the fact, that it stipulated for the surrender of the North-western posts, procured our vessels admission into the India possessions of Great Britain, placed the commerce between the two countries on the footing of reciprocity, agreed upon a mode for the

amicable settlement of the northern and eastern boundaries, provided security against the abuses of British privateers, and of the petty admiralty courts, and obtained compensation for spoliations upon American commerce amounting nearly to $10,000,000.

A violent clamour was excited against it at home, by those who wished to enlist the United States on the side of the French republic; but Washington, with his usual sagacity, properly appreciated its advantage, and determined to sanction the treaty, which was ratified by the senate, with the exception of the 12th article, relative to the West India trade. The influence of the president carried the treaty through against a violent opposition; and it is now generally conceded, that its provisions are more advantageous to the United States, than any which have since been inserted in any treaty between the two countries.

After concluding the treaty, Mr. Jay returned home, but did not again take his seat on the bench of the supreme court, having been chosen, during his absence, governor of the state of New York. During his administration of the state government, his course was distinguished by the same unbending rectitude, which had characterized him throughout his public career, and in this station he co-operated with the federal government in maintaining the dignity and character of the country.

In 1798 he was re-elected governor, Robert R. Livingston being his opponent. The vote stood,

John Jay, 16,012
R. R. Livingston, 13,632

The country appeared now to be on the eve of a war with France, and Governor Jay adopted, in conjunction with the federal authorities and the state legislature, measures to fortify the city of New-York, and to arm and discipline the militia.

The great interests of literature and agriculture were earnestly recommended to the legislature, and a revision was made of the statute code, during his administration, Chief Justice Kent, and Justice Radcliff, being the revisors.

The intense political excitement which now prevailed, rendered his situation far from agreeable. While he was vehemently assailed by his democratic opponents, his innate sense of right prevented him from entering upon a course of proscription of them, and he began to long for that retirement from which he had been drawn only by the exigency of the times. This wish he carried into effect in the summer of 1801, when he retired to Bedford, in Westchester county, never again to participate in the honours or cares of public station.

His character and conduct in retirement, are so beautifully drawn in an address to the Alumni of Columbia College, delivered shortly after his death, that we cannot close this memoir more appropriately, than in the words of that classical writer.

"As the character of Hamilton presents, in its soldier-like frankness and daring, a beautiful example of the spirit of chivalry, applied to the pursuits of the statesman, so in that of Jay, pure and holy justice seemed to be embodied. He lived as one—

> Sent forth of the Omnipotent, to run
> The great career of justice.

He was endowed above most men, with steadiness of purpose and

self-command. He had early sought out for himself, and firmly established in his mind, the grand truths, religious, moral, or political, which were to regulate his conduct; and they were all embodied in his daily life. Hence the admirable consistency of his character, which was the more striking, as it seemed to reconcile and unite apparently opposite qualities. That grave prudence, which, in common men, would have swayed every action to the side of timid caution, was in him combined with invincible energy. So too in his opinions. No man was more deeply penetrated with the doctrines, or the sentiment of religion; no man more conscientiously exact in its observances; whilst no man could look with more jealousy on any intermixture of the religious with the temporal authority; no man more dreaded, or watched with more vigilant caution, every invasion, however slight, upon the rights of private conscience.

After a long and uninterrupted series of the highest civil employments, in the most difficult times, he suddenly retired from their toils and dignities, in the full vigour of mind and body, and at an age when, in most statesmen, the objects of ambition show as gorgeously, and its aspirations are as stirring as ever. He looked upon himself, as having fully discharged his debt of service to his country; and, satisfied with the ample share of gratitude which he had received, he retired with cheerful content, without ever once casting a reluctant eye towards the power or dignities he had left. For the last thirty years of his remaining life, he was known to us only by the occasional appearance of his name, or the employment of his pen, in the service of piety or philanthropy. A halo of veneration seemed to encircle him, as one belonging to another world, though yet lingering amongst us. When, during the last year, the tidings of his death came to us, they were received through the nation, not with sorrow or mourning, but with solemn awe; like that with which we read the mysterious passage of ancient scripture—"And Enoch walked with God, and he was not, for God took him."

GENERAL INDEX

FOR THE

FIRST FOUR VOLUMES

OF THE

AMERICAN ANNUAL REGISTER:

Comprehending from 4th March, 1825, to 4th March, 1829.

A.

Abolition of Colonial System, vol. i. page 1.
Ackerman, treaty of, iii. 291.
Acts of Congress. For support of government, iv. 323. 353. 356.
Relating to pensions and pensioners, iv. 323, 324. 351. 356. 357.
Relating to the army and navy, iv. 325. 327. 347. 350. 351. 352. 354. 356. 357. 359.
Relating to public lands, &c. iv. 324. 326. 335. 339. 344. 345. 347. 351. 353. 356. 357. 359.
Relating to the public debt, iv. 324.
Relating to the courts, iv. 324. 335. 339. 354. 356.
Relating to public buildings, iv. 327. 359.
Relating to Indians and the Indian department, iv. 328. 346. 357. 359.
Relating to light-houses and harbours, iv. 333. 335. 339. 356. 359.
Relating to the District of Columbia, iv. 341. 344. 349. 350. 359.
Relating to roads and canals, iv. 325. 340. 347. 356. 357. 359.
Relating to certain agents, iv. 325.
Relating to defalcations, iv. 323.
Relating to distribution of books, and the laws, iv. 328. 346. 356. 357.
Relating to custom-houses and warehouses, iv. 344.
Relating to regulating intercourse with Martinique and Guadaloupe, iv. 328.
Relating to claims under treaty of Ghent, iv. 328.
Relating to duties on imports, iv. 329. 333. 347. 349. 353. 454.
Relating to treaty with Russia, iv. 333.
Relating to dividing Arkansas from Louisiana, iv. 333.
Relating to continuance of mint at Philadelphia, iv. 334.
Relating to suppression of the slave trade, iv. 346.
Relating to the post office, iv. 346.
Relating to Arkansas Territory, iv. 346. 355.
Relating to Florida Territory, iv. 354.
Relating to an arsenal at Mobile, iv. 347.
Relating to barracks and fortifications, iv. 357.
Relating to the mackerel fishery, iv. 351.
To explore the country west of the Mississippi, iv. 352.
Relating to appointment of surveyor, iv. 356.
Relating to deserters from foreign vessels, iv. 358.
Relating to Valley Creek academy iv. 358.
Relating to salt springs and lead mines in Missouri, iv. 359.
Private acts, iv. 323 to 359.
Adams, John, his death, i. 28.
Adams, John Quincy, inaugurated president, i. 29 Inaugural address, i. 29. His message, ii. 30. iii. 85. iii. 101. Principles of administration, ii. 25. iii. 12. Retirement, iii. 34.
Administration, charge of corruption against, ii. 23. Defeat of, iii. 31.
Adrianople, peace of, iii. 396.
Africa. Arabs in, i. 293. Slave trade i. 294. Ashantee wars, i. 296. Sir Charles M'Carthy killed, i. 297.
Alabama University, i. 347. Bank of U.S. at Mobile, ii. 493. Population, iii. 145.
Alexander, emperor of Russia, his death and character, i. 253.
Alexandria, fire at, ii. 139.
Algiers. War with Spain, i. 297.
Appropriations. For fortifications, i. 135. Army advance, &c. i. 138. Surveys, i. 139. Naval service, i. 140. ii. 140. 153. iii. 119. 126. iii. 145.
Army promotions, i. 364. ii. 503. iii. 558.
Asia. Burman Empire, i. 281. Origin of war with Great Britain, i. 282. Shapuree, i. 282. Doodpatlee, i. 282. Expedition to Rangoon, i. 283. Operations there, i. 284. Donabew and Arakan taken, i. 286. Peace, i. 290. Bhurtpore, i. 291.
Austria. Political condition of, i. 250.

B.

Bank of United States. General statement of, iii. 577.
Bankrupt system, ii. 74.
Battle of 8th of January, resolution in house on, iii. 17.
Bavaria. King of, dies, i. 252.
Bolivar, proclaimed president of Peru, ii. 246. Of Colombia, i. 179. Supreme chief of Colombia. iii. 500. Conspiracy against him, iii. 503. His designs, iii. 513. Resignations, iii. 516.
Bolivia. Constitution of, i. 186. Sucre president, ii. 264. His address, ii. 265. Bolivian code sworn to, ii. 266. Sucre's address to the army, ii. 267. Acquisition of Avica, ii. 270. Bolivia not recognised by Buenos Ayres, ii. 270. Insurrection at Chiquisaca, iii. 535. War with Peru, iii. 535. Peace, iii. 536. Velasco president, iii. 536. Velasco displaced, iii. 537. Blanco president, iii. 537. Blanco killed, iii. 537. Santa Cruz president, iii. 537.
Boundary, N. E., controversy respecting it, i. 6.
Brazil. Independence of, acknowledged, ii. 199. Character of Don Pedro, ii. 200. Invasion of Chiquitos, ii. 200. Banda Oriental, ii. 201. Insurrection, ii. 202. Gen. Lavelleja, ii. 202. Battle of Sarandi, ii. 203. Banda Oriental united to Brazil, ii. 203. War declared with Buenos Ayres, ii. 204. Progress of the war, ii. 205. Future prospects, ii. 206. Naval action, ii. 290. Invasion of Rio Grande, ii. 290. Battle of Ituzaingo, ii. 291. Brazilians defeated, ii. 292. Negotiations for peace, ii. 294. Garcia's treaty, ii. 295. State of the war, ii. 302. Naval superiority of Brazil, ii. 302. Change in the ministry, ii. 302. Emperor's address to the two chambers, ii. 303. American chargè demands his passports, ii. 305. Collision with the United States, iii. 541. With France, iii. 541. Insurrection of foreign troops, iii. 543. Insurrection quelled, iii. 543. Change in the ministry, iii. 544. Peace with Buenos Ayres, iii. 544. Bank of Brazil, iii. 546. Relations with Portugal, iii. 547. Departure of Dona Maria, iii. 548. Don Pedro's address to the Portuguese nation, iii. 549.
Brazil, disputes with, ii. 12.
Buenos Ayres. See United Provinces of La Plata.

C.

Canning Mr., his situation, i. 326. His death, i. 332. And character, i. 333.
Capo d'Istria elected president of Greece, ii. 407.
Calhoun, vice president, his decision on his duties and powers, i. 87. His appeal, ii. 81.
Central America. Constitution of, i. 172. Arce president, i. 172. Finances, i. 172. Congress of October, 1826, ii. 173. Decree of president Arce, ii. 173. Disturbance in Guatemala, ii. 175. New government organized, ii. 176. War with Guatemala, ii. 177. Salvador submits, ii. 178. Peace restored, ii. 177. Canal of Nicaragua, ii. 181.
Charles X. His accession, i. 288. Crowned at Rheims, i. 233.
Chili. Financial condition, i. 175. Surrender of Chiloe, i. 176. Congress, i. 176. Blanco president, ii. 273. His resignation, ii. 273. Finances, ii. 274. Freire president, ii. 275. His resignation, ii. 275. Resignation of vice president Pinto, ii. 275. Pinto installed president, ii. 276. War in the southern provinces, ii. 277. Remarks on the government of, ii. 279. State of parties, ii. 282.
Clay, Henry, his meeting with Mr. Randolph, i. 87. His answer to General Jackson's letter, ii. 30.
Cochrane, Lord, admiral of Greece, ii. 408.
Commerce, i. 54. i. 377. ii. 38. ii. 510. iii. 581.
Colonial bill lost, i. 23. Colonial trade, ii. 42. Controversy about, ii. 42.
Colombia, in 1825, i. 179. Bolivar president, i. 179. Government in 1827, i. 183. Santander's message, i. 184. Finances, i. 185. Army and navy, i. 186. State of things in Venezuela, i. 187. Bolivar renounces the presidency, i. 191. Proceedings in Guyaquil, i. 196. Suspicion of Bolivar's intentions, i. 201. Decree of general amnesty, i. 211. Grand convention, i. 213. Concordat with Pope Leo XII. i. 224. Devotion of the army to Bolivar, i. 226. Earthquake at Bogota, i. 233. Proceedings in Venezuela, ii. 188. Warlike operations, ii. 195. Tranquillity restored, ii. 197. Statement of finances, ii. 507. Convention at Ocana, iii. 495. Bolivar proclaimed supreme chief, iii. 500. Conspiracy against him, iii. 503. His absolute power, iii. 503. Trial of Gen. Santander, iii. 505. Designs of Bolivar, iii. 513. Historical account of his resignations, iii. 516. His ambitious projects, iii. 518.
Congress, 19th, i. 368. 20th, iii. 565.
Connecticut. Farmington canal, ii. 451. iii. 21. Election, ii. 452. School fund, iii. 21. Treasury, iii. 22.
Constantine proclaimed emperor of Russia, i. 253. Abdicates in favour of Nicholas, i. 253.
Constantinople, great fire at, ii. 398. De-

fences of, iii. 317. Blockaded, iii. 341. Disasters at, iii. 353.
Constitution, amendment of, i. 59. Discussions on, i. 62.
Courts of United States. Process in, iii. 88. Bill thereon, iii. 91. Debates, iii. 91. Passed iii. 99.
Creek controversy, i. 42. ii. 24. 85.
Cuba. Political state of, i. 157. Finances, i. 158.
Cumberland road, iii. 150.

D.

Delaware, internal improvements, i. 336. Elections, ii. 482, iii. 123. Finances, iii. 124. School system, iii. 124.
Deibitch, Count, appointed general of the Russian army, iii. 364.
District of Columbia, iii. 164.
Drawbacks, bill relative to, iii. 103.

E.

Egypt, rise of Mohammed Ali, i. 298. He conquers Arabia, i. 299. His government, i. 300.
Executive offices, i. 362. ii. 503. iii. 557.
Executive patronage, proposal to reduce, i. 77. ii. 15. ii. 31. iii. 115.
Exports, ii. 508. iii. 597.

F.

Finances, i. 58.
France. Death of Louis XVIII., i. 227. His character, i. 228. Accession of Charles X., i. 228. Ministry, i. 229. Chambers of 1825, i. 229. Civil list, i. 231. Indemnity to emigrants, i. 231. Finances, i. 231. Sacrilege laws, i. 232. Arrangement with South American governments, i. 233. Treaty with Hayti, i. 233. Coronation of Charles X., i. 233. Lafayette at Havre, i. 234. Death of General Foy, i. 235. Chambers of 1825, and king's speech, i. 235. Finances, i. 236. Religious disputes, i. 237. Views of the government, i. 238. Views concerning Spain and Portugal, ii. 335. Opening of the chambers, ii. 336. Petition against the Jesuits, ii. 338. Law concerning the press, ii. 338. Dissolution of the National Guards of Paris, ii. 339. Debates on the Budget, ii. 340. Censorship of the press, ii. 342. Maubreuil's assault on Talleyrand, ii. 343. Burial of M. Manuel, ii. 343. War with Algiers, ii. 346. Dissolution of the Chamber of Deputies, ii. 347. New election, ii. 347. Massacre in Paris, ii. 349. Prosperity of France, ii. 350. Revenue, ii. 351. Creation of new peers, iii. 223. New ministry, iii. 224. Meeting of Chambers of 1828, iii. 225. Parties in the Chambers, iii. 226. Choice of president, iii. 227. Debates, iii. 228. Abuses in the post-office, iii. 230. Electoral and jury lists, iii. 231. Foreign relations, iii. 231. Freedom of the press, iii. 234. Charges against the late Cabinet, iii. 234. Education, iii. 236. Budget, iii. 238. Army and navy, iii. 239. Recall of troops from Spain, iii. 241. Expedition to the Morea, iii. 242. Departments and Communes, iii. 244. Endowment of Chamber of Peers, iii. 250. Foreign relations, iii. 254. Relations with the United States, iii. 255. Close of the session, iii. 257. Dissolution of the ministry, iii. 258. New ministry, iii. 259. Polignac Minister of Foreign Affairs, iii. 259. Political state of France, iii. 262. Statement of Finances, ii. 508. iii. 621.

G.

Georgia. Indian Lands, i. 344. ii. 489. Banks, iii. 141. Judiciary, iii. 142.
Georgia Militia, ii. 141.
Governors of States in 1825, i. 372. in 1826, ii. 505. in 1827 and 1828, iii. 568.
Great Britain. Ministers, i. 208. Parliament of 1825, i. 209. Address, i. 210. Catholic Associations, i. 211. iii. 169. Finance and trade, i. 216. 221. iii. 160. Treaties with Brazil, Colombia, and Buenos Ayres, i. 218. iii. 186. Parliament of 1826, i. 220. Dissolution of, i. 224. New Parliament, i. 207. Currency, i. 220. Slavery, i. 221. New elections, i. 225. King's speech, ii. 308. Joint stock companies, ii. 308. Aid to Portugal, ii. 309. Death of Duke of York, ii. 314. Criminal laws, ii. 315. Catholic question, ii. 315. iii. 173. Corn laws, ii. 317. Sickness of Lord Liverpool, ii. 317. Mr. Canning appointed Premier, ii. 317. Resignation of six cabinet ministers, ii. 319. New cabinet organized, ii. 322. Parliament in May, ii. 324. Coalition with the whigs, ii. 328. Budget, ii. 329. Treaty for settlement of Greece, ii. 332. Mr. Canning's death, ii. 332. Lord Goderich Premier, ii. 334. He resigns, iii. 155. New Cabinet, iii. 157. Lord Wellington, Premier, iii. 157. Mr. Huskisson and his friends resign, iii. 163. Opening of Parliament of 1829, iii. 170. Commercial policy, iii. 183. Canadian affairs, iii. 193. British West Indies, iii. 219. East India Company iii. 220. Revenues, Expenditures, Finances, Debt, Trade, &c. iii. 613.
Greece. Government of, i. 263. Insurrection in the Morea, i. 264. Missolonghi invested, i. 266. Siege of Navarino, i.

266. Events at Missolonghi, i. 273. Egyptian fleet burnt at Modon, i. 276. Massacre at Hydra, i. 278. State of, in 1826, ii. 399. Naval action, ii. 400. Fall of Missolonghi, ii. 403. Assembly at Epidaurus, ii. 404. Capo d'Istria elected President, ii. 407. Sir Richard Church appointed General, and Lord Cochrane Admiral, ii. 408. Loans, ii. 409. Athens invested, ii. 412. Surrenders to the Turks, ii. 416. Cochrane's movements, ii. 418. Treaty of London, ii. 424. Battle of Navarino, ii. 428. Inauguration of government, iii. 405. Expedition to the island of Scio, iii. 406. French expedition to the Morea, iii. 411. Navarino taken by the French troops, iii. 413. Conference of 16th November 1828, iii. 418. Boundaries of Greece, iii. 419. Pacification of Greece, iii. 420. Amnesties, iii. 420. Peace of Adrianople, iii. 425.

H.

Hayti. Government of, i. 159. French ordinance, i. 160. Nature of it, i. 161. Accepted by Boyer, i. 161. Loan, i. 161. Disturbances, i. 162. State of, i. 165.

I.

Illinois. Finances, i. 360. Election, ii. 501. Lead mines, iii. 163.
Indian affairs, i. 43. Relations with them, iii. 70. Plan for their removal, iii. 80.
Indiana. Taxes, i. 359. Emigrants, ii. 500. Lands, iii. 161.
Internal improvements. Amount expended in, i. 51, ii. 35, iii. 577.
Ireland. Trade of, iii. 621.
Italy. Political condition of, i. 250.

J.

Java, deplorable situation of, i. 292.
Janissaries, massacre of, ii. 397.
Jefferson, Thomas, his death, i. 20.
Jackson, General, nominated President, i. 20. His address to the legislature of Tennessee, i. 21. His letter to the public, i. 27. Elected President, iii. 31.
Judiciary System, bill to extend, defeated, i. 130.

K.

Kentucky. Judiciary, i. 351. Valuation, ii. 496. University, iii. 155.

L.

Lafayette, his visit to United States, i. 20.
Lanman, his seat vacated, i. 67.
Larche, Francis, his claim for loss of a slave, i. 148.
Law Cases. Corfield *vs.* Carral. Alleged interference with the rights of oystermen, i. 174.
United States *vs.* Juan Galberto de Ortego. Assaulting a foreign minister, i. 183.
Jackson and others, *vs.* James Carver. Validity of a will, iv. 45.
Martin, *vs.* Bank of United States. Cut bank notes, i. 190.
Commonwealth of Pennsylvania, *vs.* Michael McGarvey. Murder, iv. 58.
Lippincott & Co. *vs.* United States. 651 chests of tea, i. 193.
Law of Divorce in Tennessee, i. 206.
Root *vs.* King and Verplanck. Libel, ii. 231.
King and Verplanck *vs.* Root, iv. 1.
State *vs.* John Brewer. Trial for perjury, ii. 270.
Duel. Scotland, ii. 274.
Burcle, Brothers & Co. *vs.* Ship Tapperheten. Libel for wages, &c. ii. 282.
Piracy and murder, ii. 289.
The King *vs.* W. E. Ball, on Habeas Corpus, detention of Joseph Fisher at Montreal, ii. 297.
Conspiracy against William Morgan, ii. 307. iv. 68.
Jackson, ex dem. Fowler *vs.* Carver. Astor claim, iv. 45.
Smith *vs.* State of Tennessee, iv, 76.
Hickie *vs.* Starkie. Jurisdiction, iv. 81.
Briethoupt *vs.* Bank of Georgia. Jurisdiction, iv. 87.
D'Wolf *vs.* Roland. Jurisdiction, iv. 87.
American Insurance Co. *vs.* Canter. Florida treaty, iv. 87
Fullerton *vs.* U. S. Bank. Constitutionality of state law, iv. 90.
Wilson *vs.* Blackbird Creekmarsh Co. Constitutionality of state law, iv. 94.
Foster *vs.* Neilson, Florida treaty, iv. 96.
Kentucky Bank *vs.* Wister. Suability of a state, iv. 106.
Satterlee *vs.* Mathenson. Constitutionality of state law, iv. 107.
Weston *vs.* City council of Charleston. Exemption of U. S. Stock from taxation, iv. 111.
Buckner *vs.* Finley. Jurisdiction, iv. 115.
Wilkinson *vs.* Seland. Constitutionality of state law, iv. 118.
Louis XVIII. his death and character, i. 227.
London, Treaty of, iii. 290.
Lord Liverpool, his sickness, i. 317.
Louisiana. Legislature, i. 349. Exports, ii. 494. iii. 151. Elections, iii. 150.

M.

Maine. Banks, i. 306. Meeting of Legislature, ii. 435. Treasury, iii. 4.
Manufactures, ii. 37. Depressed condition of woollen, ii. 101.
Manufacturers, convention of, ii. 125. iii. 39.
M'Carthy, Sir Charles, killed, i. 297.

Maryland. Finances, i. 337. Elections, ii. 482. Legislature, ii. 483. iii. 125. Banks, iii. 127.
Massachusetts. Reception of Lafayette, i. 314. Banks, i. 316. iii. 11. Manufactures, i. 317. ii. 445. iii. 15. Finances, iii. 11.
Mexico, Victoria President of, i. 167. Congress of, 1825, i. 168. Surrender of ship Asia, i. 168. St. Juan de Ulloa, i. 169. Texas, i. 171. Political condition in 1826, i. 172. Congress of 1827, ii. 157. Foreign relations, ii. 158. Ecclesiastical affairs, ii. 160. Persecution of the Spaniards, ii. 160. Trial and execution of Padre Arenas, ii. 162. Disturbances in Durango, ii. 163. In Texas, ii. 164. Expulsion of Esteva from Vera Cruz, ii. 165. Attack on American Minister, Poinsett, ii. 166. Navy, ii. 169. Montano's plan of reform, iii. 481. Bravo declares in favour of it, iii. 482. Montano and his associates banished, iii. 483. Pedrazza elected President, iii. 484. Santa Anna revolts, iii. 485. Revolution, iii. 487. Guerrero declared President, iii. 488. Expulsion of the Spaniards, iii. 489. Invasion of Mexico, iii. 490. Texas, iii. 491. Finances and commerce, iii. 491. Navy, iii. 492. Statement of Finances, ii. 506.
Militia men, debates on the execution of, iii. 171.
Mississippi. Elections, i. 345. Cold plague, ii. 493. Statistics of, iii. 149.
Missolonghi, captured, ii. 403.
Missouri. Legislature, i. 360. Elections, ii. 501.
Mix, his contract, ii. 81.
Morocco, great epidemic in, i. 297.

N.

Navarino, battle of, ii. 428.
Navy promotions, i. 367. ii. 504. iii. 564.
Netherlands. Opening of states general, i. 254.
New England States. Internal navigation in, i. 306.
New Hampshire. Manufactures, i. 313. ii. 441. iii. 7. Legislature, ii. 440. Finances, ii. 441. Ships of war built in, iii. 7.
New York. Canals, i. 324. ii. 461. Schools, i. 327. iii. 30. Controversy with New Jersey, ii. 455. Morgan's abduction, ii. 457. iii. 29. Elections, ii. 460. iii. 25. Revised statutes, ii. 463. iii. 39. Salt, iii. 23. Banks, iii. 25.
Nicholas, emperor of Russia, i. 256. Danger of shipwreck, iii. 331.
North Carolina. Finances, i. 342. iii. 134. Canals, i. 342. Gold mines, ii. 487. Internal improvements, iii. 135.

O.

Obituary. Charles C. Pinckney, i. 207. Alexander of Russia, i. 211. General Foy, i. 218. M. David, i. 220. General Sucket, i. 222. Count Rostopchin, i. 223. John 4th of Portugal, i. 224. John Adams, i. 225. Thomas Jefferson, i. 240. Marquis of Hastings, ii. 331. Malte Brun, ii. 332. Duke of York, ii. 333. Pestalozzi, ii. 337. Christopher Gore, ii. 339. Rufus King, ii. 341. Marquis de la Place, ii. 346. King of Saxony, ii. 347. General Caulaincourt, ii. 338. William Tilghman, iv. 125. George Canning, iv. 130. John E. Howard, iv. 137. Thomas Addis Emmit, iv. 139. Prince Ypsilanti, iv. 149. Helen M. Williams, iv. 150. De Witt Clinton, iv. 151. Dugald Stewart, iv. 166. Count Lauriston, iv. 170. Duke of San Carlos, iv. 172. Judge Peters, iv. 174. Doctor Gall, iv. 180. John T. Gilman, iv. 182. Earl of Liverpool, iv. 194. Timothy Pickering, iv. 199. Sir Humphrey Davy, iv. 204. John Jay, iv. 215.
Ohio. Canals, i. 356. iii. 158. Valuation, ii. 499. Census, iii. 156.
Opposition. Systematic and organized, i. 38. Sectional character, ii. 17. Principles of, ii. 22. iii. 9. Materials of, ii. 22.

P.

Panama mission, i. 79. 88.
Parties, dissolution of, i. 19. Violence of, ii. 30.
Paraguay. Dr. Francia, i. 276. Remarks on the government of, ii. 306.
Pennsylvania. Internal improvements, i. 332. ii. 468. iii. 117. Coal, ii. 333. iii. 119. Manufactures, ii. 480. iii. 119. List of governors, iii. 111. Penal code, iii. 112.
Peru. Battle of Ayacuhco, i. 181. Castles of Callao, i. 183. Olaneta, i. 183. Rodil capitulates, i. 184. Congress at Lima, i. 184. Bolivar, i. 185. State of parties in 1826, i. 187. Insurrection, i. 187. Manifesto of the government, i. 190. Celombian garrisons in Peru, ii.

237. Congress of 1826, ii. 237. Their address, ii. 238. Acts of the province of Lima, ii. 243. Bolivar proclaimed, and constitution sworn to, ii. 246. Government a military despotism, ii. 246. Conspiracy of the patriots, ii. 247. Citizens of Lima renounce the Bolivian code, ii. 253. Santa Cruz proclaimed provisional president, ii. 253. Colombian troops leave Peru, ii. 257. Congress meets, ii. 257. La Mar chosen president, ii. 258. Proceedings of congress, ii. 259. Conspiracy at Lima, iii. 518. Dreadful earthquake, iii. 520. New constitution, iii. 521. War with Colombia, iii. 523. Overtures of peace, iii. 524. Battle of Tarqui, iii. 526. Convention of Icron, iii. 528. Renewal of hostilities, iii. 530. Revolution, iii. 531. Peace with Colombia, iii. 532.

Portugal. Brazil independent of, i. 246. King John dies, i. 247. Constitution and regency, i. 247. Incursion from Spain, i. 248. Aid from England, i. 248. Marquis of Chaves, ii. 353. Negotiations at Madrid, ii. 356. Session of the cortes, ii. 357. Invaded from Spain, ii. 358. Military operations, ii. 360. Arrival of British troops, ii. 361. Battle of Carraches, ii. 362. Last effort of the rebels, ii. 363. Cortes prorogued, ii. 364. Mutiny at Elvas, ii. 365. Change of ministry, ii. 367. State of parties, ii. 367. Don Miguel's return, iii. 447. Swears to maintain the charter, iii. 453. Tumults, iii. 454. Charter abolished, iii. 459. Revolt at Oporto, iii. 461. Cortes convoked, iii. 465. Don Miguel proclaimed king, iii. 468. His tyranny, iii. 470. Reduction of Madeira, iii. 470. Proceedings of Don Pedro, iii. 471. Arrival of Donna Maria, iii. 472. She lands in England, iii. 473.

Porter, captain, his trial, i. 150.

Postmaster general, salary of, ii. 139.

Proclamation of president closing the ports, ii. 72.

Public lands, statement of, i. 602.

Public Documents. Treaty with Colombia, i. 1.

President's message 19th congress, 1st session, i. 9.

Concerning Panama mission, i. 49.

19th congres, 2d session, ii. 1.

President's proclamation prohibiting trade with West Indies, ii. 18.

20th congress, 1st session, iv. 1.

20th congress, 2d session, iv. 15.

Boundary of United States on Pacific ocean, i. 26.

Treaty with the federation of Central America, i. 41.

Convention with Great Britain, ii. 16. iv. 109. 113, 114.

Convention with Denmark, ii. 19.

Treaty with Sweden and Norway, iv. 102.

Letter, Mr. Rush to Mr. Anderson, minister to Colombia, i. 61.

Mr. Clay to Mr. Middleton, i. 83, 90.

Count Nesselrode to Mr. Middleton, i. 89.

Mr. Salazar to Mr. Clay, i. 92.

Mr. Canaz to Mr. Clay, i. 96.

Mr. Rush to Mr. Adams, ii. 22.

Mr. Clay to Mr. Gallatin, ii. 46. 69. 103.

Mr. Canning to Mr. Gallatin, ii. 54. 87. 98.

Mr. Gallatin to Mr. Canning, ii. 61. 91.

From the secretary of treasury on the inundated lands of the Mississippi, iv. 82.

Mr. Gallatin to Lord Dudley, ii. 115. 119. 130.

Mr. Gallatin to H. Clay, ii. 121.

Lord Dudley to Mr. Gallatin, ii. 123.

Panama documents, iv. 20.

Letters on the navigation of the St. Lawrence, ii. 137.

Letters on the north eastern boundaries, iv. 58.

Convention between Great Britain and Brazil, iv. 143; and treaty, iv. 144.

Treaty between Brazil and the Hanse Towns, iv. 150.

Treaty of indemnity between Brazil and France, iv. 154.

Circular of Bolivar, i. 97; and replies, i. 101. His address to congress of Peru, i. 131. His address to congress of Bolivia, ii. 196.

President of Mexico's address to congress, i. 103; and reply, i. 105. ii. 174. iv. 134.

Proclamations of president of Mexico, i. 107: and his address, i. 109. i. 114. i. 123.

Messages of vice president of Colombia, i. 125. ii. 181. ii. 193.

Capitulation of Ayacuhco, i. 133.

Message of government of Buenos Ayres, i. 135. iv. 165.

Brazilian documents, i. 143.

Chilian documents, i. 147.

Central American documents, i. 147.

Treaty between Colombia and Peru, iv. 189.

Treaty between Peru and Bolivia, iv. 141.

Haytien documents, i. 148.

Speech of the king of Great Britain, i. 150. ii. 209. iv. 169.

Treaty, between Great Britain and the United Provinces of the Rio de la Plata, ii. 153.

Between Great Britain and Colombia, i. 156.

Convention between his majesty and the infanta regent of Portugal, iv. 173. Despatch from Mr. Huskisson to lieut. gov. of Jamaica, iv. 175.

Speech of the king of France, i. 162. iv. 184.

Law relative to journals, iv. 189.

Manifesto of the emperor of Russia, i. 163.

King of Sweden's speech, i. 170.

Treaty between France and Mexico, i. 177.
King of Brazil's speech, ii. 205. iv. 161.
Speech of lieut. gov. of Lower Canada, ii. 207. iv. 124.
of lieut. gov. of New Brunswick, iv. 120.
of Sir Peregrine Maitland, iv. 123.
of governor of Upper Canada, iv. 132.
Protocol relative to the affairs of Greece, iv. 193.
Manifesto of the Ottoman Porte, iv. 194.
Proclamation of the Greek government, iv. 200.
Documents relating to Greece, iv. 202. iv. 238.
Russian manifesto, iv. 211.
Answer of Ottoman Porte to Russian manifesto, iv. 219.
Constitution of Greece, iv. 230.
Treaty of peace between Russia and Turkey, iv. 244.
Address of the president of Greece to 4th national congress, iv. 253.
Proclamation of the infanta regent of Portugal, iv. 261.
Documents relating to affairs of Portugal, iv. 262.
Documents relating to the affairs of Spain, iv. 296.

R.

Randolph John, his disordered intellect, i. 86. His meeting with Mr. Clay, i. 87.
Retrenchment, committee on, iii. 18.; their report, iii. 19., and report of minority, iii. 23.
Revenue and expenditure, iii. 572.
Resolutions of Congress. To frank letters and packages, iv. 352; distribute public documents, iv. 352; examine certain land claims, iv. 352; in relation to Charles Carol of Carrolton, iv. 353; executing printing, iv. 353; relating to the mail route between New Orleans and Mobile, iv. 353; to loan barracks at Sackets Harbour, iv. 353; amendatory relating to public printer, iv. 363, relating to military road in state of Maine, iv. 363.
Revolutionary officers, bill for relief of, i. 143.
Revolutionary pensions, ii. 132.
Revised Statutes of New York, iii. 43.
Rhode Island. Banks, i. 320. Blackstone Canal, ii. 451. iii. 19.
Rio de la Plata, constitution of, i. 170. Rivadavia, president of, i. 174. War with Brazil, i. 174.
Russia. Death of Alexander, i. 253. Constantine proclaimed, i. 253. Abdicates in favour of Nicholas, i. 253. Seditions in, i. 255. Secret societies in, i. 256. Coronation of Nicholas, i. 256. Relations with Turkey, i. 257. War with Persia, i. 259. Surrender of Erivan, iii. 281. Peace with Persia, iii. 282. Conferences at Ackerman, iii. 288. Mediation for Greece, iii. 289. Treaty of London iii. 290. Treaty of Ackerman, iii. 291. Battle of Navarino, iii. 296. Russia declares war, iii. 298. Occupation of Moldavia and Wallachia, iii. 318. Siege and surrender of Brailow, iii. 319. Siege of Varna, iii. 320. Surrender of Varna, iii. 329. Russian camp before Shumla raised, iii. 330. The Emperor embarks for Odessa, iii. 331. Returns to St. Petersburg, iii. 332. Siege of Silistria, iii. 334. Kalafat taken, iii. 334. Siege and surrender of Kars and Poti, iii. 338. Naval operations, iii. 341. Anapa taken, iii. 341. Russian squadrons in the Mediterranean, iii. 341. Blockade of the Dardanelles, iii. 341. Death of the Empress mother, iii. 343. Preparations for campaign of 1829, iii. 364. Count Diebitch appointed general of the armies in European Turkey, iii. 364. Kalè and Tourno taken, iii. 365. Sizepoli taken, iii. 366. Events of the campaign in Asiatic Turkey, iii. 366. Events of the war in European Turkey, iii. 375. Battle of Prevody, iii. 378. Surrender of Silistria, iii. 382. Passage of the Balkan, iii. 386. Bourgas taken, iii. 387. Slivno, iii. 390. Adrianople taken, iii. 392. Naval operations, iii. 394. Peace of Adrianople, iii. 396.

S.

Salt, duty on, reduced, iii. 88.
Sardinia, political condition of, i. 250.
Sinking Fund, report of, i. 373. ii. 505. iii. 568.
South Carolina. Legislature, i. 343. ii. 489. iii. 136.
Spain. Situation in 1825, i. 238. Zea Bermudez, prime minister, i. 238. Disturbances, i. 241. Bessieres rebels, i. 242. Party of Don Carlos, i. 242. Death of the Empecinado, i. 243. Duke del Infantado, minister, i. 244. Algerine war, i. 245. Spain in 1826, i. 245. J. G. Salmon, minister, i. 246. Proceedings on the Portuguese frontier, i. 247. State of parties, ii. 371. Views as to Portugal, ii. 372. Seditious correspondence, ii. 377. Disturbances at Malaga, ii. 378. Colombian bishops confirmed by the Pope, ii. 380. Consequences, ii. 381. Disturbances in Catalonia, ii. 382. Carlists, ii. 384. Catalonia in rebellion, ii. 385. Demands of the insurgents, ii. 385. Manifesto of the government, ii. 386. Insurrection quelled, ii. 390. Political condition in 1827, iii. 428. State of parties, iii. 430. British policy, iii.

431. Royal volunteers, iii. 434. Calamarde, Intendant of Police, iii. 436. Ferdinand at Barcelona, iii. 439. Removal of French troops, iii. 442. Debt to France, iii. 442. South American affairs, iii. 444. Earthquake, iii. 444.
Spanish American States, general view of, iii. 475.
Statistics of the world, iii. 606.
Stewart, Captain, his trial, i. 50.
St. Lawarence river, free navigation of, ii. 11.
Stocks, exchange of, bill defeated, ii. 134.
Sweden, treaty with Great Britain, i. 252.
Switzerland, political condition of, i. 250.

T.

Tariff, of 1824, ii. 101. ii. 103. Mallary's report thereon, ii. 104. Passes the house, ii. 122. Rejected in the senate, ii. 124. Tariff of 1828, iii. 35. Passed in the house, iii. 58. In the senate, iii. 61. Remarks on it, iii. 61.
Tennessee. Election, i. 350. Cotton crop, ii. 495. Legislature, iii. 152.
Thermometrical table U. S. i. 380.
Tonnage, i. 374. ii. 509. iii. 586.
Treasury report, i. 131. ii. 129. iii. 117. iii. 143.
Turkey. Janissaries, ii. 393. Attempts to reform them, ii. 394. Artillerymen, ii. 395. Insurrection of Janissaries, ii. 396. Massacre of, ii. 397. Fire at Constantinople, ii. 398. Battle of Navarino, ii. 428. Ambassadors leave Constantinople, ii. 428. Manifesto of the Sublime Porte, iii. 309. Natural defences of Constantinople, iii. 317. Armenian Catholics expelled, iii. 345. Treaties with Spain, Naples, and Denmark, iii. 347. Preparations for war, iii. 347. Council at the house of the Mufti, iii. 348. The Sultan consults a fortune teller, and decides for war, iii. 351. Levies of troops, iii. 352. Disasters at Constantinople, iii. 353. Grand Vizier departs for Varna, iii. 355. Surrender of Varna, iii. 357. Grand Vizier displaced, iii. 357. Izzet Mehemed appointed Grand Vizier, iii. 357. Armies retire to winter quarters, iii. 369. Kalè and Toumo taken, iii. 365. Events of the war in Asiatic Turkey, iii. 366. Events of the war in European Turkey, iii. 375. Battle of Pravody, iii. 378. Silistria surrenders, iii. 382. The Russians pass the Balkan, iii. 386; and capture Bourgas, iii. 387; and Slivno, iii. 390. Surrender of Adrianople, iii. 392. Peace of Adrianople, iii. 396.

U.

United Provinces of La Plata. War with Brazil, ii. 285. Folly of the war, ii. 286. Disturbances, ii. 287. Bank of Buenos Ayres, ii. 288. Imbecility of the government, ii. 288. Mines, ii. 289. Progress of the war, ii. 290. Naval actions, ii. 290. Battle of Ituzaingo, ii. 291. Brazilians defeated, ii. 292. Admiral Brown's successes, ii. 293. Negotiations for peace, ii. 294. Garcia's treaty, ii. 295. Justly rejected by the republic, ii. 295. Rivadavia resigns, ii. 298. Lopez elected, ii. 298. Government of Buenos Ayres, ii. 300. Dissolution of the republic, ii. 300. Buenos Ayres and Cordova unite, ii. 301. State of the war, ii. 302. Peace with Brazil, iii. 542. Dorego deposed and shot, iii. 552. Civil war, iii. 553. Expedition to Santa Fè, iii. 553. Distress of the country, iii. 545. General Brown resigns, iii. 555. French fleet takes possession of Buenos Ayrean squadron, iii. 556.
United States. Independence of, i. 8. Visit of Lafayette to, i. 20. Inauguration of president Adams, i. 29. Meeting of Senate, i. 36. Treaty with Colombia rejected by Senate, i. 38. Opening of 19th congress, i. 57. 2d session, ii. 72. Dignity of Senate violated, i. 87. Session concluded, i. 150. State of parties, iii. 9. Principles of the administration, iii. 10. 20th Congress, iii. 16. Character of president Adams' administration, iii. 82. 2d session of 20th congress, iii. 103. Adjournment, iii. 116.
Upper Peru. (See Bolivia.)

V.

Vermont. Population, &c. i. 309. Election, ii. 454. Legislature, iii. 17. Treasury, iii. 18.
Virginia. Internal improvement, i. 340. iii. 130. University, ii. 484. iii. 130. Legislature, ii. 485. iii. 129.
Voyage of discovery, iii. 148. Bill passed the house, iii. 149. Defeated in the senate, iii. 150.

W.

Ways and means, committee of, i. 133.
West Indies. Erropean colonies, i. 153. British West Indies, i. 153. Order in council relating to slaves, i. 153. Proceedings in Jamaica, i. 155. Cuba, i. 156. Hayti, i. 159.
Wine, duty on, reduced, iii. 88.
Woollens, bill lost, ii. 23.