



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

Mr. Pinckney's Observations

on the
Mutual Claims of the British and
American Nations.

Continued from our last.

I Come next to the resolution proposed by the British Commissioners on the subject of *interest during the war*. In the case of Cunningham and Co. the British Commissioners moved a long and general resolution, ending in this manner:—That no sufficient cause had been shewn why in awarding full and adequate compensation for such debts as had been proved, the United States should not be liable for all such *interest during the war*, as should be awarded according to the nature and import, express or implied, of the several contracts on which the claim is founded. The extent and consequence of so general a resolution, and the very large sum it would load the Treasury of the United States with the payment of, will be considered as sufficient reasons for giving this subject the examination its importance requires.

To those who are acquainted with it, and have had access to the letters and journals of our Ministers during the negotiation for peace, it is well known this subject occasioned considerable difficulties: that our Ministers expressly under their hands, in forming the definitive treaty; acquainted the British Plenipotentiary that the *emission of interest* in the 4th article was intended. Congress declares the same thing, and their declaration was communicated to Mr. Hartley. No idea was entertained that the article was meant to intend any thing more than that the *principal of the debt should be recoverable*, and that the question of interest should be reserved for the determination of a jury, on the particular circumstances of each case in which it may be claimed.

This is the state in which things stand at present with respect to claims against individuals. Regulations have taken place on the subject, and I believe in all the States, but I speak with certainty of this State, interest has been uniformly denied, as being unjust and improper; nay, so uniform and numerous have been the decisions denying it, that I am informed some of the Federal Judges, who had doubts in their own minds on the question, have nevertheless directed the juries to strike out the interest during the war. The reason they gave was an unanswerable one: that at this day to authorize a contrary decision, would be to introduce such an irregularity of proceedings in our judicial, as to hereafter destroy the confidence of our citizens in their decisions: that each succeeding court might vary the opinions which were supposed to have been so often established as law:—that it would be impossible to go back to, or unravel or expose again to legal investigation, all the settlements which have amicably taken place in consequence of former decisions: that it would be the most flagrant injustice, after having, in this State particularly, in every case that had been tried, exonerated the debtor from interest, in one or two, or in the very few that may still remain for decision, to charge them with the payment of it: that therefore it has been the uniform practice, and of course will continue so in all trials on questions of interest during the war, for the juries to strike it out from the commencement of hostilities to the establishment of peace. It will be my endeavour to shew, in a summary manner, that this denial of interest is founded on the strictest justice; regretting as I have just done upon another occasion, that I cannot from the nature of publications of this kind, go as fully into it as the subject would allow.

The decisions in England, from which country we have in a great measure borrowed our jurisprudence, have established that no interest shall be allowed on arrears of rents, profits or annuities; on book debts, open accounts, or simple contracts; for goods sold and delivered, or monies advanced without a note; on inland bills of exchange without protest, and on bonds after 20 years, where no payment or legal demand can be proved within that period. There

are many other demands which, according to the laws of England, carry no interest; but those above-mentioned, particularly for book debts, open accounts, or simple contracts, or goods sold and delivered, are sufficient to prove that even according to the laws of England, a great proportion of the demands before the board ought not, according to impartial justice, to be allowed interest during the war, and compensation from the United States.

The reasons which have been generally urged against the claim of interest during the war, are the rules of construction established by the law of nations for the interpretation of obscure and ambiguous pacts:

The meaning of the word *debts* in the 4th article of treaty of peace, as not comprehending interest, because interest is recoverable at law in the technical form of damages for the detention of the debt, "being what is given more than interest, that the creditor may not be a loser."

The inference to be drawn from the demand of the deduction of interest during the war, which had been made on the part of the United States in the course of the negotiation, previous to the formation of the treaty, and from a conversation subsequent to it, to wit, in the year 1786, between the British Secretary of State for Foreign Affairs, and the American Minister at London, in which the latter suggested the "policy of giving up the interest during the war, and agreeing to a plan of payment by instalments." And the former, after some slight expressions concerning the interest, "wished that the courts were open for recovering the principal, and observed, "that the interest might be left for an after consideration."

The nature and causes of the war, in the course of which, "the products of the land were indispensably necessary for defence against that which on the side of the Americans was a war for life, liberty and property; a war attended with such circumstances of desolation, as that after the application of what was thus necessary for defence, there was nothing left to an individual for paying interest on his debt."

The interdiction of commerce to the United States by acts of the British Parliament, and the stoppage of access between the American debtors and British creditors, by which the detention of the debt during the war was unavoidable:

The departure of creditors and their factors from the State, with their books and papers, so that nobody remained to receive payment of the debt:

The striking analogy between the present case and that quoted from Viner's Abridgment, in which it is stated, "that where by a general and national calamity nothing is made out of lands which are assigned for the payment of interest, it ought not to run during the time of such calamity."

The equity as between debtor and creditor, of denying interest during the war, whereby the creditor and debtor will be put upon a more equal footing, and a loss will not be incurred by a debtor for the sake of a gain to the creditor:

The evidence of such equity, arising from the uniform practice of the Courts and Juries of the United States, which I have already alluded to, and who in all cases disallowed interest during the war—at least in all of this State, and in such of the rest as have come to my knowledge.

In order to explain the reasons which I suppose have influenced these decisions, in addition to those already mentioned, it will be necessary for me to view the situation of the debts due to the British merchants previously to the war, and also that of their debtors at the commencement, during the war, and at its conclusion. I do this to enable me to make some comparison between the British merchants and others trading to, or having debts due them in America; and their debtors, American citizens; to shew that although Great-Britain was unsuccessful, and the United States triumphant, how preferable the situation of the British creditor

was at the conclusion of the war, to the American merchant or creditor: that although his country was successful, the fortune of the latter was destroyed, while the rights of the former remained unimpaired: that this unparalleled public honor of the American nation, in preserving the rights not only of foreigners and aliens, but of enemies, while it sacrifices those of her own citizens, by tender laws and profuse emissions of depreciated paper; this nice and scrupulous attention of her government, instead of exciting the admiration of the British cabinet, as it has done of the rest of the world, seems only to give rise to new demands, and to decisions unwarranted even by their own Courts.

The British Commissioners must surely have been acquainted with the manner, in which our citizens became indebted to their merchants before the war; being subjects of the same power, and their trade confined to the British dominions and merchants, there was an assurance and a confidence established between them which can only exist in similar situations and among subjects of the same government. From this arose the extensive credits and claims of the British merchants—claims so large, that at the time our exportations were limited, it was impossible for the American merchants to remit their creditors the sums they owed. In this situation the war found them. The events during that period, in which they were not only exposed in common with others to the loss of their negroes, and deprived of deriving any income from their lands, but the unparalleled destruction of that part of their fortunes which consisted of securities for money, by the operation of severe and unequal tender laws, are too well known to require my illustrating them.

Let us here for a moment pause, and compare the situation of the British creditor with that of the American merchant or creditor, at the end of the war, and see how far, in the eye of reason or justice, I was going to say in that of decency, he has a right to complain; or how far he had a right to expect, that while our merchants and monied men lost by the war both principal and interest, he was not only to be secured in his principal, but completely indemnified by compensation in interest for being even kept out of it during the war—a detention which, as has been proved, was owing to their own government and merchants—the first by driving us into the war and destroying all intercourse, and the latter by removing themselves and their papers out of the reach of their debtors.

Where, may be asked, could we have found an American merchant or monied man, who would not, at the peace, have joyfully accepted the proposal of losing all interest during the war, and being placed in point of principal in the situation he was at the commencement? Look into the melancholy list of decayed families in every State; at the thousands of your own citizens who have been ruined by your tender laws and depreciated paper, and who have not received, or ever will receive any satisfaction, except that of reflecting that it was done to save their country, and tell me whether you could view with serenity your public treasury drained, and your citizens, taxed as they are already, still farther harassed to pay a demand so unexpected and unjust as this is.

The equity of the English decisions has established the principle, that even in the case of lands assigned for the payment of interest, if by the interference of a national calamity nothing can be made out of them, their interest shall not be chargeable. If, therefore, by their own decisions in the case of lands, a solid immovable property, on which, although the improvements may be destroyed, the land itself must remain, this equitable decision has taken place; if this is universally acknowledged as English law, how much more applicable is the principle in the case of the American merchants, whose funds to pay their European creditors be-

ing being destroyed by the operation of laws the consequence of war, and that war occasioned by Britain, not only the means of raising the interest, but the principal assigned for that purpose and for the payment of the debt, is for ever swept away!

Can the British commissioners, or their Nation, be unacquainted with the situation of the United States at the formation of peace; and in deciding whether interest ought or not to be charged, is not this an important consideration? Are they to be told that the invasion of their armies and the destruction of our commerce, had reduced our citizens to a greater degree of poverty than they had ever experienced? That in the southern States particularly, where their fortunes had been totally unproductive for the first six years; and either actually sequestered by the British Government, or within their power for the last two or three, they were an expence and not a benefit to their owners? Or can they be ignorant, that from the peculiar situation of our merchants and monied men, who relied altogether on the funds due them in America for remittances to their European creditors, that it was on them the war, with all its losses and consequences fell, with unusual severity?

If it be an established rule, "That in case of accidents which happen without any fault of the party, he will not be liable to reparation for damages, by the rule that nobody is to answer for accidents, except there be some fault on their part."* If it is another rule, "that where misfortune has happened without the fault of either party," there is no reason to throw off the loss from one innocent man to another innocent man; and, that in such case, the condition of the defendant is the preferable one:† If "it would be unreasonable that those things which are inevitable, which no industry can avoid, no policy prevent, should be construed to the prejudice of any person in whom there is no *laches*."‡ If these are the established rules of English law—to what war, or to whom can they be more strongly applicable, than to our revolution and citizens? They have governed our Courts in all their decisions, and to strong is their equity, that they will, I trust, be the principles on which our differing claims may yet be amicably adjusted.

[To be concluded in our next.]

EAST-INDIES.

BOMBAY, JUNE 4.

Courier Extraordinary.

The following copy of a letter from Lieut. Gen. Harris, to the Right Hon. the Governor General, dated Seringapatam, 7th May, 1799, is published by his Lordship's authority.

J. WEBBE, Sec. to Gov.

MY LORD,

On the 4th inst. I had the honor to address to your Lordship a hasty note, containing in a few words the sum of our success, which I have now to report more in detail.

The fire of our batteries which began to batter in breach on the 30th April, had on the evening of the 3d inst. so much destroyed the walls, against which it was directed, that the arrangement was then made for assaulting the place on the following day, when the breach was reported practicable. The troops intended to be employed were stationed in the trenches, early in the morning of the 4th, that no extraordinary movements might lead the enemy to expect the assault, which I had determined to make in the heat of the day, at the time best calculated to ensure success, as their troops would then be least prepared to oppose.

Ten flank companies of Europeans, taken from those regiments necessarily left to guard our camp and out-posts, followed by the 12th, 33d, 73d and 74th regiments, and three corps of Grenadier Sepoys, taken from the troops of the three

* See Domat, lib. 2.

† 3d Error, 1357.

‡ Powell on Contracts, p. 446.

Presidencies, with 200 of his Highness the Nizam's troops, formed the party for the assault, accompanied by 100 of the artillery and corps of pioneers, and supported in the trenches by the battalion companies of the regiment de Meuron; and four battalions of Madras Sepoys: Col. Sherbrooke, and Lieut. Colonels Dunlop, Dalrymple, Gardiner and Mignan, commanded the several flank companies; and Major-General Baird was entrusted with the direction of this important service.

At one o'clock the troops moved from the trenches, crossed the rocky bed of the Covery under an extreme heavy fire, passed the glacis and ditch, and ascended the breaches in the fausse brave and rampart of the fort, surmounting in the most gallant manner every obstacle which the difficulty of the passage and the resistance of the enemy presented to oppose their progress. Major-General Baird had divided his force for the purpose of clearing the ramparts to the right and left. One division was commanded by Col. Sherbrooke, the other by Lieut. Col. Dunlop, the latter was disabled in the breach; but both corps, although strongly opposed, were completely successful. Resistance continued to be made from the palace of Tippoo, for some time after all firing had ceased from the works; two of his sons were there, who, on assurance of safety, surrendered to the troops surrounding them; and guards were placed for the protection of the family, most of whom were in the palace. It was soon after reported that Tippoo had fallen. Syeh Scheb, Meer Saduk, Syed Gofar, and many other of his chiefs were also slain. Measures were immediately adopted to stop the confusion at first unavoidable in a city strongly garrisoned, crowded with inhabitants and their property, in ruins from the fire of a numerous artillery, and taken by assault. The Princes were removed to camp.

It appeared to Major-General Baird, so important to ascertain the fate of the Sultan, that he caused immediate search to be made for his body, which, after much difficulty, was found late in the evening in one of the gates under a heap of slaps, and soon after placed in the palace. The corps was the next day recognized by the family, and interred with the honour due to his rank, in the Mausoleum of his father.

The strength of the fort is such, both from its natural position and the stupendous work by which it is surrounded, that all the exertions of the brave troops who attacked it, in whose praise it is impossible to say too much, were required to place it in our hands. Of the merits of the army, I have expressed my opinion in orders, a copy of which I have the honour to inclose, and I trust your Lordship will point out their services to the favourable notice of their King and Country.

I am sorry to add, that on collecting the returns of our loss, it is found to have been much heavier, than I had at first imagined.

On the 5th instant, Abdul Khilie, the elder of the Princes, formerly hostages with Lord Cornwallis, surrendered himself at our posts, demanding protection. Kerim Scheb, the brother of Tippoo, had before sought refuge with Meer Alum Behauder. A Cowl Namam, was yesterday dispatched to Futteh Hyder, the eldest son of Tippoo, inviting him to join his brothers. Pomeah and Meer Kummer odeen Kahn, have also been summoned to Seringapatam. No answers have yet been received, but I expect them shortly, as their families are in the fort.

This moment, Ali Reza, formerly one of the vazeels from Tippoo Sultan to Lord Cornwallis, has arrived from Meer Kummer odeen Kahn, to ask my orders for 4000 horse now under his command. Ali Reza was commissioned to declare, that Meer Kummer odeen would make no conditions, but rely on the generosity of the English.

Monsieur Chapuy, and most of the French prisoners: they have no commissions from the French Government.

I have the honour, &c.

GEO. HARRIS.