RALEIGH REGISTER,

AND

NORTH-CAROLINA WEEKLY ADVERTISER.

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

VOL I. TUESDAY, DECEMBER 3, 1799.

Mr. Pinckney's Observations

on the

Mutual Claims of the British and American Nations.

[Concluded from our last.]

THE British Commissioners, from their reasoning, seem to be of opinion, " That the debts existed, and that all their rights and obligations, whether of interest or otherwise, remained attached during the war: that the laws of war do not destroy private contracts."

In the present civilized state of mankind, it is true a war between different and independent nations, whose subjects or citizens are aliens to each other, does not destroy private contracts. It is however only for a few ages that this refinement has existed: formerly, not only all contracts were annihilated, but the fortune, and even persons of the conquered, were considered as the property, and at the disposal of the conqueror. Among civilized nations it is now different. The interference of war, although considered as a national calamity, and as suspending all intercourse between the parties, leaves the principles of private justice inviolate, and an accommodation revives every contract that existed before the rupture. But the late war differed extremely from a common war between nations independent of each other before its commencement, where the government and laws remained unaltered, and war has only occasioned a temporary stoppage of intercourse. In revolutions more important reasons occur: here, not only all private, but the higher and more solemn, the public or social compact, the relation between the two people being destroyed, involved in its destruction all others; the powers of government were taken into the hands of the people, and it was from the confederation and the state constitutions, and afterwards from that of the United States, our present laws and policy have originated and been established. In many instances it has been altered and accommodated to the nature of our government; but wherever it could without inconvenience, the common law of England was adopted; the debts therefore depending on the former laws and the relation between the two people, and being destroyed with them, could only have received a new existence from the treaty;* the claim was dormant during the war. If their rights remained unimpaired, and by the laws of nations each party was obliged to view them in their original situation, why the necessity of making it an article of the treaty? Such articles are, I believe, unusual in treaties of peace; but the true reason no doubt was to prevent the argument of the debts being extinguished; and the anxiety with which Great-Britain insisted upon it, is a proof that they were aware of its force.

But even if the debt did exist, the charge of interest is certainly unfounded. Interest is a rent, or sum paid for the use or detention of money. If, as has been already stated, from the interference of a national calamity, and war is such, the principal cannot be used, or by the operation of law becomes destroyed, there, interest shall not be charged, not even if it was expressly specified and inserted in that contract. If the fourth article, instead of merely saying " debts," had gone further and stipulated " debts with lawful interest," even then the interest during the war would not have been recoverable, because the claim is not a lawful one. Our Courts, governed by principles of the strictest justice, and sanctioned by English precedents, have determined that interest during the war was not recoverable according to law; and therefore, in my judgment, the British Commissioners have exceeded their powers, or attempted to do so, in the general resolution I have quoted. They ought to have known that the question, whether interest is or is not allowable on contracts, belongs exclusively to juries: that it is one of those that cannot properly be tried otherwise; that it is what the law calls 'an action sounding in damages,' and which can alone be ascertained by a jury of the vicinage: that being acquainted with the defenders and their circumstances, they are the best judges on occasions of this sort; that being chosen by lot and indifferent to the persons concerned in the suit, and acting upon oath, it was much more likely there would be impartiality in this mode of assessing damages, than in any other; that it was a known and established rule of law that all actions of damages must be tried by a jury; and that in every attempt that has been made to have the question of interest during the war determined by the Judges of the United States, as Chancellors or Judges in Equity, they have invariably refused, and referred it to the decision of a jury. No question certainly is more proper for the exclusive determination of a jury, than that of interest during the war. It is one which must depend upon so many domestic circumstances, springing from the war, and which can alone be known to persons resident in the same State with the defendant, that to decide upon it without a knowledge of these circumstances, and a personal examination of the witnesses, would be to depart from that course of proceeding which can alone produce substantial justice: that from the construction and character of our Courts, the ability of the judges, and the integrity and disinterestedness of our juries, there was no reason to doubt the propriety of their decisions: that in all cases where the claim had been solemnly argued and denied, the Commissioners should be convinced the interest ough to have been recovered: that it was the practice of all nations to suppose that justice was ably and faithfully administered in the Courts of each other, to give full credit to their proceedings, and, where the jurisdiction was admitted, to be bound by their decisions: that the intercourse necessary between them rendered this mutual confidence in their tribunals indispensible; that therefore, in all cases where interest during the war had been denied by our judicials, it was the duty of the British Commissioners to have acquiesced, and confined themselves only to the examination of the principal and interest since, where it was admitted; and to the legal impediments that have been imposed: that so tender were our citizens on this subject, and on the sole and exclusive right of juries to determine the question of interest during the war, that even in the Circuit Courts of the United States, when once the question was decided there by a jury of the vicinage, our citizens have constantly denied the right of the judges to grant an appeal on this particular question, even to the Supreme Court to be held at the seat of Government: that the reason of an appeal from one of the Judges of the Supreme Court to that of the whole was, that in cases of consequence and difficulty it was to be presumed there must be more knowledge and experience, and certainly more safety in the opinions of six judges, than in that of one; that therefore in all cases in equity, and on all points proper for the decisions of the Judges, appeals ought to be allowed; but that in actions sounding in damages, and particularly in this of interest during the war, no appeal can be granted, because, being exclusively reserved for the opinion of a jury, it would only be an appeal from one jury to another jury; from one of the vicinage, who can alone be acquainted with the parties and their circumstances, and partake of the qualities juries are intended to possess, to another of strangers, totally unacquainted with them, before whom no persons could be brought and cross examined, and who, as a jury, must, from the distance of the residence of the parties, the inevitable absence of witnesses, and the difficulty and danger of transporting books and papers, be without the means of deciding either with safety to themselves or with justice to the concerned.

I know of no attempt to have such an appeal as this granted. If it should be made, we are to suppose the wisdom and integrity of the judicial will respect it. From the little doubt there is on the point, it is to be presumed no such attempt will be made. I have introduced it here merely to convince the British Commissioners, that this is a subject they ought not to have touched; that substantial justice to the United States required them on this point to have acquiesced in the decisions of our juries; —that it was improper for our Judges without a jury to decide on it, even in the States where the defendants resided; it was extremely so indeed, for the Commissioners, to whom it must have been more inconvenient, indeed to whom it must be impossible to obtain the necessary testimony, either by the presence of witnesses, or the production of papers;---that where the parties were not, or did not consider themselves personally interested, and were not to pay, but knew the United States must, they would be inattentive to the transmission of evidence: that where the distance was great, it would be impossible to obtain personal attendance, as the Commissioners could issue no compulsory process to oblige it: that all the vigilance and care of the ablest agents would be insufficient to remedy these defects; and that the examination by commission was open to so many errors, that it was not upon the loose and vague testimony which was to be thus obtained, the United States should be loaded with the payment of so considerable a debt: that for all the reasons which have been urged, the attention of the Commissioners should have been directed to examine only the nature and amount of the principal at the commencement of the war, the interest where legal since, and the legal impediments; and having done this they would find that in all cases where they had a right under the treaty to secure to their merchants and subjects payment from the United States for the principal of their debts at the beginning of the war, and the interest since its conclusion, they would then be in a situation to which even the hopes of our distressed merchants and creditors, whose families have been ruined by our tender laws, have never yet been permitted to aspire.

There are some other points in controversy between the British and American Commissioners, which I have not leisure at present to discuss. My intention is to induce the British Government to attend to the arguments which may be used in support of our claims; and to convince them that so far as their subjects are justly entitled, the United States will make ample compensation: that they will expect it in return for the losses of their citizens; and that they are ready again to treat upon these with the sincerity and candor which have ever distinguished them.

If Great-Britain wishes to continue on friendly terms with us, she will agree to this and attend to our reasonings; but if, elated with success, she is so impolitic as to look to this country with other eyes than those of peace and commerce, she will magnify her claims and render an adjustment as difficult as possible. If such is her ultimate object, it would perhaps be wise in her to consider our distance and the inconveniences of even a serious controversy with us: that although it is to be confessed licentiousness, avarice and rapine, have but too often stained the cause of republicanism in Europe, it is at the same time to be remembered, that public virtue, honor and justice, have always graced its annals here: that the rights of suffrage, representation and of jury, are sacredly preserved to us: that corruption is as yet a stranger: that although there may, as in all others, be errors in the administration of government, yet by slight changes, they can be soon made to vanish, and leave it in its purity: that enjoying unquestionably the greatest political happiness upon earth, mild and gentle in their deportment to all nations, and unwilling again to tread the thorny path of war, our citizens are still always prepared to defend their public honor, and cherish their government and its rights with the attachment and affection due to so excellent a system.

A South-Carolina Planter.

Charleston, October 26, 1799.

* Grotius says, " To whomsoever a thing is conceded by the peace, to him also the profits are conceded, from the time of the concession, but not back."

Division of Wilkes County.

The question on the second reading of the Bill for dividing the County of Wilkes, being under consideration in the House of Commons of this State, on the 25th inst. the following Debate took place.

MR. ROBINET observed, that though this bill had frequently been before the Legislature, yet as there were many new members in the house, who might not be acquainted with the reasons upon which it is founded, he should trouble the house with a few words on the subject, in order to remove impressions from the minds of members which may have been made upon them out of doors. He had been instructed for five years past to use his endeavours to effect the object of this bill, which he had not failed to do, though hitherto ineffectually. His constituents who pray for this measure, think it due to them in justice, and think it is owing to a failure of duty in their Representatives that it has not yet been obtained, believing their desire to be so perfectly reasonable. He hoped, however, the time was at length arrived when the good sense of the Legislature would grant relief to these aggrieved citizens.

Mr. R. spoke of the great extent of this county. He said it is 94 miles in length, and from 30 to 45 in breadth, and called upon the house to consider the situation of such a country, with the Apalachian mountain running through it, and the long journies the citizens must of necessity be obliged to take, in order to attend their Courts of Justice. Mr. R. supposed it would be objected now, as it had been heretofore, that the taxes received by the Treasury from this county, are not sufficient to pay additional Representatives. He hoped, however, this objection would not have any weight. For some years past, it was well known that this county had been in a state of confusion, occasioned by Land Speculators, whose lands have as yet yielded nothing to the revenue; but he trusted this would not long remain the case, as 150.000 acres had been ordered to be sold for taxes at their last Court.

Mr. PURVIANCE did not intend to have troubled the house with any observations of his; but the importance of the present subject had compelled him to depart from this determination; its advantages and disadvantages ought to be weighed, and the bill received or rejected accordingly. It is now, said Mr. P. about ten years since these people have cried for a division of their county; and though they have hitherto cried in vain, they have still annually renewed their application for redress. Such a perseverance is a strong evidence of the inconveniences which they suffer; nothing but urgent necessity could have induced such unwearied application. Indeed if ever a county was entitled to a division, he said, it was this. The Apalachian mountain running through it; and the Court-house being on one side of it, and a great number of the citizens on the other, they are of necessity put to great inconveniences and hardships in passing it, in order to attend upon their Courts. We who live in a level country, can have no idea of these inconveniences and hardships, arising from the inclemency of the weather and mountaincus bad roads. Living ourselves in a temperate climate, we know nothing of deep snows and swollen waters. Mr. P. painted the scene of a winter passage over the mountain in high colours; observing that whilst we sat round our comfortable fires, we had no thought of the poor distressed widow of Wilkes, who might, at this inclement season, be obliged to pass the Apalachian mountain to attend a Court.

If, then, said Mr. P. these grievances are experienced by the people of Wilkes, it becomes the business of the Legislature to redress them. It was for the purpose of redressing grievances, and to make the people happy, that the General Assembly was formed. It becomes an object of consideration, therefore, whether the grievance exists, and if it does, whether this bill is calculated to remove it.

That it does exist is self-evident, and has never been denied; and it is only by passing a bill of this kind that it can be removed unless, indeed, a law were passed for the erection of another Court-house, so that one might be on each side of the mountain. A bill of this kind was before the house at the last session, and rejected. Sufficient objections, though, in his opinion neither founded in reason or justice, had constantly been urged to prevent the passage of this bill.

The first objection was a mere arbitrary aversion to a division of any county. This is an objection, but not a argument; it shews the aversion of those who use it; but not the grounds upon which that aversion is established. And why this aversion to new counties? We have heretofore had, and in a few years shall doubtless again have, many new counties.

The principal argument used against the bill, is, that the revenue at present arising from the county, is not more than sufficient to pay the present expences. To destroy his argument will not require any great ingenuity.

Mr. P. said he should exhibit a calculation which he had made in relation to this subject.

The amount of land in Wilkes, returned by the sheriff, is - -	217,178 acres.	
Which at 8d. per 100 acres, is	£72	6 2
The amount of polls is 1287, which at 2s. is - -	128	14 0
Making in the whole	201	0 2
But the county is said to be about 100 miles long and 50 miles wide, containing in the whole, an area of	3,200,000 acres.	
From which deduct the land returned - -	217,178 acres.	
And there is left a balance omitted of -	2,982.822 acres not returned,	
Which at 8d per 100 acres, is	£994	5 4
of taxes not given in.		
Which, added to the sum of	201	0 2
of taxes which have been given in,		
Makes the whole amount of the revenue which ought to be given in for that county to be	1195	5 4

Which, instead of being barely sufficient to support the expence of three members, would support eighteen; but, admitting the calculation to be a large one, take one half the amount, and sufficient is left for the maintenance of nine members.

But, said Mr. P. there must be some other objections to this measure—some latent arguments, which produce the strong and uniform opposition which is given to the passage of this bill, or it would long since have passed. What form this spectre had assumed, he could not pretend to say; if it had any reference to the removal of the seat of Government, he could only say, that that was fixed by a cement too strong to be dissolved by so simple a measure as that of the division of the county of Wilkes. The aggrieved people who call for this division, he believed, had no other object in view but that of removing the local disadvantages under which they labour. He hoped therefore the bill would pass.

Mr, BLACKLEDGE said, as he was one of the number of those who were opposed to this bill, he thought it his duty to offer some arguments in support of the vote which he meant to give. In doing this, he should not follow the gentleman from Fayette through his mazes of eloquence, but confine himself to simple facts.

Mr. B. believed the statement which the gentleman had produced of the amount of taxes paid into the Treasury by the county of Wilkes, was nearly right. He himself had also got a statement. He believed it would be a good argument in favour of the division of a county, to shew that the people are numerous enough to support two sets of members; or against it, to shew the contrary.