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Letter to Mr. Finckney, Minister Plenipotentiary of the United States to the French Republic.

[Continued.]

THE French Minister has discovered an aptitude to complain. I may cite as instances, his letter of the 9th of January and that of March, 1796; the former, because the colours of France, which he had presented to the United States, were not permanently fixed and displayed before Congress; the latter, because some printers of almanacks, or other periodical publications in the United States, in managing the foreign Ministers and agents remaining among us, had placed those of Great-Britain before France and Spain. Mr. Adet made no declaration in writing, that the government of the United States had no concern in printing the works in which the agents of the French Republic were registered after those of Great-Britain, and that the works themselves might be suppressed. I gave him an answer in writing, with my consent to his publishing it in the newspapers agreeably to his request. The answer states, that in matters of this kind, the government did not, and could not interfere. With regard to the colours, I must observe, that in what concerns our foreign relations, the President being the sole representative of the United States, they were properly presented to him. He received them with all possible respect, and directed them to be deposited with our national archives, that both might be preserved with equal care.

It remains to notice a summary of complaints exhibited by Mr. De la Croix, the French Minister for foreign affairs, to Mr. Monroe, our Minister at Paris, under the date of March 9, 1794, to which the latter returned an answer, under the date of March 15. These were enclosed to Mr. Monroe's letter of the 21st of May, and received at the department of the State the 27th of July. Copies of both papers, and extracts of so much of his letter as relates to the subject, are among the documents now selected.

1st. Complaint.—The inexecution of treaties. The courts of justice have taken, and still refuse to recognize of prizes brought by French privateers into the ports of the United States.

2d. English ships of war have been admitted into their ports, even in cases prohibited by the stipulations of the treaty, that is, when they have made prizes on the French Republic or its colonies, and have also conducted thither their prizes.

3d. The consular convention has in two points become illusory. 1st. For want of giving to the Consuls the means of having their decisions executed in all disputes between Frenchmen, of which the Consuls have the exclusive cognizance. 2d. Because the Judges charged with issuing warrants for apprehending French mariners who desert, require the original roll of the crew to be first produced. 3d. The arrest of the corvette *Le Cassius* and her Captain.

Second complaint.—The impunity of the outrage committed on the Republic, in the person of its Minister the citizen Faucher, by the English ship *Africa*, in concert with the Vice-Consul of that nation, within the waters of the United States.

Third complaint.—The treaty concluded in November, 1794, between the United States and Great Britain.

Excepting the second complaint, relative to the attempt of the English ship *Africa* to seize Mr. Faucher and his papers—and the 3d article under the first complaint relative to the consular convention, all the charges in this summary have been already examined, and, we think, proved to be unfounded.

As to the consular convention, many inconveniences would attend the giving to the Consuls a jurisdiction to the extent contended for on the part of the French Republic, to be exercised by French Consuls in the ports of the United States, and consequently by American Consuls in France. The inconveniences are manifestly so great as to require very explicit language in the convention of the two nations to authorize the conclusion that

such an enlarged jurisdiction was intended. It would be to erect in foreign countries complete courts of justice, with effectual process to compel appearance of parties and witnesses, and to execute their decisions. And as the transactions in commerce and navigation could not in the nature of things be confined to the foreigners alone, the citizens of the country must often be necessary witnesses to those transactions, and of course rendered amenable to this foreign jurisdiction in their own country: whereas the jurisdiction demanded is only of French Consuls over French citizens in the United States; and reciprocally of American Consuls over the citizens of the United States in France. From these considerations, a presumption would arise, that the jurisdiction contemplated in the consular convention, was to be merely voluntary, but at the same time exclusive of the courts of the country. An examination of the convention, we believe will support this and no other construction. The 12th article provides, that all differences and suits between Frenchmen in the United States, and between citizens of the United States in France, and particularly all disputes between seamen and their Captains, and between Captains of different vessels of their nation, shall be determined by the respective Consuls, either by a reference to arbitrators, or by a summary judgment without costs—"No officer of the country, civil or military, shall interfere therein, or take any part whatever in the matter." This last clause alone would seem sufficient to repel the claim we are considering. Sheriffs, Marshals, and their deputies cannot aid in the execution of consular decisions, because they are "officers of the country," expressly forbidden to "take any part in the matter." But was it meant that the laws should give Consuls the power to appoint such executive officers of their own nation? We find no such thing in the convention. On the contrary, in case of deserters from vessels mentioned in the 9th article, whom the Consuls are authorized to cause to be arrested, they are expressly directed to apply in writing to the "courts, Judges and officers competent" to make an arrest; meaning the courts, Judges and officers of the country where the Consuls reside. Besides, if power could be given to Consuls to appoint officers to execute their decisions, these officers must of course have their fees of compensation to be paid by one or other of the parties; But the 12th article declares that the consular judgements shall be "without costs."

To these observations I subjoin the deliberate opinions of two respectable lawyers, Mr. Harrison of New-York, and Mr. Bradford, late Attorney General of the United States.

"I have considered the 12th article of the convention between his late most Christian Majesty and the United States of America, and also the act of Congress concerning Consuls and Vice-Consuls, as far as it prescribes the duty of Marshals of the United States, and it is my opinion that the Marshals are not bound by law to execute any sentence of a French Consul, arising under the said article.

RICHARD HARRISON.
Attorney United States for the New-York district.

"New York, March 6, 1794."

"I have considered the convention and act above referred to, and I perfectly coincide in the opinion given by the Attorney of the United States, for the district of New York.

WM. BRADFORD.

"Philadelphia, March 14, 1794."

The other complaint under this head is, that the Judges who are charged (by an act of Congress) to issue warrants of arrest against deserters from French vessels, have required the original ship's roll, to prove that the men alleged to have deserted, were a part of the crew; in contempt of the 5th article, which admits in the tribunals of both countries copies certified by the Consul.

If we look at the 9th article of the consular treaty, we shall see, that the Consuls who demand the arrest of deserters from the vessels of their nation, must prove "by an exhibition of

the registers of the vessel's or ship's roll, that those men were a part of the crew." It is apparent, that the original roll, and not a copy, is here referred to; nor indeed is the contrary pretended. But it is said that the 5th article admits certified consular copies as evidence in the courts of both nations. But the 5th article appears to have no relation to the subject of the 9th. It stipulates, that "the Consuls respectively shall have the exclusive right of receiving in their chancery, or on board of vessels, the declarations, and all other acts which the Captains, masters, crews, passengers and merchants of their nation, may choose to make there, even their testaments and their disposal by last will: and the copies of the said acts, duly authenticated by the said Consul, under the seal of their consulate, shall receive faith in law, equally as their originals would."

The ship's roll (or shipping paper) of a vessel's crew, is not an act to be done before the Consul, but the evidence of a private agreement between the Captain of a vessel and his crew; and when he alleges that any of them have deserted, the 9th article requires this original evidence of the fact to be produced to the Judge, as the ground on which he shall issue his warrant to arrest them. And this is the construction put on this article by the Judges; and for ought I know, without any diversity of opinion. The difference alleged by Mr. Faucher in one of his letters to the Secretary of State, I have enquired into; and find he was under a mistake. And the mistake arose probably from this circumstance, that when from the information of the Consul, there was danger that the deserter would wholly escape unless instantly apprehended, the Judge has issued his warrant to arrest and bring before him the alleged deserter; but when brought, the Judge has not committed the man or delivered him to the Consul, unless the original roll has been produced to prove him one of the ship's crew.

As to the outrage against Mr. Faucher by the *Africa* man of war, in attempting to seize him and his papers within the jurisdiction of the United States, and Captain Home's insult on their authority, I do not know what measures more efficacious could have been taken by the executive than those which were adopted, to obtain satisfaction. After waiting reasonable time for explanations on the part of Captain Home, and of Mr. Moore, the English Vice-Consul, and receiving none, the President revoked the exequatur of the Vice-Consul, and desired the Governor of Rhode-Island, where the *Africa* had been lying, to communicate to Captain Home the demand of the President. That he should immediately remove from a station within the jurisdiction of the United States, where he had violated their rights; and further to make known to him, that in forty-eight hours after the requisition should be communicated to him, all intercourse between the citizens of the United States and his ship should be forbidden. It is very true that the exequatur of the British Vice-Consul was withdrawn expressly for his knowingly transmitting to the Governor of Rhode-Island a most insulting letter from Captain Home, because although he was on board the *Africa* when the attempt was made against Mr. Faucher, the President had no evidence of his co-operation. The Minister of the United States in London, was directed to represent to that court the conduct of Captain Home, and to demand his exemplary punishment. It was not to be expected that he would be judged unheard; and consequently, much delay must have ensued. From his station on the coast of North-America he went to the West-Indies. Seeing sometimes once by an article in the newspapers, that the *Africa* was returning to England, our Minister in London was reminded of this affair, that the demand of satisfaction might be renewed.

Although the subject of Mr. De la Croix's third and last complaint, (the British treaty) has been already discussed, allow me here to make a few remarks. He says, "It will be easy to prove that the United States in this treaty have knowingly and evidently sacrificed their

(See the last page.)