



AND

NORTH-CAROLINA WEEKLY ADVERTISER.

Once are the Plans of fair delightful Peace, Unwarp'd by Party Rage to live like Brothers."

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THE FOLLOWING Observations

On the mutual claims of the British and American nations, the ferocious of their Commissioners, and the eventual state to which things are reduced...

FELLOW-CITIZENS,

WHEN a difference respecting the construction of treaties is about to take place, between Nations long in the habits of intimacy and an important commerce with each other, it is of infinite consequence to a government or its citizens, to be able to show that they are not in the wrong...

It will always be painful for a people so ambitious and so little disposed to controversy as the United States, to contend with any nation upon points on which they could with truth be charged with the smallest departure from the most exact and honorable justice...

The relative situation of Great-Britain and the United States, is such as to make this difference peculiarly disagreeable: they are so connected by commerce, and their trade is so reciprocally beneficial, that except the preservation of their national honour, I know no object that is to be put in competition with it.

While possessed of so much more territory than we can people, it must for many years be the interest of the United States to be a land of husbandmen: they can purchase cheaper than they can manufacture, and the rapid extension of their agriculture will prove the most solid means of promoting the strength and riches, and of protecting the morals of their citizens.

On every ground of policy as well as humanity, in which the situation of the two countries can be viewed, it is so much their interest to be at peace with each other, that it becomes all their true friends to interpose their best services, and by moderation and conciliatory measures, prevent the most dreadful calamity that can possibly happen to either.

I well know I have been frequently accused of improper partiality to one nation, and undesired enmity to another. Convinced of the purity of my motives, and that the opinions and measures I have

advocated, were founded in a wish to promote the real interests of our country, I have been long accustomed to despise both public and private calumny. Believing truth and reason to be on my side, I have always used them as my shield, against the shafts of error and deception. Well knowing the consequences of war, I have exerted myself as much as my feeble influence would permit, to assist in averting its evils from our fellow-citizens; and in doing so, have differed from many, whose sentiments I still respect. Consistent as I trust my public opinions have always been, I shall upon the present occasion use the same unwearied diligence to arrest the hand of violence, and prove to both people the error of that opinion which could prefer hostility to peace, or force to temperate discussion.

It is the character of Monarchies to delight in war; the pride of conquest, and a desire to rule, invariably govern their councils. To love peace, and cherish all its milder arts, should be the policy of every wise Republic; for none but the most important reasons, ought they to fly to arms. It is only in the last resort it should ever be thought of. When moderation and discussion have been exhausted, and every honourable means to prevent a difference have failed; when points unfounded in justice, and ruinous in the extreme, have been urged, and nothing short of an unconditional compliance will be accepted; then, but not till then, can a Republic be justified in committing their interests and safety to the uncertain events of war: then, and probably not before, will all their citizens be convinced of the moderation and equity of their government, and be ready to support and defend its rights.

These reflections have been occasioned by the awful and alarming state to which things are reduced between Great-Britain and the United States. Finding that our citizens seem not to be apprized of their situation, and anxious that they should be prepared for an event, which, in my judgment, nothing but the utmost prudence and forbearance on both sides will prevent; I consider it as my duty to inform them, that in drawing for the 5th Commissioner, under the 6th article of the treaty with Great Britain, the British have been successful; that in consequence of obtaining this decisive majority at the board, such principles have been established by them as have opened a door to claims amounting to many millions--claims so great indeed, and the principles so ruinous to the interests of the United States, and so clearly not within the meaning of the treaty, that the American Commissioners have seceded from the board. It is mentioned in the papers, that one of the British Commissioners is returned to England; and it is said, with great appearance of truth, that the Commissioners in London, under the 7th article for deciding upon the cases of the vessels captured by the British cruisers, in 1793, and 1794, have also seceded: if they have not already, as soon as they hear of the secession of the American Commissioners in Philadelphia, there is no doubt they will retire as a matter of course. The increase of the captures of our vessels by their cruisers, I stated in my last address to you, and our subsequent accounts do not warrant a belief that they will be lessened. Thus are things returned to the situation in which they were in the spring of 1794, when the then President (General Washington) sent Mr. Jay, as Envoy Extraordinary to London to adjust them: at least so far as respects British claims for debts, claims for captures of American vessels, and the violated honour of our government.

It is true the British Government are since in possession of a treaty, under which they have attempted to support these claims, but as they are ruinous, and totally inadmissible on our part, the existence of the treaty only contributes to increase the delicacy and difficulty of

* An Address on the subject of the capture of our vessels by British cruisers.

our situation, and to make the adjustment of differences less easy.

In order to give a correct view of this subject, it will be necessary to state the 6th article of the treaty, which is in these words.

ART. VI. Whereas it is alleged by divers British merchants and others, his Majesty's subjects, that debts to a considerable amount, which were bona fide contracted before the Peace, still remain owing to them by citizens or inhabitants of the United States, and that by the operation of various lawful impediments since the Peace, not only the full recovery of the said debts has been delayed, but also the value and security thereof have been, in several instances, impaired and lessened, so that by the ordinary course of judicial proceedings, the British creditors cannot now obtain, and actually have and receive, full and adequate compensation for the losses and damages which they have thereby sustained: it is agreed, that in all such cases, where full compensation for such losses and damages cannot, for whatever reason be actually obtained, had and received by the said creditors, in the ordinary course of justice, the United States will make full and complete compensation for the same to the said creditors: but it is distinctly understood, that this provision is to extend to such losses only as have been occasioned by the lawful impediments aforesaid, and is not to extend to losses occasioned by such insolvency of the debtors, or other cause as would equally have operated to produce such loss, if the said impediments had not existed, nor to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission, of the claimant.

For the purpose of ascertaining the amount of any such losses and damages, five Commissioners shall be appointed, and authorized to meet and act in manner following, viz. Two of them shall be appointed by his Majesty, two of them by the President of the United States, and with the advice and consent of the Senate thereof, and the fifth by the unanimous voice of the other four; and if they should not agree in such choice, then the Commissioners named by the two parties shall respectively propose one person, and of the two names so proposed, one shall be drawn by lot, in the presence of the four original Commissioners. When the five Commissioners, thus appointed, shall first meet, they shall, before they proceed to act, respectively take the following oath or affirmations, in the presence of each other, which oath or affirmation being so taken and duly attested, shall be entered on the record of their proceedings, viz. "I, A. B. one of the Commissioners appointed in pursuance of the 6th article of the Treaty of Amity, Commerce and Navigation, between his Britannic Majesty, and the United States of America, do solemnly swear, or affirm, that I will diligently, impartially and carefully examine, and to the best of my judgment, according to justice and equity, decide all such complaints, as under the said article shall be preferred to the said Commissioners; and that I will forbear to act as a Commissioner in any case in which I may be personally interested."

Three of the said Commissioners shall constitute a board, and shall have power to do any act appertaining to the said commission, provided that one of the Commissioners named on each side, and the fifth Commissioner shall be present, and all decisions shall be made by the majority of the voices of the Commissioners then present; eighteen months from the day on which the said Commissioners shall form a board, and be ready to proceed to business, are assigned for receiving complaints and applications; but they are nevertheless authorized, in any particular cases in which it shall appear to them to be reasonable and just, to extend the said term of eighteen months, for any term not exceeding six months after the expiration thereof. The said Commissioners shall first meet at Philadelphia, but they shall have power to adjourn from place to place; as they shall see cause.

The said Commissioners, in examining the complaints and applications so preferred to them, are empowered and required, in pursuance of the true intent and meaning of this article, to take into their consideration, all claims, whether of principal or interest, or balances of principal and interest, and determine the same respectively, according to the merits of the several cases, due regard being had to all the circumstances thereof, and as equity and justice shall appear to them to require. And the said Commissioners shall have power to examine all such persons as shall come before them, on oath or affirmation, touching the premises; and also to receive in evidence, according as they may think most consistent with equity and justice, all written depositions, or books, or papers, or copies or extracts thereof; every such deposition, book, or paper, or copy, or extract, being duly authenticated, either according to the legal forms now respectively existing in the two countries, or in such other manner as the said Commissioners shall see cause to require or allow.

The award of the said Commissioners, or of any three of them as aforesaid, shall, in all cases, be final and conclusive, both as to the justice of the claim, and to the amount of the sum to be paid to the creditor or claimant, and the United States undertake to cause the sum awarded, to be paid in specie to such creditor or claimant, without deduction; and at the same time or times, and at such place or places as shall be awarded by the said Commissioners; and on conditions of such releases or assignments to be given by creditor or claimant, as by the said Commissioners may be directed: provided always, that no such payment shall be fixed by the said Commissioners to take place sooner than twelve months, from the day of the exchange of the ratifications of this Treaty.

From an attentive examination of this article, it will be found that none but British merchants, and

other subjects of his Britannic majesty, are entitled to recover under it: that they must prove their losses have been sustained by lawful impediments arising from the public authority of the government: that they have not arisen from the insolvency of debtors, nor occasioned by these impediments, but owing to causes unconnected with them; that they have used due diligence to recover these debts; and that no wilful negligence, omission or delay could be imputable to them in their attempts to sue and recover in the courts of the several States. These must appear to every unprejudiced examiner, to be the duties established by the treaty as necessary to entitle the claimant to recover. Indeed it seems not only to confine the description of claimants to debtors, but to render it absolutely incumbent on them first to have brought suit, and legally prove that the parties or their representatives, who were their debtors, were insolvent, or that their property was removed, or not to be discovered, or made liable. This is so clear an explanation of the article, that I was astonished to find in the case of the Right Reverend Charles Inglis, Bishop of Nova Scotia, and who was formerly clergyman of New-York, and whose estate was confiscated there, the three British commissioners, Mr. Macdonald, Mr. Rich and, Mr. Guillemard, had, by force of their majority, attempted to establish in substance the following decision. That the date of the treaty was the point of departure; and it should depend upon the board, under the circumstances of every case that may come before them, to agree or not as they should think proper, to admit the claim of a British subject, who had been banished and his estate confiscated, although he had not sued his debtor in the courts of the State where he was resident, and although it was presumed, and indeed alleged, the debtor was solvent: in short, that the board would always leave themselves at liberty to judge of the circumstances under which claims like this might be sustained, and how far it was or was not incumbent on a claimant to have previously ascertained, in a legal manner, the insolvency of his debtor. And in the case of Cunningham & Co. they expressly declare, that the board would in all cases in which they thought proper, exercise the right of granting to claimants full compensation from the United States, for all the interest during the war, which had been denied to them by the American judicials: and they termed this, denial of interest during the war by our judicials, that "lawful impediment" which bro't the claim within the letter of the treaty.

Had the board continued to sit, or to decide upon claims under the latitude and extent of the principles above stated, the three Commissioners, being upon all occasions a decided majority, would have loaded the treasury of the United States to an amount, in millions, that our citizens can at present have no idea of. It is for this reason our commissioners, Mr. Fitzsimons and Mr. Sitgreaves, have seceded; and I am only astonished that Lord Grenville and Mr. Jay, who formed the treaty, or, that either the British or American Government could have expected from such an article, anything but disagreement and secession; that instead of healing, it would widen the breach, and open such a door to fraud, imposition and perjury, as had not yet been witnessed among us. How was it possible for men the least acquainted with the feelings and partialities of the human mind, to suppose that British and American Commissioners could meet to arbitrate upon claims springing from our revolution, but with the most discordant opinions? Could the consequences of exile, confiscation, or suspension of the rights of British subjects, which the pressing situation of affairs frequently rendered inevitable, be viewed by them with the same eyes? Or ought it not to be expected, as has proved to be the

* Vattel, lib. 4; and Wolf, sec. 1229, both contend that a Treaty only binds subjects or citizens of a country from the time of its publication.

case, that they would carry into their arbitrations all those passions and prejudices which have so invariably actuated the subjects and citizens of the two powers, whenever those points have come into controversy? In constructing this article, the negotiators seem to have been less guarded and explicit, than they should have been on questions of such great consequence, and in which such differences in opinion were to be expected.

It is from this consideration, that I hope the forbearance and conciliatory temper of both governments will derive the experience that is now found to have been necessary to the amicable adjustment of our mutual claims. They will hereafter be convinced that the nature and limits (as to date) of the claims, with the particular description of the creditors who are to be entitled as it respects the British debts, and the nature of the claims and proof as it respects the American demands for spoliations, must be exactly defined and settled, by negotiators, possessing liberal and well-informed minds--by men incapable of being prejudiced by past transactions, or the former situation of the two countries, and who will take an enlarged view of the subject as it ought now to be considered. To Ministers like these, the adjustment will not be difficult. To the British Negotiator, particularly, it will at once appear, that it can never be the interest of his Government, to risk the loss of their best customer, and endanger the peace of his country, for claims like these; that the acquisition of the object sought, is not worth the hazard or expence of attempting it; that most of the claims which have been presented, were either unjust, or fraudulent, or would not have been thought of, had not the last treaty with Mr. Jay unexpectedly given rise to them; that the denial of most of them, or the renewing any right to claim, except in very particular and clear cases of real British creditors, to be distinctly specified, would create little or no disappointment, and effectually shut the door to innumerable frauds; that while, as I have just observed, the subject was really, in a national point of view, of little consequence to Britain, it was of the utmost importance to the United States, and would involve, if the resolution intended by the British Commissioners were to operate, the increase of a debt little short of one half of the amount of their original one: that the taxes to defray it would fall entirely on the landed interest, and amount to a sum extremely inconvenient to our citizens: that the evil would not stop here; but that with the increase of taxes, every article and necessary of life would rise; and thus a lasting, and indeed a growing misfortune to our country, be fixed upon it, perhaps, for ages.

In the extensive and enlightened view such Negotiators would take of it, they certainly would differ from the British Commissioners, and determine in all cases where the insolvency of the debtors was insisted upon, that such insolvency should have been legally, and previously proved, in the Courts of the State where the debtor was resident, or those of the United States, since their establishment, and where it was practicable: that where this was not done, it was to be presumed the reason for not doing it was, that the creditors knew they were either already paid, or that altho' the charges were made against persons known to be solvent, they were so improper as not to be capable of support: that trusting to the partialities and prejudices of a board consisting of a

* To shew the evils produced by the increase of Taxes, as operating upon every class in the community, an English writer remarks, as it respects that country, "The evils already produced by the taxes to pay the interest of the funds, are likely to prove fatal to our national prosperity, by the enormous advance they have occasioned in every article of expence. This advance will appear by the following Table of Prices in the years 1732, 1780 and 1792, taken from the most authentic accounts:

Table with 3 columns: Year (1732, 1780, 1792) and various commodity prices (Beef, Mutton, Veal, Butter, etc.)