

## DISPATCHES,

(Concluded from our last.)

The general terms too in which this decree is conceived, threatened but too certainly the mischiefs it has generated, and the abuses which have been practised under it. Neutrals are to be treated as they shall permit the English to treat them. No rule extracted from the practice of England is laid down, which might govern the cruisers of France, or instruct the vessels of neutrals. No principles are stated manifesting the opinion entertained of the treatment received from England, which might enable neutrals to controvert that opinion, and to shew that the English were not permitted to treat its flag as was supposed by the government of France. To judge from the decree itself, from any information given concerning it, or from the practice under it, those who were to be benefited by its abuse were to decide in what manner it would be executed, and the cruiser who should fall in with a valuable vessel had only to consult his own rapacity, in order to determine whether an English privateer, meeting a vessel under similar circumstances, would capture and bring her into port. Multiplied excesses, accumulated vexations could not but have been apprehended from such a decree, and the fact has realized every fear that was entertained concerning it. It has been construed even in Europe to authorize the capture and condemnation of American vessels for the single circumstance of their being destined for a British port. At no period of the war has Britain undertaken to exercise such a power. At no period of the war has she asserted such a power. At no period of the war has she asserted such a right. It is a power which prostrates every principle of national sovereignty and to which no nation can submit without relinquishing at the same time its best interests and sacrificing its dearest rights. This power has been exercised by France on the rich and unprotected commerce of an ally, on the presumption that she ally was sustaining the same injuries from Britain, at a time when it is believed that the depredations of that nation had ceased, and the principle of compensating for them had been recognized.

In the West-Indies similar depredations have been experienced. On the 11th of August 1796, the special agents of the Executive Directory to the Windward Islands decreed, that all vessels loaded with contraband should be seized and confiscated for the benefit of the captors.

On the seventh Frimaire, 5th year of the French Republic, one and indivisible, (27th November, 1796) the commission, delegated by the French Republic to the Leeward Islands, resolved that the captains of French national vessels and privateers are authorized to stop and bring into the ports of the colony, American vessels bound to English ports or coming from the said ports.

On the nineteenth Pluviose, 5th year of the French Republic, one and indivisible, (February 11th, 1797) Victor Hughes and Lebas, the special agents of the Executive Directory to the Windward Islands, passed a decree, subjecting to capture and confiscation neutral vessels destined for the Windward and Leeward Islands of America, delivered up to the English, and occupied and defended by the emigrants. These ports are said to be Martinico, St. Lucie, Tobago, Demerara, Berbice, Essequibo, Port-au-Prince, St. Marks, L'Archaye, and Jeremie. The decree also subjects to capture all vessels which have cleared out for the West-Indies generally.

The undersigned will not detain you, citizen minister, for the purpose of proving how directly and openly these decrees violate both the law of nations and the treaty between France and the United States.

They have been executed on the officers and crews of the captured vessels in a manner, by no means calculated to mitigate their rigor.

The decree of the fourteenth of Messidor was soon followed by another which has spared but little of the American commerce, except what has fortunately escaped the pursuit of the cruisers of France. On the twelfth Ventose, 5th year, (2d March, 1797) the Executive Directory considering the treaty of amity, commerce, and navigation concluded at London the 10th November, 1794, between the said United States and England, as containing concessions of privileges to Britain which, under the treaty of February 1778, might be en-

joyed by this Republic also, proceeds to modify the treaty between France and the United States, by declaring enemies goods in American bottoms liable to capture and confiscation; by enlarging the list of contraband and by subjecting to punishments as a pirate any American citizen holding a commission given by the enemies of France as well as every seaman of that nation, making a part of the crew of enemies ships. The decree next proceeds to exact from Americans papers which had been made necessary to establish the neutrality of foreign vessels, generally, by the ordinance of the 26th of July, 1778, but which had never been considered as applying to the United States; which required papers their vessels could not be supposed to possess, and which the treaty between the two nations was supposed to have rendered unnecessary.

The basis taken by the Executive Directory, on which to rest their modification of the treaty of the sixth of February, 1778, is that by the treaty of the nineteenth of November, 1794, particular favours in respect of commerce and navigation have been granted to England.

It has been demonstrated that no particular favours in respect of commerce or navigation, have been granted to England. That treaty has been shown only to recognize, regulate, and moderate the exercise of the rights before possessed, and before openly acknowledged to be possessed—rights which France and America had reciprocally ceded to each other, without requiring, as a condition of the cession, that either should compel England to form a similar stipulation.

But to admit for a moment that the treaty with England might be considered as stipulating favours not before possessed, yet the American government did not understand that treaty, and had manifested a disposition to modify, by common consent, its relations with this republic in such manner as to reinstate a rule, which has been voluntarily changed. It cannot but be sincerely regretted, because it seemed to indicate an unfriendly temper, that France has deemed it more eligible to establish by force, in opposition to her treaty, a principle which she deemed convenient, than to fix that principle on the basis of mutual and amicable agreement.

But the clause under which these modifications, are justified is in these words: "The most Christian King and the United States 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 favor freely, if the concession was freely made, or on allowing the same compensation, if the concession was conditional." If these stipulations unequivocally amount to the grant of favours, the grant is not gratuitous. The concessions on the part of the United States are made on condition of similar concessions on the part of Britain. If therefore France chuses to consider them as modifications of the treaty of 1778, she can only do it by granting the reciprocal condition, on this supposition she has either of the rules at her election, but she cannot vary from the first without a compact on her part to grant the reciprocal stipulation. Such a compact is in the nature of a national treaty.

But the rules laid down in the decree of the 12th Ventose, 5th year (March 2, 1797) as founded on the 17th, 18th, and 21st articles of the 19th of November 1794 are materially variant from these articles. To demonstrate this it is only necessary to contrast the rules of the decree with the articles of the treaty on which those rules are said to be founded.

Articles of the Treaty Rules establish by of the 19th Nov- the article of the ember, 1794, as Directory. quoted by the Directory.

ARTICLE 17. RULE 1. It is agreed that in all cases where vessel shall be captured or detained on just suspicion of

having on board enemies property, or of carrying to the enemy any of the articles which are contraband of war the said vessels shall be brought to the nearest or most convenient port; and if any property of an enemy should be found on board such vessels that part only which belongs to the enemy shall be made prize, and the vessel shall be at liberty to proceed with the remainder without any impediment. And it is agreed that all proper measures shall be taken to prevent delay in deciding the cases of ships or cargoes so-brought for ed. judgment; and in the payment or recovery of any indemnification adjudged or agreed to be paid to the owners or masters of such ships.

According to the article, when on just suspicion of having on board enemy's property, or of carrying to the enemy contraband of war, a vessel shall be brought into port, that part only which belongs to the enemy shall be made prize, according to the article, then the fact whether the property does or does not belong to an enemy is to be fairly tried. The party who would establish the fact must prove it. The captor must shew the justice of the suspicion on which the capture or detention was founded. The burthen of the proof rests on him. If in truth and in fact the property does not belong to an enemy, it must be discharged. But the rule pursues a different course. The rule declares that merchandize of the enemy, or not sufficiently proved to be neutral, laden under the American flag shall be confiscated. The burthen of the proof is shifted from the captor to the captured. The question to be tried is not solely whether the merchandize be in fact the property of an enemy, but also whether it be sufficiently proved to be neutral. The sufficiency of this proof is to be ascertained, not by general and satisfactory testimony not by the grand principles of truth and the common understanding of mankind, but by the exhibition of certain papers demandable at the will of one of the parties, and not in the possession of the other. This may be a regulation which France chooses to establish; but certainly it is a regulation, essentially variant from the article it professes to resemble.

ARTICLE 18. RULE 2. In order to regulate what is in future to be esteemed contraband of war, it is agreed that under the said denomination shall be comprised all arms and implements serving for the purposes of war, by land or by sea; as cannon, muskets, mortars, petards, bombs, grenades, carcasses, saucisses, carriages for cannon musket rests, bandoliers, gunpowder, match, saltpetre, ball, pikes, swords, head pieces, cuirasses, halberds, lances, javelins, horse furni-

mer, 1794, all merchandize of the enemy, or merchandize not sufficiently proved to be neutral, laden under the American flag, shall be confiscated, but the vessel on board of which it shall be found, shall be released and restored to the owner. It is enjoined on the Commissioners of the Executive Directory to accelerate, by all the means in their power, the decision of contests which shall arise either on the validity of the prize cargo, or on the freight and demurrage.

ture holsters, belts, and generally all other implements of war: as also timber for ship-building, tar or rosin, copper in sheets, sails, hemp and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir plank only excepted.

The immense number of articles, which may serve indirectly for the armament and equipment of vessels are made contraband by the rule of the Directory, though they are not so by the article it professes to cite.

ARTICLE 21. RULE 3. It is likewise agreed that the subjects and citizens of the two nations shall not do any acts of hostility or violence against each other, nor accept commissions or instructions to act from any foreign prince or state enemies to the party; nor shall the enemies of one of the parties be permitted to invite or endeavour to enlist in their military service any of the subjects or citizens of the other party; and the laws against all such offences shall be punctually executed. And if any subject or citizen of the said parties respectively shall accept any foreign commission or letters of marque for arming any vessel to act as a privateer against the other party, it is hereby declared to be lawful for the said party to treat and punish the said subject or citizen, having such commission or letters of marque as a pirate.

The government of the United States has never formed a treaty comprehending an article in any degree similar to this rule. It has never assented to such stipulations as they relate to its own citizens, or require them as they relate to those of other powers. The difference between the article and the rule requires no comment. Nor will the rule be commented on. The undersigned will only observe, that the article is by no means uncommon, but is to be found in most treaties of amity and commerce. The 1st article of the treaty with France, the 19th of the treaty with the United Provinces, the 23d of the treaty with Sweden, and 20th article of the treaty with Prussia, contain similar stipulations. It is not easy to conceive a reason why it should not also be inserted in a treaty with England, or why its insertion should give offence to France.

But the fourth rule of the decree is in its operation the most extensive and the most seriously destructive. That rule declares, that "conformably to the law of the 14th of February, 1797, the regulations of the 21st of October, 1794, and of the 26th of July, 1778, concerning the manner of proving the property of neutral ships and merchandize, shall be executed according to their form and tenor."

"Every American ship shall therefore be a good prize, which shall not have on

These several articles shall be confiscated whenever they shall be detained or attempted to be carried to the enemy.