



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 24, 1799.

No. 10.

Mr. Pinckney's Observations on
British Captures.

[Concluded from our last Number.]

IT is said the law of England does not permit a subject to change his allegiance. There is, I am informed, a similar regulation in Russia. I have proved the law of nations allows it in all cases, except in times of extreme danger and difficulty. It is necessary for every independent people to have laws or regulations of their own, respecting the admission of citizens; in determining upon these, it would be improper for them to be governed by the laws or opinions of particular nations. They vary so much, that it would be impossible to frame any system that would suit the whole. The law of nations being the ancient and established usage, and paramount to the local laws, was the safest and most proper criterion. It knows no distinction, and acts upon general principles; it teaches us that all men have a natural right, except in the cases alluded to, to change their residence and leave their country for another; that, as Cicero says, "the way lies open to all, and that the keeping or parting with this right is the foundation of liberty." It considers it as a cruel and unjustifiable restraint, that men should be so much supposed the property of the sovereign, in whose dominions they happen to be born, as to be obliged, either to live there constantly, or if they emigrate, that the duties or obligations of subjects should still follow them; that though they might live in other countries, it would be under the degrading disability of still being considered as subjects of the power they had left, and that they therefore would be incapable of mixing in the councils of the country to which they had removed. Depriving such a state of bondage, the law of nations gives to every one, as it ought, the right of living where he thinks proper; instead of being fixed to one spot, of becoming, if he pleases, a citizen of the world. Nor is this a new doctrine: it is as old as the Armenian Republic. "I would rather," says Socrates, "be a citizen of the world, than of any particular commonwealth." Nay, so fixed was this opinion among the ancients on the right of a citizen to leave his country, that on discussing it, Demaratus exclaimed, "he would prefer liberty in banishment, to servitude at home." The opinions of all the best modern writers are, as I have quoted, that, except in times of extreme danger, a citizen has a right to change his situation and residence, and 'tis on this opinion the United States have founded their law. Considering their habits and principles, it was impossible to frame it on any other. Every American citizen is born free, and glories in it with reason. The first lesson he receives from his father, and the first he transmits to his son, is, that independence is his inheritance; he is proud of being himself, of thinking, feeling, and acting for himself; he can have no idea of being confined to one country, or one allegiance, if he thinks proper to change them. In their act, therefore, it was impossible for them to make any distinction or to pay any attention to the local laws of particular States. They have been obliged from circumstances to vary the time necessary to entitle an applicant to citizenship; the residence previously necessary, in the year 1793, was two years; so that all the citizens made in that year, must have been in the country two years before. Many of them have been here a much longer time, as it is well known that there are at this moment, a great number of the natives of Britain, resident in the United States, who have been so long before 1793, and who still continue subjects of that power. All those who became citizens in 1793 or 1794, must have, from the law admitting them to citizenship, been here so long as to prove at once, that they left their country before the war, and in a time of profound peace; and yet, by the decree of the Judge of New-Province, they are not to be consider-

ed as citizens, and are liable, if they attempt to trade under the American flag, to have their property engaged in such commerce, seized and condemned. I will ask, under what pretence, under what colour of law or reason, can these condemnations take place or be justified? It is universally admitted by all the writers, ancient and modern, that in time of profound peace, a man has a right to leave his country; I have shewn, from the residence previously necessary to qualify for citizenship, all those who were admitted in 1793, and 1794, must have left Great-Britain when at peace, and therefore, with respect to those, there can be no doubt, among well-informed Judges, that the Providence Judge has violated our rights, and that it is the duty of our government to seek redress. I am not without hopes, that the policy of amicably granting it, will be seen and pursued. It might also lead to explanations on the subject in general; for under the law of nations, I hold it to be a clear and undoubted right, the subject or citizen of every power possesses, to change his residence and allegiance, except when his country is actually invaded by a foreign force, or is in imminent danger of being so, or has a contest amounting to war raging within it; that it is a privilege founded in the law of nations and the reason of things, and that the laws of Great-Britain, Russia, and the other countries which differ, are unnatural infringements of a right their creator must have intended every human being to possess; that the United States, having acted upon this right, it is their duty to protect the lawful commerce of those they have created citizens; that otherwise their grant of citizenship is a public deception, ruinous to the interests of those their laws upon this subject have entrapped, and unworthy the justice and honour of the American nation. I come now secondly to consider the determination given by the Judge respecting the condemnation of all the goods on board any vessel belonging to the same owner, who may have shipped any contraband goods, even of the smallest value; and that contraband goods, shipped by the owner of the vessel, renders such vessel liable to condemnation. The property of American citizens depending upon this construction, being to a very great amount, and as it may hereafter materially affect them, I have considered the subject with all the care and attention I could. I have searched into every authority within my reach; and, after the most deliberate and impartial examination, do not hesitate to pronounce it a most unjust and illegal decision—one as unwarranted by the law of nations, as it is by the laws of England, or the decisions and opinions of their ablest Judges. As the question is of infinite importance, I trust my countrymen will not consider me as unreasonably trespassing on their patience in making the following observations. It is agreed by all writers, that ships of war, or privateers, are not to attempt any thing against the law of nations; they are not, by assaulting within the port of a friend, to disturb the peace of a place, for it must be inviolably preserved; they are carefully to attend to the leagues of their allies, neutrals and friends, according to their various and several treaties; and therefore by a marine treaty between Charles II. and the State of Holland, the Commanders of privateers are to give security for their behaviour, exactly in the manner of the treaty with Great-Britain with the United States: indeed, it appears to me, that the whole of the 19th article of the treaty is copied nearly verbatim from that of 1674. By other articles in the said treaty, if torture, cruelty, or any barbarous usage after capture, be done to the persons taken in the prize, the same shall discharge such prize, although she was lawful, and the captains shall lose their commissions, and they and the offenders, be subject to punishment. This

agreement between the English and the Dutch, ought to be a standard to all nations: and by the treaty of Utrecht, there is an article with France to the same purpose. Ships carrying powder, shot, guns, swords, or other warlike instruments for sea or land, bound for an enemy, from a neutral nation or State, in amity with both the belligerent powers, shall be taken as a prize, provided they are wholly laden with them. Money "provisions," &c. can only be interrupted in time of extreme necessity, when the war is so severe, that a prince cannot possibly defend himself, or damage the enemy, without intercepting such things: and it is now agreed and settled by numerous treaties, "that those things which may be used out of war, or in war, (except ships) shall not be called prohibited nor liable to condemnation: unless carried to places besieged" and universally considered as a rule not to be questioned "that goods made use of for pleasure and luxury only, are free in neutral ships." But the part of the law of nations established on this subject, which claims peculiarly the attention of every American citizen, is, "that in case part of the lading of a ship is prohibited or contraband, and the other part merely for pleasure, the goods prohibited only shall be deemed prize, and the ship, and the remainder of the cargo be discharged, which may proceed in the voyage, on delivering up the other goods, without being even brought into port. But if a ship be wholly laden with contraband goods, then, and only then, both the ship and the goods may be made prize." These are the settled and established rules which govern all well-informed and impartial tribunals, in deciding upon prizes, and I shall examine how far they are consistent with the treaty made by Great-Britain with the United States, and whether that treaty has not, with respect to contraband, expressly stipulated that a conduct shall be observed by the British tribunals exactly the reverse of the decrees of the Nassau Judge. The 17th article stipulates, that "if any vessels are detained on suspicion of having enemy's property, or contraband goods on board, they shall be carried to the nearest port; and that which belongs to an enemy shall be made prize of only, and the vessel shall be immediately at liberty to proceed with the remainder." The 18th article declares what shall be contraband, adding to the usual list, "timber for ship building, tar, rosin, copper in sheets, sails, hemp and cordage, and generally whatever may serve for equipping vessels, except unwrought iron and fir planks." The same article expressly declares, that "whenever provisions or other articles, not generally contraband, may by the existing law of nations, be considered so and be seized, the same shall not be confiscated, but the owners shall be speedily and completely indemnified, and the captors, or, in their default, the government under whose authority they act, shall make full compensation, adding a reasonable mercantile profit, and freight and demurrage, incident to such detention." Although I have ever disapproved of these articles of the British treaty, and clearly foresaw the evils which have arisen from our giving a colour to the British cruisers to take and detain our vessels on any pretence, the extending the list of articles declared contraband of war, and yielding to the seizing our provision ships; yet, upon comparing these regulations with the decrees and condemnations of their Judge at Nassau, we are astonished beyond expression, that so open a violation of justice, of the law of nations, and of existing treaties, should be attempted by any Judge acting under the authority of a nation which boasts so much of the purity and impartiality of her tribunals. No one can now for a moment doubt, that not only by the law of nations, the laws and adjudications of England and her courts, but by the express provisions of their treaty with the United States, the Bri-

tish cruisers are bound not to touch any part of any American cargo, except such as is enemy's property, or undoubtedly contraband, according to the laws of nations, that it is stipulated in the most positive manner, in the case of provisions and articles not generally contraband, but which may by the existing laws of nations be considered so, and be for that reason carried into port, that they shall not be confiscated or condemned; but that the owners thereof shall be completely indemnified, and with a reasonable mercantile profit. The Judge therefore at Nassau, or any English Judge, was bound by the most powerful reasons to respect all American property, except ammunition or implements of war. The treaty expressly forbids their condemning any other part of it; and it was his duty in all the cases mentioned, only to have confiscated the military stores, or what was clearly proved to be enemy's property. As a Judge, instead of tarnishing, he should have considered himself the guardian of the public honour of his government, the preserver of her treaties, and the protector of those rights he had so solemnly promised to maintain inviolate towards a neutral and friendly power. I had proceeded thus far in the present number, when I received information that the spoiliations upon our trade, and the number of the vessels carried into Kingston, Jamaica, exceeded those carried into New-Province, and that the list expected from Martinico, Mountserrat, St. Kitt's and Tortola, were comparatively large. In this distressing dilemma, it becomes every friend to his country to unite in endeavouring to obtain the fullest information. The merchants, who must be the most interested, are earnestly called upon, and requested to furnish particular and authentic documents of their respective losses; it would perhaps be best to send duplicates, transmitting one copy to the Secretary of State's office, and the other to one of their Representatives in Congress. This should be done throughout all the ports of the United States. No time is to be lost; the meeting of Congress approaches; and they should have the fullest information. The merchants should recollect, that the reasons given by the Judge, and which we are to presume are the reasons which govern all the British courts of Admiralty in the West-Indies, go almost to the annihilation of our commerce, particularly in the West-Indies. That which respects British subjects made citizens since February, 1793, is highly important; but the doctrine respecting contraband, is absolutely the most ruinous and illegal that they could have devised. We know that the list of contraband articles, as established by the law of nations, is frequently altered by agreement between different powers. I have examined a variety of treaties in which these articles have been altered, some treaties lessening, and others increasing them. The treaty between G. Britain and the U. States, enlarges them very much: there is scarcely one between commercial nations in which it is not an important article. To know the extent, therefore, of contraband articles, as they stand between different countries, requires researches and examinations, to which none but men in the habits of public business are much accustomed. It is not to be expected, that every merchant, or supercargo, or master of a vessel, is a man of letters; that he is to be acquainted with the law of nations, or to understand in what particular situation parts of their cargo may become contraband. Nineteenth of the articles shipped by a merchant may be proper, and the remainder may, thro' ignorance, be contraband; nay, a single article may inadvertently have been shipped, and, for this trifling mistake, is he to forfeit, perhaps, his all? Can this be just, or is it consonant to those principles on which the laws that govern States in their intercourse with each other, are founded? The cases which sometimes occur on the subject of what is, or what is not, under existing circumstances, contraband, require the

nicest distinctions. The most able and experienced judges have often differed upon them. How much more reasonable, then, is that law, which does not expect from every one concerned in trade, an accurate knowledge upon this subject, and only forfeits the article that is contraband? I will still indulge the hope, that upon a serious and attentive consideration of the subject, Great-Britain will find it her true policy to remove and correct the injuries which determinations like these produce. It must always be her interest to protect the just rights of commerce, to support those principles which promote the labours of mankind, since she herself, like the United States, can only be great from the virtuous industry of her inhabitants. The project of having alone the empire of the sea, and not only monopolizing, but treating all kinds of commerce as she pleases, is not less chimerical, nor less destructive, than that of universal dominion on the continent. It is to be wished, for the happiness of mankind, the English were convinced of this truth, before they learn it by their own experience. France has already repeated many times, that it was necessary to establish a balance of power at sea, and has yet persuaded nobody, because they supposed she wished to be the ruling power, and by lessening the force of the English, more surely to give laws to the continent: but if England continues to abuse its strength, and exercise a tyranny on commerce, all the other States, that have ships and seamen, will be compelled to unite against her, and assert their rights. The United States are probably soon to take a new station. They are about to enter into a negotiation with France; and the present uncertain state of their commerce with Great-Britain, the difficulties which have arisen, respecting the immense claims, amounting to millions, that are made by British subjects under Mr. Jay's treaty, and the secession of the American commissioners, must open a negotiation with that power; one in which every interfering claim, whether of commerce or otherwise, can be amicably adjusted. Thus will all the important relations which this country has with the most powerful maritime States, and those with whom she has the greatest intercourse, be again submitted to negotiation. It will be opened, too, at a time when, being more experienced, and better understanding her true interests, she will probably have it in her power to form treaties upon principles which may remove the objections to the present, and possibly reconcile and conciliate all parties. That all these difficulties may thus end in producing the blessings of a free commerce, and domestic harmony, must be the wish of every friend to his country. I will here conclude, with indulging the hope, that those who may direct our affairs, or represent our citizens in the Councils of the Union, will, upon every occasion, suffer themselves to be alone governed by the principles of impartial justice to all Nations, by an upright and steady attention to the true interests of their own country; that they will countenance no improper partialities for some Nations, and dislike to others; that they will by no means permit their public opinions to be influenced by the hope or expectation of what might happen in Europe; that this was of all things the most changeable and uncertain; that so much depends upon success, or misfortune in war, nay, frequently upon the event of a single battle, upon the ability and fidelity of a General, the zeal of his troops, or the enthusiasm of a people, that it was almost impossible in one year to say, what may be the state of things the next. The termination of the war is no doubt of the highest importance to the civilized world; it is difficult to say how or when it will end. At present it is our duty to guard our rights, and be just and impartial in our public conduct. The event we must leave to him, in whose hands is the fate of nations, and under whose protection we have hitherto been a free and fortunate people.

* See Grotius, Bynkershoek, Mollay, and Consolato del Mare.