
SPEECH
OF
HON. J. T. MOREHEAD, OF KENTUCKY,
ON
FRENCH SPOLIATIONS.

DELIVERED IN THE SENATE OF THE U. S., AUGUST 10, 1846.

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FRENCH SPOILIATIONS.

The Bill to provide for the satisfaction of claims of American citizens for spoliations on their property, committed by the French, prior to the ratification of the convention with France of September 30, 1800, being under consideration—

Mr. MOREHEAD rose and said:

I rise, Mr. President, to continue the discussion of the bill before the Senate, with feelings of much more than ordinary concern. The peculiar nature of the claims to which it refers; the time that has elapsed since they originated; the manifest injustice which, if they are well founded, has been done to the owners of them, by so long a postponement of their payment; above all, the private suffering which that postponement has occasioned, not alone by the sickness of the heart which arises from hope deferred, but by reason of the pecuniary destitution which has attended it,—all these considerations have impressed me with a deep sense of our obligation to give an answer to the petition of the memorialists, and settle their claims at once and forever. No duty, it does seem to me, is more imperative upon us, than that of deciding promptly upon appeals made by our fellow-citizens to our justice. If the beneficence of a Government is apparent in any one thing more than another, it is in the fidelity with which its engagements are performed, and the amplitude with which it dispenses its justice to those who are entitled to it.

For very near half a century, these unfortunate claimants have been supplicating Congress for redress, without having been able to obtain a final decision, either favorable or adverse, to their cause. They have presented themselves before you, not in the confidence of their own strength alone, but supported by evidence of high officers of the Government; by acts and acknowledgments of the Government itself; by reports of committees of both Houses of Congress; and they come before you now, strengthened and upheld by decided majorities, on more than one occasion, of the recorded votes of the Senate. Surely it will be conceded, that it is high time *some* disposition was made of their application for relief. Surely it will be conceded, that forty-five years is a period of time sufficiently protracted, to enable the Congress of the United States to examine and decide upon the validity or invalidity of their demands. Whatever, therefore, may be our final determination, even if our sense of justice shall not be satisfied, I trust we will show our *mercy* to the parties, by making a final disposition of their claims. If they are with-

out merit, let us tell them so, and reject them. But if they are well founded; if good faith requires that they should be satisfied; if the liability of the Government is clear and indisputable, let us acquit ourselves at once, and in a becoming spirit, of our high obligations, and award the relief which has been so long and so fruitlessly sought.

I have heard that an objection has been taken to the satisfaction of these claims, because, for the most part, they have ceased to belong to the original owners, and have been purchased by capitalists for purposes of speculation. Personally, I have but little information upon this point. During a very brief service on the Committee on Foreign Relations, opportunities occurred to me of forming acquaintance with some of the claimants, and those I found to be either widows or fiduciary representatives of the original holders, in reduced and straitened circumstances. My information is, that only a few of the claims are in the hands of strangers, and that those, in general, have been pledged for the security of debts. Perhaps a very sufficient reason for their not having been disposed of, may be found in the unwonted delay of their recognition and adjustment by the Government, and their consequent want of credit. But suppose they *have* been sold, and acquired by speculators, can any Senator show how the obligation of the Government, if otherwise unquestionable, can be thereby affected? Is its liability extinguished—nay, is it in the most remote degree diminished, in consequence of a change of ownership, or in consequence of the character or pursuit of the subsisting holder? I am very sure that such an argument will not be relied on.

It is impossible to discuss the subjects embraced by the bill under consideration, without being compelled to recur, at the very outset, to some of the most deeply interesting passages in our history, and especially to that event, certainly one of the most conspicuous, when France became, not alone the ally of the feeble and struggling colonies, but, what was and is much more important, when she stipulated, in terms the most solemn and imposing recognised among nations in their intercourse with each other, to guaranty to the United States their liberty, sovereignty and independence, absolute and unlimited, against all the Powers of the

earth forever. With that event, and at that point of time, I propose to commence the discussion of the merits of these claims.

My honorable friend from Delaware [Mr. J. M. CLAYTON] has presented this whole subject to the Senate with such "a provoking fulness of illustration and analysis," that it is extremely difficult to follow him, without trespassing upon ground already most advantageously appropriated by him. I use the word trespass in its strictly technical sense, for the Senate will bear witness, that he maintained his position with such distinguished ability and success, as to render the ground he occupied exclusively his own. It will be my endeavor, therefore, to avoid, as far as I may find it practicable, a repetition of anything that fell from him, either as argument or as deductions from facts. The facts themselves, and the documents to support them, in common with him, I shall freely use.

Mr. President, on the 6th of February, 1778, a treaty of alliance was made between the United States and France. By the eleventh article of that treaty, "the two parties guaranty mutually for 'the present and forever, against all other Powers, 'to wit: the United States to his most Christian Majesty, the present possessions of the Crown of France in America, as well as those it may acquire by the future treaty of peace; and his most Christian Majesty guaranties to the United States, their liberty, sovereignty and independence, absolute and unlimited, as well in matters of government as commerce; and, also, their possessions, and the additions or conquests that their confederation may obtain during the war, from any of the dominions now or heretofore possessed by Great Britain in North America." And it was provided by the 12th article that the reciprocal guarantee should have full force and effect the moment war should break out between France and England.

The treaty throughout had reference to mutual aid and coöperation against a common enemy. Neither party was authorized to conclude either a truce or peace with Great Britain without the formal consent of the other, and arms were not to be laid down until the independence of the United States was secured.

Such, in substance, were the terms of that celebrated alliance, which gave assurance to the world of the independence of our country.

"The treaty" it was insisted by the Senator from New York, [Mr. Dix,] "was, in its main stipulations, conditional, eventual, prospective. Conditional on the event of a rupture between France and Great Britain; or, if such rupture should not take place, then on the termination of the war between Great Britain and the United States."

That the fulfilment of the obligations imposed by it depended on the contingencies referred to by the honorable Senator, I have no difficulty in admitting; but the correctness of the proposition, that because it was eventual, it was intended to be confined to the knowledge of the parties, until the events happened on which the contingency depended, is not quite so clear.

"The treaty of alliance," the Senator observed,

"was not designed to be made public, and when the Congress of the United States, 'in a moment of exultation,' as Marshall, in his Life of Washington, says, published it with the treaty of amity and commerce, which was an open treaty, the publication was not approved by the cabinet of Versailles; and he (Marshall) adds, 'that treaty being only eventual, ought not to have been communicated to the public but by mutual consent.'" But, continued the Senator, "the condition on which it depended was soon fulfilled, and France became involved in our contest for independence."

Now, sir, will the Senator from New York allow me, with great deference, to say, that I think he has made the most of the authority on which he relies? The language of Marshall is, that the publication of the treaties was "a circumstance which, not without cause, was disapproved of by the cabinet of Versailles." He does not speak of the extent of the disapprobation; but, although he had so spoken—although he had said that the act of the American Congress had given great offence to France, still there is good reason to believe that there was some mistake concerning the fact.

"The despatches," says Marshall, "containing the treaties, were received by the President of Congress on Saturday, the second of May, 1778, after Congress had adjourned. That body was immediately convened, the despatches were opened, and their joyful contents communicated. On Monday the treaties were ratified by an unanimous vote."

The embassy that concluded the treaties was composed of Dr. Franklin, Mr. Silas Deane, and Mr. Arthur Lee. From the Journal of the latter (Life of Arthur Lee, vol. I, p. 399) I take the following extracts:

"March 5, (1778).—Dr. F. then stated to Mr. Gérard (one of the French Ministers,) that the Commissioners, considering all circumstances, were of opinion that the immediate publication of the treaty would be of great advantage, both in preventing the acceptance of the propositions from England, and in attaching America decidedly to France. Both Dr. F. and Mr. D. pressed the advantages that it would give, in preventing Holland from contributing to the English loan, and promoting that of America: "and that the effect of it might possibly be that the English would find themselves obliged to accede to the independency, from their inability to sustain a war against the united powers of the house of Bourbon and the States of America, and the war would be ended at once." "Mr. Gérard said that the publication of the treaties was now under deliberation among his Majesty's servants. That the great objection was, the uncertainty of its being ratified by Congress. For, if they should publish it in Europe, and it should be rejected in America, it would subject France to infinite disgrace, and probably occasion a mortal enmity between the two people." "The Commissioners all agreed that there was not the least reason to apprehend Congress would reject the treaty, unless the want of intelligence should have laid them under other engagements. Mr. Gérard professed himself much satisfied with this assurance, and promised to report the reasons and desire of the Commissioners, which he did not doubt would have great weight with the Council."

I do not perceive from the same journal, that the subject was at any time renewed.

But I have it in my power to refer to an authority so conclusive as to remove all doubt. In a very learned and elaborate history of the law of nations, of which an eminent American jurist, recently in the diplomatic service of the United States, is the author—I mean Mr. Wheaton—that distinguished gentleman, referring to the two treaties of alliance and of commerce of 1778 with France, thus speaks: "The French court notified

these treaties to that of Great Britain, and sought to justify their formation by alleging that the United States were *de facto* in possession of the independence they had declared." The notice was given in March, 1778, near two months before the ratification of them by the colonial Congress.

And, now, let us look for a moment to the attitude which, in this great movement, the respective parties occupied. Sir, France was the chief and only responsible agent. The colonies were in no condition to stipulate terms with the Power to whom they applied for coöperation and alliance. With a firmness of purpose which nothing could shake, inspired by the justice of their cause, but without arms, ammunition, money, resources, or credit, they had engaged, single-handed and alone, with a great and powerful enemy, in a desperate conflict, on the success of which, in all human probability, hung the last hopes of the friends of freedom throughout the world. When, under these circumstances, France consented to become our ally, we may well indulge the agreeable supposition that she lost sight entirely of the benefits to be derived from reciprocal engagements, and looked alone to what the treaty declared to be *the essential and direct end of the alliance*—the liberty, sovereignty, and independence of the United States. Of what practical avail to her, would have been ten times the number of such guarantees as were incorporated on our part into the treaty? What to her was the pledge of the colonies to assure to his most Christian majesty the then subsisting possessions of the Crown of France in America? Whence did the colonial confederation derive ability to conform to treaty stipulations, requiring, besides fleets and armies, the revenues and resources of a strong and well-organized Government? No, sir. France stood alone in the glory of an alliance, so novel in its purposes—so full of benefit to mankind. *She was then at peace with England.* But it is not only certain that both parties contemplated a war between France and England as a consequence of the annunciation of the treaty: it is equally certain that *the treaty rendered that war inevitable.* Accordingly it did come; and it exhibited in its progress, in the sacrifice of several French islands in the West Indies, a forcible illustration of the value of the colonial guaranties.

In a proper time after the date of the alliance, France threw herself, with the characteristic ardor and enthusiasm of her people, into the American contest for independence. She made that contest her own. She furnished ships of war and armies. She contributed money, the sinews of war. The sum expended by her for our benefit was stated by the Senator from Delaware to have amounted to 1,440,000,000 of livres, equal to 256,900,000 of dollars. (Jefferson's Works, I, p. 57.) And yet by what magnanimity—I will not say disinterestedness, but by what singular magnanimity—was her whole conduct towards us distinguished? I will detain the Senate with a single illustration. In a letter dated Passy, October 2, 1780, four months subsequent to the arrival in the United States of the French army under Rochambeau, Doctor Franklin writes to Mr. Jay:

"At length I got over a reluctance that was almost invincible, and made another application to the Government here

for more money. I drew up and presented a state of debts and newly-expected demands, and requested its aid to extricate me. Judging from your letters that you were not likely to obtain anything considerable from your court, I put down in my estimate the twenty-five thousand dollars drawn upon you, with the same sum drawn upon me, as what would probably come to me for payment. I have now the pleasure to acquaint you that my memorial was received in the kindest and most friendly manner, and though the court here is not without its embarrassments on account of money, I was told to make myself easy, for that I should be assisted with what was necessary. Mr. Searle arriving about this time, and assuring me there had been a plentiful harvest and great crops of all kinds; that the Congress had demanded of the several States contributions in produce, which would be cheerfully given; that they would therefore have plenty of provisions to dispose of; and I being much pleased with the generous behavior just experienced, presented another paper, proposing, in order to ease the Government here, which had been so willing to ease us, that the Congress might furnish their army in America with provisions, in part of payment for the services lent us. This proposition, I was told, was well taken; but it being considered that the States having the enemy in their country, and obliged to make great expenses for the present campaign, the furnishing so much provisions as the French army might need, might straiten and be inconvenient to the Congress, his Majesty did not at this time think it right to accept the offer. You will not wonder (adds Doctor Franklin) at my loving this good Prince: he will win the hearts of all America."—(*Life of Jay*, vol. II., p. 62.)

Sir, I have no comment to make on so agreeable a reminiscence; and I should not have considered it necessary perhaps to allude to the motives that prompted the interposition of the French monarch in our behalf, if the Senator from New York had not deemed it "due to the impartiality of history" to say that the Government of France was not so clearly actuated by the purely disinterested motives which had been ascribed to her." I am not about to contend, in opposition to that honorable gentleman, that "disinterestedness and generosity" are "the virtues of governments;" but I cannot concur in the opinion so broadly expressed by him, that "the whole history of our negotiations with France in 1777, showed that she had her own interest in view in the part she took in our struggle for independence;" that "she came to our aid, not because she thought us in the depths of distress, but in the hour of victory, when our triumph seemed no longer doubtful;" and that "unless the testimony of all history is to be discarded, these treaties, but for the successes of 1777, might never have been formed."

In the spring of 1780, the Marquis de la Fayette returned to the United States from a visit to France, bringing with him the gratifying intelligence that the French King had determined to employ a considerable land and naval armament in the United States for the campaign of that year. Accordingly, in the ensuing month of July, the French army, under the Count de Rochambeau, landed at Newport, in Rhode Island. The gladsome influence of this auspicious event was instantly diffused throughout the colonies, and was felt in the reinvigoration of energies which had been, to a considerable extent, enfeebled by the war. It was not long before the combined armies commenced their operations;

"And God was with them in full many a field."

For the effect of the alliance was speedily decisive of the conflict, which was closed at Yorktown in little more than a year after the arrival of the French troops. The peace of 1783 embraced all

the belligerent parties; and the liberty, sovereignty, and independence of the United States were fully consummated. It remains only to add, that the French Islands, which had been taken during the war, were restored by the treaty.

France had now fulfilled her pledges. She had performed all, and more than all, that devolved on her by the treaty of alliance. Under Him, and next to Him, who presides over the destinies of nations, we were indebted to France for the triumph of our cause; and now, for the first time, the United States were in a condition to feel the full force of the obligations which the stipulations of the treaty imposed upon them. Besides those obligations, heavy and responsible as they were, there were others attaching to the United States, as well as to France, of a character so interesting and important, as not to be lost sight of in this discussion.

Sir, on the same 6th of February, 1778, on which the treaty of alliance bears date, a treaty of amity and commerce was concluded between the United States and France. By the only articles which are important to be referred to in this discussion, it was mutually stipulated that vessels of war belonging to the one Power should give convoy to, and defend and protect the merchantmen of the other going the same route, in the same manner they ought to protect and defend their own; and each party was to restore them when captured in its jurisdiction; that free ships made free goods; that there should be perfect liberty of commerce with an enemy's port, with all articles, except contraband, and articles of contraband were restricted to the list contained in the treaty; that the right of search should consist alone of an inspection of the ship's papers, the tenor of which was set forth in the treaty; that even in case of contraband articles being found, their forfeiture should not affect the ship, or the rest of the cargo, and that such articles were not to be taken out before condemnation, without consent; that ships of war and privateers of the one Power, with their prizes, should be received in the ports of the other, and allowed to depart, without paying any duties; but no shelter was to be given to vessels of the enemy, having made prize of the property of such Power, who should be forced, if they came in by stress of weather, to depart as soon as possible; that a ship or privateer of an enemy of one Power should not be permitted to refit in the ports of the other, nor to sell their prizes, and should not even be permitted to take provisions, except what might be necessary to carry them to the next port of their own nation.

Such were the relations subsisting between the Governments of the United States and France; such the obligations resting upon each by the treaties of 1778, when that great event took place which convulsed Europe to its centre—I mean the French Revolution. Sir, the change which that revolution produced in the aspect of political affairs on that continent, has not yet ceased to excite the astonishment of mankind. The minds of men were utterly bewildered by the transition of scenes and events so amazing as to defy belief on the one hand, and so rapid on the other, as to make the senses giddy to look upon them. Monarchs trem-

bled upon their thrones when they witnessed a nation throwing off the incubus of arbitrary power, and rising up with one accord to reclaim its long-lost rights of sovereignty. Roused by a sense of common danger, they united themselves together in a common cause, and France—because she was republican France—found herself beleaguered by foes. If such was the aspect of her political affairs, her maritime interests were no less materially assailed and endangered. Viewed as an outlaw as well on the ocean as the land, her commerce became the prey of the affiliated nations, and a settled determination existed to starve her into submission to the authority of her kings. At the close of the year 1792, she was at war with Austria, Prussia, Sardinia, and the Netherlands, and Russia and Great Britain had withdrawn their Ministers from the French Court. Secretly a party to the coalition formed against France by the treaty of Pilnitz in the year 1791, Great Britain became in the early part of the year 1793 an avowed and active participant in the war; and, thus situated, it might almost be said that France, in her single person, stood opposed to the combined power of the monarchies of Europe, engaged in a desperate attempt to exterminate her new political institutions. The motives for this combination, as avowed by the Emperor of Germany and the King of Prussia in a manifesto against the French Revolution, bearing date the 4th of August, 1792, were, “to preserve social and political order among all polished nations;” “to rescue a numerous nation from its own fury; to preserve Europe from the return of barbarity, and the universe from that subversion and anarchy with which it was threatened.”—(*Annual Register for 1792, part 2, p. 289.*) So direful were the consequences of establishing upon the ruins of thrones and kingdoms the institutions of a popular government!

Sir, in this great effort to extricate herself from the perils of her condition, there can be no doubt that France carried with her the cordial sympathies of the people of the United States. But she was entitled to something more substantial than sympathy at our hands. From the moment of the breaking out of hostilities between France and England, the Government of the United States stood pledged to the fulfilment of the stipulations of the treaties of 1778. Was neutrality on our part one of these stipulations? No, sir: far, very far from it. The very first article of the treaty of alliance declared that in case of war between France and England, the cause was to be common between France and the United States.

Early in April, 1793, Martinico was taken possession of by the British; and during the next year most of the French possessions in the West Indies were captured by the land and naval forces of Great Britain. The language of the treaty of alliance was: “The United States guaranty to his most Christian Majesty the present possessions of the Crown of France in America.” And in order that there might be no doubt of the sense and application of this stipulation, the contracting parties declared, that “in case of a rupture between France and England,” the guarantee should have its full force and effect the moment such war should break out. In view of the consideration on which the

guarantee was founded, I desire now to say that, in my opinion, no more sacred obligation ever devolved upon a nation than that which was imposed upon the United States to perform the guarantee to the letter. If anything could have increased the weight of that obligation—if anything could have enhanced the merit of the original consideration—it was the fidelity and zeal with which France had performed *her* part of the compact, at a period of peril to *our* liberties, similar to that which now menaced hers.

Mr. President, the rupture between France and England took place in January, 1793. Immediately on its occurrence, it became necessary for the Government of the United States to determine upon the course which a just regard to its position towards the belligerents required it to adopt. Whilst, on the one hand, we were pressing the French Government with complaints of violations of our rights, as a neutral and friendly nation—of aggressions upon our commerce, as well by French privateers as Government ships, and of the detention of our vessels in the harbor of Bordeaux, that Government, on the other hand, demanded from the United States a faithful compliance with the treaty of commerce, which, it as vehemently complained, had been disregarded by the American Government. Fully alive to the difficulties of his situation, and deeply solicitous that the conduct of his administration should be marked by the most rigid justice to France, to England, and to the world, President Washington assembled his constitutional advisers, and presented the whole subject to them in the most imposing and solemn manner. Several questions were submitted for their consideration and advice. The first was, whether a proclamation should issue for the purpose of preventing interferences of the citizens of the United States in the war between France and England? Others were, whether the United States were obliged, by good faith, to consider the treaties heretofore made with France as applying to the present situation of the parties; whether either might renounce them, or hold them suspended, until the Government of France should be *established*; whether, if they were to be considered as then in operation, the guarantee in the treaty of alliance was applicable to a *defensive* war only, or to war either *offensive* or *defensive*; and whether the war in which France was engaged appeared to be *offensive* or *defensive* on her part, or of a *mixed* and *equivocal* character? The Cabinet unanimously agreed that a proclamation ought to issue, forbidding the citizens of the United States to take part in any hostilities on the high seas, with or against any of the belligerent Powers.

With the same unanimity, they advised the President to receive a minister from the French Republic. But, "on the question respecting a *qualification* to his reception," they entertained different views. The Secretary of State, (Mr. Jefferson,) and the Attorney General, (Mr. Randolph,) were of opinion that no cause existed for departing, in the instance before them, from the usual mode of acting on such occasions; that the revolution in France had produced no change in the relations between the two countries; that the obligations created by preëxisting treaties re-

mained the same; and that there was nothing in the alteration of the Government, or in the character of the war, which could impair the right of France to demand, or weaken the duty of the United States faithfully to comply with, the engagements which had been solemnly formed. The Secretaries of the Treasury and of War (Mr. Hamilton and Mr. Knox) were of opposite opinions. Even admitting, in its fullest latitude, they said, the right of a nation to change its political institutions, according to its own will, they denied its right to involve other nations, *absolutely and unconditionally*, in the consequences of the changes it might think proper to make. They maintained the right of a nation to absolve itself from the obligations even of real treaties, when such a change of circumstances takes place in the internal situation of the other contracting party, as so essentially to alter the existing state of things that it may, with good faith, be pronounced to render a continuance of the connexions which result from them disadvantageous and dangerous. They thought, in view of the engagements between the two nations, and especially of the clause of guarantee, the character of the French Revolution, and the immense force which had armed against that republic, there was much reason to fear, whatever might be the issue of the contest, that a continuance of the close relations which the United States had formed with France would, in consequence of this new state of things, prove dangerous to the safety of the United States. They were, therefore, of opinion, not that the treaties should be annulled, or absolutely suspended, but that the United States should reserve for future consideration and discussion the question, whether the operation of those treaties ought not to be deemed temporarily and provisionally suspended.

On the question respecting the application of the clause of guarantee to the war between France and England, a difference of opinion also existed. The Secretary of State and the Attorney General perceived no necessity for deciding it; still, the Secretaries of the Treasury and of War were of opinion that the treaty of alliance was plainly *defensive*, and that the clause of guarantee did not apply to a war which, having been commenced by France, must be considered as *offensive* on the part of that Power.—(*Marshall's Washington*, vol. 5, pp. 403—406.)

These were the views presented to President Washington by the respective members of his Cabinet on the main question submitted by him for their consideration. Whether the treaty of alliance was offensive or defensive, it is, perhaps, not very material at this moment to inquire; for in either event, the clause of guarantee was unquestionably imperative upon the United States, *if the war, in point of fact, was defensive on the part of France*.

The proposition of Mr. Hamilton and Mr. Knox was, that the war between France and England, having been commenced by France, was offensive on her part, and, therefore, that the United States were under no treaty obligations to make common cause with her in its prosecution.

I dispute the proposition, and maintain that England was the aggressor in that war, and conse-

quently that the *casus fœderis* had arisen, which devolved upon the United States the obligation to perform the guarantee of the treaty of alliance.

Mr. President, if there be truth in history, England instigated and commenced the war of 1793 against France. I have referred to her secret accession to the coalition of Pilnitz in 1791. I have shown from the joint manifesto of the Emperor of Germany and King of Prussia, in August, 1792, what were the purposes of those monarchs in their declaration of war against the French republic. It should be borne in mind, that Great Britain was, at that period, in strict alliance with Prussia and Holland, defensive, probably, but susceptible, as subsequent events proved, of a very liberal construction.

I have also had occasion to observe, that after the Revolution in Paris of the 10th August, 1792, when the King of France was taken into custody by authority of the National Convention, Great Britain withdrew her Minister (Lord Gower) from the French Court. This movement had a most significant tendency, and an important influence upon the then subsisting relations between the two countries. It indicated very clearly the belligerent motives of the British Government, and was the first of a series of hostile acts which terminated in open collision. By the second article of the treaty of 1786, between France and Great Britain, "it was concluded and agreed, that if, at any time, there should arise any misunderstanding, breach of friendship, or rupture between the Crowns of their Majesties," "the rupture should not be deemed to exist until the recalling or sending home of the respective ambassadors and ministers." The British Cabinet assigned no other reason for the recall of their Minister, than the captivity and imprisonment of Louis; or, to adopt the language of Lord Grenville, (*Annual Register, 1793, State Papers, 250*), "the unhappy events of the tenth of August." No violation of treaties, no national collision, none of the ordinary causes of dissatisfaction and complaint occurring among nations in their intercourse with each other, superinduced the measure. The French National Convention had resolved upon a radical change in the government of France; and having, by the imprisonment of Louis, aimed a blow at the inviolability of kings, Great Britain thought proper to take violent exception to so bold and decisive an act of the popular sovereignty. Not only did she recall her Minister. The events of the tenth of August were succeeded by other acts of a still more aggressive character on the part of the English Government. It was provided by the fourth article of the treaty of 1786, before mentioned, that the *subjects and inhabitants* of the respective dominions of the two sovereigns should have full liberty, freely and securely, without license or passport, general or special, by land or by sea, or any other way, to enter the kingdoms, dominions, provinces, countries, islands, cities, towns, ports, or territories whatsoever of either sovereign, situated in Europe, and to return from them, to remain there, or to pass through the same, and therein to buy and purchase, as they pleased, all things necessary for their subsistence and use; and they were mutually to be treated with all kindness and favor. And by the seventh article of the

same treaty, *both nations were to enjoy all the benefits and privileges in navigation and commerce granted by either to the most favored nation.* Notwithstanding these provisions, an act of Parliament was passed in the month of January, 1793, subjecting all French citizens going to, or returning from, England, to forms and restrictions equally inquisitorial and oppressive, and utterly inconsistent with the kindness and favor to which, by the stipulations of the treaty, they were entitled; and but a very short time previous to the passage of this act, orders were adopted by the King of Great Britain in council, to prohibit the exportation of corn to France, (*Annual Register, 1793, p. 269*), and several ships and vessels laden with that article and destined for France, were ordered to be detained in English ports, *when the exportation of it was freely allowed to other countries.*

These, it will be admitted, were acts of hostility, the motives and tendency of which cannot be mistaken. In the mean time, the French Minister remained at London, unrecognised, and with suspended functions; and in thus leaving him there after the recall of Lord Gower from Paris, the French Government declared it to be their belief that they gave to his Britannic Majesty an unequivocal proof of the desire they had to remain in good understanding with the British Court.—(*Note of M. Chauvelin to Lord Grenville, 27th December, 1792, Ann. Reg. 1793, State Papers, 248.*)

Other demonstrations were offered by the Government of the French republic to that of Great Britain of their pacific intentions and wishes. In an official note of M. Lebrun, of the 4th of January, 1793, in reply to a communication of the previous 31st of December, the French Executive Council repeated to the Minister of his Britannic Majesty "the most express assurances of their sincere desire to maintain peace and harmony between France and England." "The sentiments of the French nation toward the English, (they declared,) had been manifested, during the whole course of the Revolution, in so constant, so unanimous a manner, that there could not remain the smallest doubt of the esteem which it vowed to them, and of its desire to have them for friends. It is, then, with great reluctance that the republic would see itself forced to a rupture much more contrary to its inclination than its interest."

On the morning of the 21st January, 1793, sentence of death was pronounced by the French Convention on Louis XVI., and was carried into execution on the same day. On the 24th of the same month a note from Lord Grenville to M. Chauvelin, the French Minister at London, announced to him that the character with which he had been invested at the British Court, and the functions of which had been so long suspended, having entirely terminated by the death of the French King, he had no more any public character there. "The King can no longer," said Lord Grenville, "after such an event, permit your residence here. His Majesty has thought fit to order that you should retire from this kingdom within the term of eight days."

These measures were immediately followed by others of a character yet more marked and une-

quivocal. On the 28th of January, a message was communicated by the King to both Houses of Parliament, in which he said:

"His Majesty has given directions for laying before the House of Commons copies of several papers which have been received from M. Chauvelin, late Minister Plenipotentiary from the Most Christian King, by his Majesty's Secretary of State for Foreign Affairs, and of the answers returned thereto; and likewise a copy of an order made by his Majesty in council, and transmitted by his Majesty's commands to the said M. Chauvelin, in consequence of the accounts of the atrocious act recently perpetrated in Paris.

"In the present situation of affairs, his Majesty thinks it indispensably necessary to make a further augmentation of his forces by sea and land; and relies on the known affection and zeal of the House of Commons to enable his Majesty to take the most effectual measures in the present important conjuncture, for maintaining the security and rights of his own dominions, for supporting his allies, and for opposing views of aggrandizement and ambition on the part of France, which would be at all times dangerous to the general interests of Europe, but are peculiarly so when connected with the propagation of principles which lead to the violation of the most sacred duties, and are utterly subversive of the peace and order of all civil society."—(Ann. Reg., 1793, State Papers, 229.)

Sir, the tenor of this message, the relations of Great Britain with some of the continental Powers, and the debates and proceedings in both Houses of Parliament, leave no room for doubt as to the belligerent intentions of the British Cabinet. The message proposed that the military and naval force of the kingdom should be increased. One of the avowed objects of the augmentation was the support of the allies of Great Britain in their wars against the French Republic. Holland and Prussia were those allies. Another object was, "to oppose views of aggrandizement and ambition on the part of France," which, it was alleged, were "peculiarly dangerous when connected with the propagation of principles utterly subversive of the peace and order of all civil society."

When the message was under consideration in the House of Commons, it was inquired whether an application had been made by Holland for the assistance and interference of Great Britain, in her existing dispute with France.

To this it was answered by the Minister, (Mr. Pitt,) that "although the Dutch had made no requisition for the particular contingent of troops with which the British Government was bound by treaty to furnish them, yet they had repeatedly expressed their solicitude for the presence of a British force to defend them from the attack with which they were menaced."

It is plain, therefore, that it was one of the purposes of the proposed increase of the army and navy of Great Britain, to support Holland, as one of her allies, from the attacks of France; and it is not difficult to determine the effect of such a measure upon the peaceful relations between France and England.

The British Minister commenced his speech on the subject of the message with a pathetic lamentation of the calamitous event which had recently taken place in Paris, and concluded by saying, that in his view, a war was preferable to any peace which was inconsistent with the internal tranquillity or external safety of the country. He then moved an address of thanks to the King for the communication which he had made to them, in which the sentiments of the message were reciprocated, and an

assurance given that its requisitions would be complied with.

The Minister was seconded by Lord Beauchamp, who conceived the immediate interference of Great Britain necessary for the safety of Europe, and expressed a regret that they had not interfered at an earlier period.

Mr. Fox reprobated in the strongest terms the death of Louis the Sixteenth; yet he saw neither propriety nor wisdom in passing judgment upon an act committed in another nation, which had no direct reference to Great Britain; it being admitted as a general maxim of policy, that the domestic crimes perpetrated by one independent State were not cognizable by another. He denounced the alliance between Austria and Prussia against France as the most dangerous which had ever been formed, both to the tranquillity of Europe and to the liberties of mankind. He denied that Austria had been attacked by France, and insisted that Prussia had been manifestly the aggressor. He expressed the opinion, that every war was unjust which did not apprise an enemy of the ground of provocation and the measure of atonement; and not only unjust but impolitic; for without a clear and accurate definition of the object contested, what opening could there ever be for treating of peace? He stated as the arguments which had been advanced on the side of war, the exposed condition of Holland, the decree of the Convention of the 19th of November, and the danger of Europe from the progress of the French arms. These he adverted to, as the professed motives of the war. The real motive, however it might be disavowed, he conceived to be wholly different—no other than the destruction of the internal government of France.

Mr. Windham did not coincide with Mr. Fox in opinion, that it was always necessary at the commencement of a war to define the precise object which was to lead to its termination. In most instances this would be impracticable. He thought it sufficient to state that the object of the war was the security of the country, although it might be impossible to say how or when that object could be obtained. From the avowed disposition, also, of the French rulers, he thought hostilities inevitable; and as the time only seemed left to the choice of Great Britain, it would be the height of imprudence to wait until the French were better prepared to commence the attack.

The address having been carried through both Houses of Parliament, in the House of Lords three Peers protested against it, assigning, among others, the following reasons for their dissent: 1. Because its immediate tendency was to plunge the nation into war. 2. Because they considered war as an evil of such magnitude that nothing but absolute necessity could justify it. 3. Because they had not heard of any danger to the country which rendered war necessary. 4. Because the observance of good faith towards their allies did not require them to engage in war, his Majesty's Ministers having admitted that Holland had not demanded our interference, and it being notorious that Prussia has been the aggressor against France. 5. Because, though they felt the utmost horror at the atrocious act of cruelty and injustice mentioned in the address, they thought that no injustice, how-

ever flagrant, committed in a foreign State, and having no relation to other countries, a just ground for making war. 6. Because they were more likely to obtain the objects, whether of policy or principle, in the way of negotiation, than war; the aversion of France to break with that country, which had lately stood the test of repeated provocations, putting it in the power of Great Britain at that moment to give peace to all Europe.

In a similar protest signed by Earl Stanhope, in consequence of the rejection of his amendment to the address, his lordship also declared, that "it was a well-known fact that the people of France were in general extremely desirous to maintain and strengthen, between that country and Great Britain, the bonds of amity and friendship."

On the 1st of February, four days subsequent to the date of the message of the British King, the National Convention decreed, "in the name of the French people, that in consequence of the multiplied acts of hostility and aggression on the part of Great Britain, the French republic was at war with the King of England and the Stadtholder of the United Provinces."

The British Government, after having thus manifestly resorted to the first hostile measures, vainly attempted to avail itself of the more formal declaration of the French Convention, to make France the aggressor in the eyes of the world. With that view, a message from the King was communicated to both Houses of Parliament on the 11th of February, acquainting them "that the Assembly, then exercising the powers of Government in France, had, without previous notice, directed acts of hostility to be committed against the persons and property of his Majesty's subjects, in breach of the law of nations and of the most positive stipulations of the treaty, and have since, on the most groundless pretences, actually declared war against his Majesty and the United Provinces. Under the circumstances," the message added, "of this wanton and unprovoked aggression, his Majesty has taken the necessary steps to maintain the honor of his Crown," relying on Parliament and a brave and loyal people for support "in endeavoring to oppose an effectual barrier to the further progress of a system which strikes at the security and peace of all independent nations."

In the debate upon the message in the House of Commons, Mr. Fox said "he conceived himself, as a member of that House, compelled to support his Majesty in a war already commenced, and avowed his readiness to give such support; but he did not consider himself pledged to any of those crooked reasonings upon which some might find their support, nor on that account less bound to scrutinize the conduct of those through whose mismanagement they had been forced into hostilities. Truth and justice, in his idea, were preferable to high-sounding words. He could not, therefore, coincide with the sentiments of the Minister's address, which represented the war as an unprovoked aggression on the part of France, being persuaded that the dismissal of M. Chauvelin, and the prohibition of the exportation of corn to that country when it was allowed to others, were acts of provocation and hostility on the part of Great Britain."

It was in the course of his reply to this speech of Mr. Fox that Mr. Burke made the extraordinary declaration, "that the constant policy of the British Government had always been to consider every country which proved inimical to France as the natural ally of Great Britain; that if this had been the case under the ancient monarchy, much more was it at the present juncture; and that the acts of France were all acts of hostility against England; her whole system, her speech, her every decree, and every proceeding, displayed an intention preclusive of all accommodation."

After this exposition of the conduct and the designs of the British Cabinet, I feel myself justified in reaffirming the proposition, that Great Britain was the aggressor in the rupture with France in 1793. It could have consisted with neither the interests nor the wishes of the French republic to add another power, so formidable as England, to the fearful combination of forces which had already taken up arms against her. If Great Britain received any provocation to collision, it was to be found alone in the exercise, by the French people, of their acknowledged powers of sovereignty and self-government, or in the avowal of opinions supposed to be dangerous to the safety of the monarchies of Europe. Prior to the orders in council prohibiting the exportation of corn to France, and to the passage of the alien act by Parliament, in January, 1793, and to the expulsion of M. Chauvelin, all of which, it was admitted, were measures of provocation and hostility, France had committed no breach of subsisting treaties. It was not of acts of positive aggression that England complained, unless the Revolution of the 10th of August, 1792, and the subsequent trial and execution of Louis, were acts of that character. It was to resist "views of aggrandizement and ambition," "dangerous," because connected with the propagation of peculiar political principles, that England armed herself against France. It was "to oppose an effectual barrier to the further progress of a system which struck at the security and peace of all independent nations." "We are at war with a system," said Mr. Burke—(*Letters on a Regicide Peace—Burke's Works, vol. 4, p. 345.*) "which, by its essence, is inimical to all other governments, and makes peace and war, as peace and war may best contribute to their subversion. It is with an armed doctrine that we are at war."

Sir, whatever may have been the excesses of the French Revolution, a warfare of the character thus described and admitted, is yet to find an example in the history of mankind, and to be vindicated as defensive in a government like ours. No, sir, it was an aggressive war by England against France, and the Government of the United States was exposed to all the consequences of the obligations of the treaties of 1778.

Mr. President, I resume the narrative of events interrupted by the examination of the motives and character of the war of 1793, and I proceed to show that the neutrality of the United States during that war produced no serious disturbance of the friendship between the United States and France. Other causes, however, having a more direct bearing upon the subject-matter of this discussion, were gradually contributing to that event.

The proclamation of neutrality was made on the 22d of April, 1793. The French Minister at Philadelphia, (M. Genet,) immediately complained of it in terms of violent disapprobation. But the Government of the United States persisted in disregarding not only the clamors, but the incivilities and indignities of that functionary, and firmly withstood all subsisting provocations to collision with the French republic. On the 16th of August, 1793, the American Secretary of State, after alluding to his despatch of the 13th of June, the object of which was to represent the principles on which our Government was conducting towards the belligerent Powers, thus addresses Mr. Morris, the American Plenipotentiary at Paris:

"Mr. Genet had been then but a little time with us; and but a little more was necessary to develop in him a character and conduct so unexpected and so extraordinary, as to place us in a most distressing dilemma, between our regard for his nation, which is constant and sincere, and a regard for our laws, the authority of which must be maintained; for the peace of our country, which the executive magistrate is charged to preserve; for its honor, offended in the person of that magistrate; and for its character, grossly traduced in the conversations and letters of this gentleman. In the course of these transactions, it has been a great comfort to us to believe, that none of them were within the intentions or expectation of his employers. These had been too recently expressed in acts which nothing could discolor, in the letters of the Executive Council, in the letters and decrees of the National Assembly, and in the general demeanor of the nation towards us, to ascribe to them things of so contrary a character. Our first duty, therefore, was to draw a strong line between their intentions and the proceedings of their Minister; our second, to lay those proceedings faithfully before them."—(Doc. 102, 1st session, 19th Congress, 53.)

In another part of the same letter, (*ib.* page 65,) Mr. Jefferson repeated similar sentiments in almost the same language:

"The written proofs of which Mr. Genet was the bearer, were too unequivocal to leave a doubt that the French nation are constant in their friendship to us. The resolves of their National Convention, the letters of their Executive Council, attest this truth, in terms which render it necessary to seek in some other hypothesis the solution of Mr. Genet's machinations against our peace and friendship."

"Lay the case, therefore," he adds in conclusion, "immediately before his Government; accompany it with assurances, which cannot be stronger than true, that our friendship for the nation is constant and unabating," and "that after independence and self-government, there is nothing we more sincerely wish than perpetual friendship with them."

The resolves and decrees of the National Convention were indeed very unequivocal indications of the friendship and partiality of the French Government towards the United States. I do not propose to enlarge upon them. The national archives attest the fact fully. If it happened that measures were, at any time, resorted to by the French authorities affecting materially the commerce of American citizens, those measures were either abandoned when their effects were made known, or assurances given of satisfactory indemnification. A single instance, illustrative at once of the severity of the French policy and of the forbearance of this Government, may not be unimportant in this connexion. On the 9th of May, 1793, a decree of the convention declared that "the French ships of war and privateers may arrest and bring into the ports of the republic the neutral vessels which should be laden wholly or in part, either with articles of provisions belonging to neutral nations and destined for an enemy's port, or with merchandise belonging to an enemy," which mer-

chandise were declared to be lawful prize. Beyond doubt this decree was a violation of treaty stipulations. The representations of the American Minister to that effect were answered by a supplementary decree of the 23d of May, declaring that American vessels were not included in its dispositions; and in communicating the intelligence of this modification, the French Minister of Foreign Affairs informed Mr. Morris that "he would there find a new confirmation of the principles from which the French people would never depart, with regard to their good friends and allies, the United States of America."

But on the ensuing 27th of July, the French Convention revived the decree of the 9th of May, and American vessels became subject again to its provisions. With the revival of the decree, the remonstrances of Mr. Morris were renewed. The explanatory communication of the French Minister evinced the earnest solicitude felt by his Government respecting its influence upon our commerce, and pledged that Government to the payment of just indemnities for the injuries it had produced. The proceeding was attributed by him to the "most imperious circumstances," resulting from "the extreme rigor with which the English and other belligerent Powers treated all the neutral vessels destined for France," which "put the republic to the painful necessity of arresting, by way of reprisal, in such vessels, the provisions belonging to its enemies." "But you must be satisfied," said M. Le Brun to Mr. Morris, "with the manner in which the request presented by the American captains from Bordeaux has been received. This fact, and several others of the same kind, which had not escaped your attention, must have convinced you that when the particular circumstances of the republic permitted the Administration to favor your countrymen, it was eager to give to them testimonies of the desire which it always had, of bringing nearer and nearer the citizens and the interests of the two countries." "We hope," he continued, "that the Government of the United States will attribute to their true cause the abuses of which you complain." "It must perceive how difficult it is to contain, within just limits, the indignation of our marines, and in general of all French patriots, against a people who speak the same language and having the same habits as the free Americans. The difficulty of distinguishing our allies from our enemies has often been the cause of offences committed on board your vessels. All that the Administration could do, is to order indemnification to those who have suffered, and to punish the guilty."—(*ib.* Doc., p. 69.)

It is important to observe in what manner this forcible appeal was received and treated by the American Government.

In his despatch to Mr. Jefferson of the 19th of October, 1793, (*ib.* Doc., p. 74,) Mr. Morris thus speaks:

"In Mr. Deforgne's letter of the 14th, and the decree (of the 9th May) which accompanied it, you will see the reasons assigned for violating the treaty. You will see, also, that it was not from the difficulty of refuting them that I declined entering into the controversy. In effect, he had acknowledged and lamented to me the impropriety of the decree; but, unable to prevail over a greater influence for

the repeal of it, he is driven to the necessity of executing a step which it is not possible to justify. There is no use in arguing with those who are already convinced; and where no good is to be expected, some evil may follow. I have, therefore, only stated the question on its true ground, and leave to you in America to insist on a rigid performance of the treaty, or slide back to the equal state of unfettered neutrality. Your orders will of course be given to me, according to the determination which the President shall take, and, until then, I hold the matter open."

Sir, the matter continued "to be held open." The Government of the United States was in no condition, if it had been disposed, to insist "on a rigid performance of the treaty," and *no orders to that effect were given to Mr. Morris*. Inasmuch as it might have happened that France would have insisted upon the fulfilment of the articles of guarantee, it became the Government of the United States to be careful about asking indemnity for the breach of that provision of the commercial treaty which stipulated that free ships should make free goods. Whatever, therefore, may have been the operation of the decree of the 9th of May upon our commerce, it is certain that it produced no breach in the friendship of the two nations. The Plenipotentiaries of the respective Governments were withdrawn, and others substituted; but their intercourse remained the same.

In the early part of the year 1794, Mr. Genet was recalled, and his successor, Mr. Fauchet, who arrived in February, brought with him assurances that his Government strongly disapproved the conduct of his predecessor. Shortly afterwards, at the request of the French Government, Mr. Morris was recalled also, and Mr. Monroe was appointed to succeed him. And now, sir, throughout the year 1794, let us look to the dispositions of the two Governments toward each other.

Up to the period which we have now reached, neither the spoliations upon our commerce, nor the embargo upon our vessels at Bordeaux, nor the decree of the 9th May in regard to neutral vessels, had produced any permanent alienation. But a new and controlling motive to dissatisfaction was about to be given to France, in the embassy of Mr. Jay to England.

The instructions to Mr. Monroe bear date on the 10th June, 1794. They disclose, first, the important fact, that the neutrality assumed by General Washington, and announced in his proclamation of 22d April, 1793, was not unacceptable to the French Government. "From Mr. Genet and Mr. Fauchet we have uniformly learned," say the instructions, "that France did not desire us to depart from neutrality, and it would have been unwise to have asked us to do otherwise: for our ports are open to her prizes, while they are shut to those of Great Britain; and supplies of grain could not be forwarded to France with so much certainty were we at war, as they can even now, notwithstanding the British instructions, [Orders in Council:] and as they may be, if the demands to be made upon Great Britain should succeed. We have therefore pursued neutrality with faithfulness."

2d. We are next favored with a view of the policy of the Government in respect to the treaties. "Should you be interrogated," the instructions proceed, "about the treaty of commerce, you may reply that it has never been proposed to

us by Mr. Fauchet. As to anything else concerning it, you will express yourself not to be instructed—it being a subject to be negotiated with the Government here.

"In like manner, if a treaty of alliance, or if the execution of the guarantee of the French islands, by force of arms, should be propounded, you will refer the republic of France to this side of the water. In short, it is expected, with a sure reliance on your discretion, that you will not commit the United States by any specific declarations, except where you are particularly instructed, and except, too, in giving testimony of our attachment to their cause."

3d. Besides being told "to remonstrate against the embargo of Bordeaux and to urge satisfaction for the sufferers," Mr. Monroe was directed "to go farther, and insist upon compensation for the captures and spoliations of our property, and injuries to the persons of our citizens by French cruisers."

4th. Lastly, the instructions declared, "to remove all jealousy with respect to Mr. Jay's mission to London, you may say that he is positively forbidden to weaken the engagements between this country and France. It is not improbable, that you will be obliged to encounter, on this head, suspicions of various kinds. But you may declare the motives of that mission to be, to obtain immediate compensation for our plundered property and restitution of the posts."

Sir, as additional proof of the kind dispositions of the Governments in July 1794, the American Secretary of State, on the 30th of that month, after recapitulating our causes of complaint against France, says, "You are at liberty to speak in a firm and decisive tone, taking care to avoid offence, or in any degree to weaken the friendship between the two countries."—(Id. Doc., 80.)

To these instructions of his Government, so explicit and decisive of the friendly spirit that characterized them, Mr. Monroe conformed with equal sagacity and care. What was the result? Let us look into his correspondence to ascertain the manner in which these amicable sentiments of the American Government were met and reciprocated by France.

On the 25th August, 1794, Mr. Monroe informs the Secretary of State, "that he had reason to believe that there was a general desire that he should be received as soon as possible, and with every demonstration of respect for the country he represented. Aware that the Convention possessed the sovereign authority of the nation, he presumed (he said) that by addressing himself to that body, he could make an experiment of the real disposition of that country towards his own." He therefore addressed a letter to the President of the Convention, which was well received, and a decree adopted for his reception by the Convention itself on the following day. He availed himself of the occasion to dissipate impressions of the unfriendly disposition of the American Government towards the liberty and happiness of the French nation. For that purpose, he laid before the Convention the declarations of the Senate and House of Representatives, as conveyed to him by the President, through the Secretary of State, with an assurance that he was authorized to declare

that the President was actuated by similar sentiments. The manner in which the communication was received furnished the strongest proof of the affection entertained by the French nation for the United States of America. Every department evinced the strongest disposition to prove its attachment to their ally, by embracing every opportunity which the slightest incident offered. Mr. Monroe proceeded to particularize some of the instances which had occurred. "A few stores, (he observed,) brought for the accommodation of my family, in the ship in which I sailed, were arrested at Havre, because no declaration of them was rendered by the captain. This was casually heard by the Committee of Public Safety, and, without any intimation from me, by their order, restored. But, being desirous (he added) more formally to certify their regard, the Commissary of Foreign Affairs announced to me yesterday that he was instructed, in the name of the republic, to appropriate a house for my use, as Minister of the United States, of such accommodations and in such part of the city as I would designate."

We are thus brought to the last of August, 1794, at which period the relations between the United States and France were not only amicable and peaceful, but affectionate to an uncommon degree. Their respective citizens, it is true, were roused and excited by mutual wrongs and aggressions, but the Governments were making all possible efforts to prevent collision.

I pause here for a moment to make one observation as to the condition of the American claimants upon the French Government for indemnities for spoliations. It will not be denied that hundreds of vessels had been captured; that millions worth of property had been confiscated. For the remuneration of these injuries, the French Government stood pledged in the most formal and solemn manner. The observation I propose to make is, that whatever may be the fate of the claims for spoliations committed subsequently to the year 1794, there would seem to be no doubt of the liability of the French Government for all those subsisting at the close of that year, and up to the period of quasi hostilities between the two Governments, to which I shall presently allude.

Sir, in order to obtain satisfaction for these grievances of his constituents, "many of whom were laboring under embarrassments of the most serious kind, growing out of the war," (*Ib. Doc. 82.*) Mr. Monroe lost no time in laying their complaints before the Government of France. The claimants were classed by him under several heads. 1. Those who were injured by the embargo at Bordeaux. 2. Those who had claims upon the republic for supplies rendered to the Government of St. Domingo. 3. Those who had brought cargoes in for sale, and were detained by delay of payment or some other cause. 4. Those who had been brought in by the ships of the republic, in derogation of the treaty of amity and commerce, and were subjected to like detention and delay. 5. Those who had been taken at sea or elsewhere, and were confined, in derogation of the treaty of amity and commerce, or rights of citizenship in the United States.—(*Mr. Monroe's despatch of*

15th of September, 1794. Ib. Doc. 82.) These, with a comprehensive statement of the embarrassments attending our trade, as well those which proceeded from cruisers of the French republic as those which proceeded from the commercial system of France, were laid by Mr. Monroe before the Committee of Public Safety; and he "was assured that it exhibited a picture that shocked them;" for he adds, "these evils progressing with the course of their own affairs, were long accumulating, and had now probably attained a height of which they had no conception."

In a few days after this communication, he was invited to a conference with the committee, when it became the subject of discussion. "Merlin," says Mr. Monroe, (*Ib. Doc. 85.*) "commenced by observing that I had advised and pressed them to execute the twenty-third and twenty-fourth articles of the treaty of amity and commerce. That they were persuaded their compliance would be useful to us, but very detrimental to them. It would likewise be distressing for Frenchmen to see British goods protected by our flag, whilst it gave no protection to theirs." And after making some other comments, he finally came to this point: "Do you insist upon our executing the treaty?" This Mr. Monroe for the moment thought proper to evade; but it was again peremptorily inquired—"Do you insist upon or demand it?" And Mr. Monroe replied, "that he was not instructed by the President to insist upon it, nor did he insist upon it;" and he acknowledged in his letter to the Secretary of State, one of his motives to have been "lest it might excite a disposition to press us upon other points on which it were better to avoid any discussion."

Notwithstanding these difficulties and impediments, on the 13th January, 1795, Mr. Monroe thus writes to the Secretary of State:

"I have the pleasure to inform you, that upon the report of the United Committees of Public Safety, General Security, Legislation, Commerce, and Finances, a decree has passed the Convention since my last whereby it is resolved to carry into strict execution the treaty of amity and commerce subsisting between the United States and this republic. I beg leave to congratulate you upon this event, and particularly the unanimity with which it passed the Convention, since it demonstrates the good disposition of that body and the nation generally towards us."—*Ib. Doc. 88.*

And the President of the United States, in a confidential message to Congress on the 28th of February, 1795, gave the most satisfactory assurances of the same "good dispositions" of the two countries towards each other. "Our Minister near the French republic, (he said,) has urged compensation for the injuries which our commerce has sustained from captures by French cruisers, from the non-fulfilment of the contracts of the agents of that republic with our citizens, and from the embargo at Bordeaux. He has also pressed an allowance for the money voted by Congress for relieving the inhabitants of St. Domingo. It affords me the highest pleasure to inform Congress that perfect harmony reigns between the two republics, and that these claims are in a train of being discussed with candor, and of being amicably adjusted."—*1 Ex. Jour.*, 175.

With this review of our relations with France to the commencement of the year 1795, I leave

them in the condition in which they were placed by the decree of the French Convention to carry *into strict execution* the provisions of the treaty of amity and commerce, "demonstrating," as it did, to adopt the language of Mr. Monroe, "the good disposition of that body and of the nation generally towards the United States."

On the 19th of November, 1794, the celebrated treaty negotiated by Mr. Jay was concluded in London. From this point we take observations for a new departure. A new state of things instantly arose, both at home and abroad, and a most unpropitious state of things it was. In the United States it created a ferment, which not all the influence of General Washington, great and preponderating as it was, could compose.

Sir, the agitation that pervaded this whole country, in consequence of the treaty, can scarcely be understood at a period so remote from the actual occurrence of the events. Perhaps at no other period in our history has the temper of the nation been more highly inflamed. The press teemed with vituperation, both of the motives and conduct of the participators in the negotiation. Public meetings, in all the principal cities, from Machias to Charleston, fulminated their resolutions. Those resolutions assigned various causes for the public dissatisfaction with the treaty; but it was particularly denounced for great political reasons, "as hostile to the French republic;" "as having a tendency to embroil us with it;" and "as an infringement of the rights of friendship, gratitude, and alliance, which that republic might justly claim from the United States." Mr. Jefferson wrote to Mr. Rutledge, of South Carolina:

"I join with you in thinking the treaty an execrable thing. But both negotiators must have understood, that, as there were articles in it which could not be carried into execution without the aid of the Legislatures on both sides, therefore it must be referred to them; and that these Legislatures, being free agents, would not give it their support if they disapproved of it. I trust the popular branch of our Legislature will disapprove of it, and thus rid us of this infamous act."—(3 *Jefferson's Works*, 317.)

Again, in a letter to Mr. Page, of Virginia, Mr. Jefferson said:

"I do not believe with the Rochefoucaults and Montaigne, that fourteen out of fifteen men are rogues. I believe a greater abatement from that proportion may be made in favor of general honesty. But I have always found that rogues would be uppermost; and I do not know that the proportion is too strong for the higher orders, and for those who, rising above the swinish multitude, always contrive to nettle themselves into the places of power and profit. These rogues set out with stealing the people's good opinion, and then steal from them the right of withdrawing it, by contriving laws and associations against the power of the people themselves. Our part of the country is in considerable fermentation, on what they suspect to be a recent roguery of this kind. They say, that while all hands were below deck, mending sails, splicing ropes, and every one at his own business, and the captain in his cabin, attending to his log-book and chart, a rogue of a pilot has run them into an enemy's port. But metaphor apart, there is much dissatisfaction with Mr. Jay and his treaty."—(3 *Jefferson's Works*, 315.)

Even the spotless purity of Washington's character was not exempt from malevolent imputation and reproach:

"There is too much reason to believe," he declared, in a letter to Mr. Randolph of the 31st of July, 1796, "from the pains which have been taken, before, at, and since the advice of the Senate respecting the treaty, that the prejudices against it are more extensive than is generally imagined. This I have lately understood to be the case in this quarter.

from men who are of no party, but well disposed to the present Administration. How it should be otherwise, when no stone is left unturned that could impress on the minds of the people the most arrant misrepresentation of facts, that their rights have not only been neglected, but absolutely sold; that there are no reciprocal advantages in the treaty; that the benefits are all on the side of Great Britain; and what seems to have had more weight with them than all the rest, and to have been most pressed, that the treaty is made with the design to oppress the French, in open violation of our treaty with that nation, and contrary, too, to every principle of gratitude and sound policy."

On another occasion, in a letter to Mr. Jefferson of the 6th of July, 1796, the illustrious and venerated man bitterly complains, "while he was using his utmost exertions to establish a national character," and "by steering a steady course to preserve his country from the horrors of a desolating war," that he "should be accused of being the enemy of one nation and subject to the influence of another; and to prove it, that every act of his Administration should be tortured, and the grossest and most insidious misrepresentations of them made, by giving one side only of a subject, and that, too, in such exaggerated and indecent terms as could scarcely be applied to a Nero, a notorious defaulter, or even to a common pick-pocket."

Whatever may have been the causes of the failure of the violent opposition made to the treaty by the Democratic party in the United States in 1795 and 1796, it can scarcely be doubted, at this day, that it did violence to our treaty relations with France. Sir, I am not about to travel over that old ground of controversy, and awaken feelings which, having slept for more than fifty years, I sincerely hope may sleep forever. But nothing is more certain than that it was so regarded by France, and that it conduced to bring about the collisions that ensued.

The same letter of Mr. Monroe, of the 13th January, 1795, in which he expresses himself in such strong terms of congratulation upon the decree of the Convention to carry that treaty into strict execution, and in which he informs the Secretary of State that the utmost cordiality had taken place in the Committee of Public Safety towards the United States, announces the sudden change of sentiment which Mr. Jay's treaty had produced. "After his recent communications," Mr. Monroe said, "with the Committee of the Public Safety," he had "flattered himself that in every respect we had the best prospect of the most perfect harmony between the two republics. I am sorry, however, (he continued,) to add, that latterly the prospect has been clouded by accounts from England, that Mr. Jay had not only adjusted the points in controversy, but concluded a treaty of commerce with that Government. Some of those accounts state that he had also concluded a treaty of alliance offensive and defensive."

In a subsequent letter of the 12th February, 1795, Mr. Monroe expresses himself in still stronger terms. I will not detain the Senate to quote them.

I think it demonstrable that the treaty with Great Britain was the prolific source of the difficulties that ensued between the United States and France. At that period the provision crops of France had failed, and famine impended over the country. A frightful civil war raged in her bosom. Her colo-

nies were filled with dissensions, and menaced by the overwhelming naval and military forces of England, who, with nearly all Europe united, had resorted to measures avowedly to starve the French nation. In a despatch from Mr. Jefferson, Secretary of State, to Mr. Monroe, of July 14, 1795, he says:

"The treaty is not yet ratified by the President, nor will it be ratified, I believe, until it returns from England, if then. The late British order for seizing provisions, is a weighty obstacle to a ratification. I do not suppose that such an attempt to starve France will be countenanced."

Nevertheless, the treaty was ratified, and the exchange of ratifications made by our Government, without the abrogation or mitigation of the British order.

The whole of the French Islands in the West Indies having been conquered by the British, the only refuge on or near this continent for French ships of war, their privateers, and prizes, was in the ports of the United States. The right to our ports was secured *exclusively* to France, by the treaty of amity and commerce in 1778, and had been freely exercised by her with the full assent of the American Government, notwithstanding the complaints of Great Britain. These complaints were put to rest by Mr. Jefferson, in an official note to the British Minister of the 9th September, 1793, as follows:

"Though the admission of the prizes and privateers of France is exclusive, yet it is the effect of treaty, made long ago for valuable considerations, not with a view to the present circumstances, nor against any nation in particular, but all in general; and may, therefore, be faithfully observed without offence to any; and we mean faithfully to observe it. The same exclusive article has been stipulated by Great Britain in her treaty with France, and indeed is to be found in the treaties between most nations."

This exclusive use of our ports was of incalculable importance to France during the war then pending with England, especially after the loss of her West India possessions. But by our own construction of Jay's treaty, France was not only deprived of the exclusive privilege secured to her of using our ports—the use of them was allowed to her enemies; and she was thus cut off from all refuge in this hemisphere for her ships and prizes. She complained with vehemence that this policy of her ally laid her bound and powerless at the feet of Great Britain. She charged us openly with perfidy, and ordered our commerce to be swept from the ocean. The order was most effectively executed, for a large proportion of the claims now under our consideration originated from the captures made under it.

On the 19th of Ventose, (9th March,) 1796, the French Minister of Foreign Affairs, in his exposition of complaints against the United States, expressly alleges, not only that the United States, by the treaty of 1794, had sacrificed, knowingly and evidently, their connexion with the republic, and rights the most essential and least contested, of neutrality; but that they had gone further—that they had "consented to extend the denomination of contraband even to provisions," and had "tacitly acknowledged the pretensions of England to 'extend the blockade to the French colonies, and even to France, by the force of a proclamation alone.'" "It is evident," he proceeded to say, "by the clause which limits the continuance of

'this desertion of neutrality to the term of this war, that Mr. Jay did not hesitate to sacrifice our colonies to Great Britain during the continuance of these hostilities, by which their lot will be decided.'" And he concludes by saying, that "it is submitted to Mr. Monroe to judge in what point these concessions accord with the obligation by which the United States have contracted to defend our colonial possessions, and with the duties, not less sacred, which the great and inestimable benefits they derive from their commerce with those islands, bind them to observe."

On the 19th Messidor, (7th July,) 1796, (*Ib. Doc. 143.*) the same Minister wrote to Mr. Monroe:

"You call my attention, in your note of the 9th of this month, to the arguments which that letter contains relative to our complaints against the treaty concluded between the United States and Great Britain. Time has sufficiently ripened the points that were then in discussion; and far from being enfeebled, our complaints against that treaty have acquired since, in our estimation, new force. I will content myself, then, without entering into details, to announce to you that the opinion of the Directory has never varied upon that point. It has seen in this act, concluded in the midst of hostilities, a breach of the friendship which unites the United States and this republic, and in the stipulations which respect the neutrality of the flag, an abandonment of the tacit engagement which subsisted between the two nations on this point, since their treaty of commerce of 1778."

On the 7th of October, the French Minister notified Mr. Monroe that the Executive Directory had suspended the functions of the Minister Plenipotentiary of the French republic at Philadelphia; avowing that the dignity of that republic would evidently be brought into question, and its duty neglected, if it did not give unequivocal proofs of a *just dissatisfaction*. But the notification was accompanied by an assurance, that the ordinary relations subsisting between the two people in virtue of the conventions and treaties should not, on that account, be suspended, and that the consuls would remain charged to superintend them.

In the mean time Mr. Monroe was recalled from Paris, and General Charles Cotesworth Pinckney appointed his successor. In answer to Mr. Monroe's communication laying before the Directory a copy of his letter of recall, and the credentials of General Pinckney, the French Minister was charged to say to him, that the Directory would no longer receive a Minister Plenipotentiary from the United States, until after a reparation of the grievances demanded of the American Government, and which the French republic had a right to expect. (*Ib. Doc. 150.*)

The motives of these proceedings were avowed as follows, several years afterwards, in a report made to the French tribunal, on the 4th of December, 1801, upon the convention of the preceding year, between the United States and the French republic:

"The American Government," it was declared, "*forgetting the duties of neutrality, had concluded, under the influence of the enemies of France, a treaty which wounded our interests.* The French Government, instead of entering into negotiations, of which the moderate character of its agents, of which the dispositions of the American people would have guaranteed the success, thought proper to take rigorous measures with regard to the United States. It enacted decrees, abrogated the laws favorable to the Americans, ordered the Minister of the French republic to suspend his functions near the Federal Government; and when the United States, in

order to put a period to the measures which were weighing upon them, sent three envoys to Paris, it seemed little inclined to listen to them."

This was the state of affairs between the Governments of the United States and France, and these were the difficulties and embarrassments to which the United States were subjected by the treaties of alliance and commerce. It can certainly be no matter of surprise that the deepest solicitude should have been felt by the Administration of that day to be relieved from engagements at once so onerous in the performance and so hazardous to the peace and prosperity of the United States. In looking back upon the events of that difficult epoch in our history, we are apt to conclude that no arm but that of Washington could have conducted the vessel of State safely over the rocks. Sir, although it be admitted that the proclamation of neutrality and the treaty of Mr. Jay, did in fact violate the treaties with France, yet it may be safely said, that to those measures we are indebted for the preservation of peace with both of the great belligerent nations with whom our commercial intercourse was most intimate, and for that national prosperity and glory by which our subsequent career has been distinguished. If the refusal of the French Directory to receive our Minister (Mr. Pinckney) was calculated to give offence to the Government of the United States, the motives to dissatisfaction were strengthened by the decree of the Executive Directory of the 2d March, 1797, which was pronounced by the American Secretary of State, (Mr. Pickering,) "to be a palpable violation of our treaty with France, which the Directory, without our participation, undertook to modify, professedly to make it conform to our treaty with Great Britain."

The causes of complaint were thus accumulating with the progress of time and events. France continued her depredations, to a ruinous extent, upon our seafaring citizens. Unquestionably these depredations violated the treaties between the two countries. Nevertheless another effort was made by the United States to put an end to them, and to obtain satisfaction, in the celebrated mission of Messrs. Pinckney, Marshall, and Gerry. Their instructions are voluminous, and filled with important matters relating directly to the subject before us, but a very brief reference to them will now be made. They state:

"Although the reparation for losses sustained by the citizens of the United States, in consequence of irregular or illegal captures or condemnations, or forcible seizures or detentions, is of very high importance, and is to be pressed with the greatest earnestness, yet it is not to be insisted on as an indispensable condition to the proposed treaty. You are not, however, to renounce these claims of our citizens, nor to stipulate that they be assumed by the United States as a loan to the French Government."

"The proposed alterations and arrangements suggest the propriety of revising all our treaties with France. In such revision, the first object that will attract your attention, is the reciprocal guarantee, in the eleventh article of the treaty of alliance. This guarantee we are perfectly willing to renounce. The guarantee, by France, of the liberty, sovereignty, and independence of the United States, will add nothing to our security; while, on the contrary, our guarantee of the possessions of France in America, will perpetually expose us to the risk and expense of war, or to disputes and questions concerning our national faith. When Mr. Genet was sent as the Minister of the French republic to the United States, its situation was embarrassed, and the success of its measures problematical. In such circumstances it was natu-

ral that France should turn her eye to the mutual guarantee; and accordingly it was required, in Mr. Genet's instructions, to be 'an essential clause in the new treaty,' which he was to propose; and on the ground 'that it nearly concerned the peace and prosperity of the French nation, that a people whose resources increase beyond all calculation, and whom nature had placed so near their rich colonies, should become interested, by their own engagements, in the preservation of those islands.' But, at this time, France, powerful by her victories, and secure in her triumphs, may less regard the reciprocal guarantee with the United States, and be willing to relinquish it. * * But if France insists on the mutual guarantee, it will be necessary to aim at some modification of it. The existing engagement is of that kind, which, by writers on the law of nations, is called a general guarantee; of course the *casus federis* can never occur except in a defensive war. The nature of this obligation is understood to be, that when a war really and truly defensive exists, the engaging nation is bound to provide an *effectual and adequate defence*, in coöperation with the Power attacked: whence it follows, that the nation may be required, in some circumstances, to bring forward its whole force. The nature and extent of the succors demandable not being ascertained, engagements of this kind are dangerous on account of their uncertainty; there is always hazard of doing too much or too little, and of course of being involved in involuntary rupture. Specific succors have the advantage of certainty, and are less liable to occasion war. On the other hand, a general guarantee allows a latitude for the exercise of judgment and discretion.

"On the part of the United States, instead of troops or ships of war, it will be convenient to stipulate for a moderate sum of money or quantity of provisions, at the option of France: the provisions to be delivered at our own ports, in any future defensive wars. The sum of money, or its value in provisions, ought not to exceed two hundred thousand dollars a year, during any such wars. The reciprocal stipulation, on the part of France, may be to furnish annually the like sum of money, or an equivalent in military stores and clothing for troops, at the option of the United States, to be delivered in the ports of France."

This mission not only proved abortive, but whilst these envoys were in Paris, endeavoring to effect the object of their mission, the French Government, on the 18th January, 1798, passed a law which subjected to capture and condemnation neutral vessels and their cargoes, if any portion of the latter were of British fabric or produce, although the entire property belonged to neutrals. This law was considered by the President of the United States to be an unequivocal act of war on the commerce it attacked, of which those nations which possessed the means could reconcile nothing to their interest and honor but a firm resistance. (*Ib. Doc. 428.*)

The controversy was now approaching a crisis. On the 28th May, 1798, Congress authorized the President to cause to be seized and brought in for adjudication the armed vessels of the French republic which should have committed aggressions upon our citizens, or should be found hovering on our coasts for that purpose, and to retake any vessel captured. And on the 7th July of the same year, an act was passed abrogating our treaties with that republic. To manifest to the world a forbearance the most unequivocal, and to prevent a resort to the last alternative of injured nations, the President of the United States instituted a new mission, composed of Messrs. Ellsworth, Davie, and Murray, who arrived in Paris in March, 1800.

The first material point necessary to be stated in connexion with this mission is, that one of its objects was to obtain remuneration for the identical claims for spoiliations which are at this moment under consideration. The second is, that when the proposition for that purpose was made by the

American to the French Ministers, the obligation of the French Government to pay was frankly and freely acknowledged.

Sir, as nothing could be more explicit, so nothing could more clearly indicate the sense of the United States Government than the instructions of the President to the Envoys to France. "At the opening of the negotiation," he tells them, "you will inform the French Ministers that the United States expect from France, as an indispensable condition of the treaty, a stipulation to make to the citizens of the United States full compensation for all losses and damages which they shall have sustained by reason of irregular or illegal captures or condemnations of their vessels and other property, under color of authority or commissions from the French republic or its agents." The *ultimata* to these instructions are ranged under seven distinct heads, the first of which runs thus:

"That an article be inserted for establishing a board, with suitable powers, to hear and determine the claims of our citizens for the causes hereinbefore expressed, and binding France to pay or secure the payment of the sums which shall be awarded."

Acting upon these instructions, the American Ministers, "to satisfy the demands of justice, and render a reconciliation cordial and permanent, proposed an arrangement such as should be compatible with national honor and existing circumstances, to ascertain and discharge the equitable claims of the citizens of either nation upon the other, whether founded on contract, treaty, or the law of nations." To which the French Ministers replied, that "they thought the first object of the negotiation ought to be the determination of the regulations, and the steps to be followed for the estimation and indemnification of injuries for which either nation might make claim for itself or for any of its citizens."

Throughout the negotiation, the French Ministers uniformly and unreservedly admitted their liability for the claims, and their willingness to stipulate for their satisfaction. But the difficult question was, in what manner the adjustment should be made. If, on the one hand, the instructions of the American Envoys bound them to insist upon the payment of the claims; the French Ministers on the other pointed to the guarantee in the treaty of 1778, and demanded either a renewal of it, or an adequate consideration for its surrender. On the 18th of April a *projet* of a treaty was presented to the French Ministers, the second article of which proposed that "full and complete compensation should be made by the Government of the French republic to the citizens of the United States for losses and damages by reason of irregular or illegal captures or condemnations of their vessels and other property." The article closed with the provision, that "the board of liquidation to be raised shall decide the demands according to their original and intrinsic merits, conformably to justice and the law of nations; and in all cases of complaint prior to the 7th of July, 1798, they shall pronounce agreeably to the treaties and consular convention then existing between France and the United States."

The 7th of July was thus specified, because it was the day on which the Congress of the United

States had passed the law purporting to annul the treaties of 1778. The French Ministers strenuously denied the power of the American Government to annul them by a legislative act; and to the closing suggestion of our Envoys, they replied, on the 6th of May, 1800, that "they saw no reason which authorized a distinction between the time prior to the 7th of July, 1798, and the time subsequent, for the purpose of applying to damages which have taken place in the former, the dispositions of the treaty; and only the principles of the laws of nations to those which have taken place during the latter. The instructions of the Ministers of the French republic hence pointed out to them the treaties of alliance, friendship, and commerce, and the consular convention, as the only foundations of their negotiations. Upon these acts has arisen the misunderstanding, and it seems proper that upon these acts union and friendship should be established. When the undersigned hastened to acknowledge the principle of compensation, it was in order to give an unequivocal evidence of the fidelity of the French Government to its ancient engagements; every pecuniary stipulation appearing to it expedient, as a consequence of ancient treaties, and not as a preliminary of a new one." This objection of the French Ministers to the distinction referred to, is thus stated in the strong and emphatic language of the American Envoys: "The French think it hard to indemnify for violating engagements, unless they can thereby be restored to the benefit of them."

But it was the fixed purpose of the American Government to refuse to renew the treaties; and I now proceed to show that when every attempt to induce the French Ministers to forego them proved unavailing, they were bought off by a renunciation of the claims of our citizens; and this I shall endeavor to do without wearying the Senate with minute details of the progress of the negotiation.

Sir, the discussions of the Ministers of the respective Governments, which preceded the convention of September, 1800, show very clearly, first, that it was the deliberate purpose of the American Government to avoid renewing the old treaties; and, secondly, that the purpose was as deliberate on the part of France not to make a pecuniary compensation for the damages sustained by our citizens, without a reciprocal acknowledgment of indemnities due to France, and a like acknowledgment of the continuing obligation and privileges of the old treaties.

On the 11th of August, after various fruitless interchanges of mutual propositions, the French Ministers "reduced them to this simple alternative: 'Either the ancient treaties, with the privileges resulting from priority, and a stipulation of reciprocal indemnities; or, a new treaty, assuring equality, WITHOUT INDEMNITY.'"

On the 20th of August, 1800, the American Ministers, waiving the alternative, proposed on their part—

"1st. Let it be declared that the former treaties are renewed and confirmed, and shall have the same effect as if no misunderstanding between the two Powers had intervened, except so far as they are derogated from by the present treaty.

"2d. It shall be optional with either party to pay to the

other within seven years three millions of francs in money, or securities which may be issued for indemnities, and thereby to reduce the rights of the other as to privateers and prizes to those of the most favored nation. And during the said term allowed for option, the right of both parties shall be limited by the line of the most favored nation.

"3d. The mutual guarantee in the treaty of alliance shall be so specified and limited that its future obligation shall be, on the part of France, when the United States shall be attacked, to furnish at her own ports military stores to the amount of one million of francs, and on the part of the United States, when the French possessions in America in any future war shall be attacked, to furnish and deliver at their own ports a like amount in provisions. It shall, moreover, be optional for either party to exonerate itself wholly of its obligation, by paying to the other within seven years a gross sum of five millions of francs, in money, or such securities as may be issued for indemnities.

"4th. The articles of commerce and navigation, except the 17th article of the treaty, shall admit of modifications, reserving for their principle the rights of the most favored nation, where it shall not be otherwise agreed, and be limited in their duration to twelve years.

"5th. There shall be a reciprocal stipulation for indemnities, and these indemnities shall be limited to the claims of individuals, and adjusted agreeably to the principles and manner proposed by the American Ministers in a project of a treaty heretofore delivered, except when it shall be otherwise agreed; public ships taken on either side shall be restored or paid for.

"6th. All property seized by either party, and not yet definitively condemned, or which may be seized before the exchange of the ratifications of the present treaty, shall be restored on reasonable, though it should be informal, proof of its belonging to the other, except contraband goods of the United States, destined to an enemy's port. This provision to take effect from the signature of the treaty; and if any condemnation should take place contrary to the intent of this stipulation before knowledge of the same shall be obtained, the property so condemned shall be paid for without delay."

To these propositions of our Envoys, the French replied, on the 25th of August, 1800:

"1st. The ancient treaties shall be continued and confirmed to have their full force, as if no misunderstanding between the two nations had ever occurred.

"2d. Commissioners shall be appointed to liquidate the respective losses.

"3d. The 17th article of the treaty of commerce, of 1778, shall be continued in full force, with a single addition, immediately after these words, to wit: 'And on the contrary, no shelter or refuge shall be given in their ports or harbors, to such as shall have made prize of the subjects of his Majesty, or of citizens of the United States.' There shall be added, 'if it be not in virtue of known treaties, on the day of the signature of the present, and subsequent to the treaty of 1778, and that for the space of seven years.' The 2d article subject to the same reservation as the 17th article.

"4th. If, during the term of seven years, the proposal to establish the 17th and 2d articles be not made and accepted without reserve, the award of indemnities, determined by the commissioners, shall not be allowed.

"5th. The guarantee stipulated by the treaty of alliance, shall be converted into a grant of succour for two millions. But this grant shall not be redeemable, unless by a capital of ten millions."

On the 4th of September the French Ministers submitted these propositions:

"A commission shall regulate the indemnities which either of the two nations may owe to the citizens of the other.

"The indemnities which shall be due by France to the citizens of the United States shall be paid for by the United States; and in return for which, France yields the exclusive privilege resulting from the 17th and 2d articles of the treaty of commerce, and from the rights of guarantee of the 11th article of the treaty of alliance."

The American Ministers declined to accept them. But on the 6th of September they made propositions somewhat approaching them: one of which was, that it should be left to the option of the United States, on the exchange of ratifications, to re-

linquish the indemnities; and, in that event, the former treaties were not to be obligatory on the United States so far as they conferred exclusive privileges on France.

On the 12th of September the Ministers of both governments held a conference to consider these propositions; and the journal of that conference, kept by Messrs. Ellsworth, Davie, and Murray, furnishes these extracts:

"The French Ministers now openly avowed that their real object was to avoid, by every means, any engagement to pay indemnities, giving us, as one reason, the utter inability of France to pay in the situation in which she would be left by the present war. The subject of the modification of the guarantee was now particularly pressed in the manner agreed. The conversation on this subject closed by a declaration of the President of the French Commission, that such a modification could not be acceded to without new instructions; that they had no powers to assent to such a stipulation; but that, if the Government should think proper to instruct them to make a treaty on the basis of indemnities, and a modified renewal of the old treaties, he would resign sooner than sign such a treaty.

"The American Ministers retired a few minutes, and agreed that it was now clearly in vain to make any further attempts on that ground;" that is, a modification of the old treaties, since the French Ministers now and always insisted on their entire and absolute recognition and unqualified operation."

On the 13th of September, the journal of the same gentlemen contains the following:

"The American Ministers being now convinced that the door was perfectly closed against all hope of obtaining indemnities, with any modifications of treaties, it only remained to be determined whether, under all the circumstances, it would not be expedient to attempt a temporary arrangement," &c.

And on the same day they wrote to the French Ministers:

"It remains only to consider the expediency of a temporary arrangement. Should such an arrangement comport with the views of France, the following principles are offered as the basis of it:

"First. The Ministers Plenipotentiary of the respective parties, not being able at present to agree respecting the former treaties and indemnities, the parties will, in due and convenient time, further treat on those subjects, and until they shall have agreed respecting the same, the said treaties shall have no operation."

This proposition was substantially the basis of the article subsequently agreed upon, as follows:

"The Ministers Plenipotentiary of the two parties 'not being able to agree, at present, respecting the 'treaty of alliance of the 6th of February, 1778, 'the treaty of amity and commerce of the same 'date, and the convention of the 14th of November, 1788, nor upon indemnities mutually due 'or claimed, the parties will negotiate further on 'these subjects at a convenient time; and until they 'may have agreed upon these points, the said 'treaties and convention shall have no operation, 'and the relations of the two countries shall be 'regulated as follows."

This was introduced as the second article of the treaty; and when the Senate of the United States was called upon for its advice and consent, the treaty was approved, with the exception of that article, which was stricken out by that body; and, thus modified, together with a limitation of eight years' duration, it was ratified by the President of the United States, according to the forms of the Constitution.

The effect of this modification, it was argued by the committee of the French Tribunal, was,

that the American Government, by not recognising the right of the French republic to revive the treaties of 1778, also interdicted to itself the right of claiming for indemnities; for it was in virtue of the treaties which France wished to revive, that either party had the right to set up those claims. Whether such was the effect or not, it is not material now to inquire. When the treaty was presented to the French Government for confirmation, in the shape in which it was approved by the Senate of the United States, that Government was desirous that no doubt should remain as to its construction; lest, as it alleged, "in ratifying without explanation, the two Governments would have found themselves in an unequal position relative to the pretensions expressed in the suppressed article: the suppression of this article releasing the Americans from all pretensions on our part relative to ancient treaties, and our silence respecting the same article leaving us exposed to the whole weight of the eventual demands of [on] this Government relative to indemnities"—under the law of nations. And, accordingly, in the ratification, when approving the retrenchment of the second article, Napoleon, then First Consul, added these words: "*It being well understood that, by this retrenchment, the two States renounce the respective pretensions which are the object of that article.*" In this declaration of the French Consul, the Senate of the United States afterwards concurred; and the treaty, thus ratified with the suppression of the second article, was proclaimed by the President as a law of the United States. It only remains to be observed, that the French Government thereby renounced its claims under the treaties of 1778, and the United States renounced the claims of their citizens for indemnities for spoliations committed by France.

In conformity with a resolution of the Senate of the 5th of March, 1824, Mr. Clay, then Secretary of State, made an elaborate and lucid report on this subject, which was communicated to the Senate by the President with his message of May 20, 1826, from which I take the following extract:

"The two contracting parties thus agreed, [in the final ratification with the French proviso of the convention of 1800.] by the retrenchment of the second article, mutually to renounce the respective pretensions which were the object of that article. The pretensions of the United States to which allusion is thus made, arose out of the spoliations under color of French authority, in contravention to law and existing treaties. Those of France, sprung from the treaty of alliance of the 6th February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th of November, 1785. Whatever obligations or indemnities from these sources either party had a right to demand, were respectively waived and abandoned, and the consideration which induced one party to renounce his pretensions, was that of the renunciation by the other party of his pretensions. What was the value of the obligations and indemnities so reciprocally renounced, can only be matter of speculation. The amount of the indemnities due to citizens of the United States was very large, and, on the other hand, the obligation was great, (to specify no other French pretensions,) under which the United States were placed in the 11th article of the treaty of alliance of 6th February, 1778, by which they were bound forever to guarantee, from that time, the then possessions of the crown of France in America, as well as those which it might acquire by the future treaty of peace with Great Britain; all these possessions having been, it is believed, conquered at, or not long after, the exchange of the ratification of the convention of September, 1803, by the arms of Great Britain from France. [As they had also been captured by Great Britain in the years 1793-94-95.]

"The fifth article of the amendments to the Constitution, provides: 'Nor shall private property be taken for public use without just compensation.' If the indemnities to which citizens of the United States were entitled for French spoliations prior to the 30th September, 1800, have been appropriated to absolve the United States from the fulfilment of an obligation which they had contracted, or from the payment of indemnities which they were bound to make to France, the Senate is most competent to determine how far such an appropriation is a public use of private property, within the spirit of the Constitution, and whether equitable considerations do not require some compensation to be made to the claimants."

While it thus appears that the claims for spoliations were surrendered to France by virtue of the second article, it is proper in this connexion to show how other then subsisting claims of our citizens upon the French Government were provided for by that treaty.

By the third article, the public ships on both sides, which had been captured, were to be restored. France had captured none of our public ships, but we had captured several of hers. These we restored to her, either in kind or in their money value for those we had used and lost.

By the fourth article, property not then definitively condemned was to be restored. This provision was partially executed.

By the fifth article, "The debts contracted by one of the two nations with individuals of the other, or by individuals of one with the individuals of the other, shall be paid, or the payment may be prosecuted in the same manner as if there had been no misunderstanding between the two States. *But this clause shall not extend to indemnities claimed on account of captures or confiscations.*"

Under this article, "the debts" due to our citizens from the Government of France, for contracts executed, for detentions by embargo at Bordeaux, and for supplies of all kinds to her colonies, were in the chief part subsequently paid by her under the provisions of the Louisiana convention of April 30, 1803, by which twenty millions of francs, of the eighty millions purchase money for that territory, was set apart and disbursed for that object.

Here, Mr. President, I close this protracted narrative of the origin and character of the claims which are the subject of the bill before us. On the grounds substantially set forth, the Senator from Delaware [Mr. J. M. CLAYTON] has, as I think, with complete success, maintained that these claims, which the United States, as well as France, had always admitted to be valid against France, prior to the 30th of September, 1800, were renounced or released by this Government in the convention of that date, to purchase its exoneration from the treaties of 1778, and the consular convention of 1788; and also that they were so renounced or released, to purchase an exemption from further spoliations upon our commerce, to secure to the United States the blessings of peace, and the benefit of a highly advantageous traffic with France and her dependencies, together with other benefits which were secured by that convention. Sir, I repeat what I said when I began, that I shall not attempt the difficult task of adding strength to the positions of the honorable gentleman from Delaware. A different employ-

ment devolves upon me—that of making my respects to the arguments in reply to him, of the Senator from New York, [Mr. Dix.] That honorable Senator has, with great emphasis and characteristic ability, resisted the liability of the Government of the United States for the claims in question, first, on the ground “that the treaties existing between France and the United States in 1793, when their differences commenced, were terminated by the acts and declarations of both parties. The declarations of France (he contended) were less comprehensive than those of the United States. Her acts were open, palpable, and direct. The declaration of the United States was full and unequivocal. She pronounced herself freed and liberated from the obligation of the treaties, and she acted in conformity to that declaration.”

If the treaties existing between the two countries in 1793, were *in fact terminated*, as alleged, it cannot be denied that the respective Governments were exonerated from their obligation, *from and after the period of actual termination*; because the claims were subsequently acknowledged by both parties to be valid and *just*. Nor will it, I presume, be denied that those Governments were liable for damages arising *before that period*, from their violation. But the great and important question is, were they, in fact, by any sufficient acts or declarations of either party, suspended or annulled? On the manner that this question *ought to be decided*, I am fully content, on my part, to rest the whole case. I contend that the treaties were *not* on any account terminated or annulled; but on the contrary, that they remained in full force until the treaty of September, 1800, was concluded.

I begin with the acts of the United States, and take up, at the very threshold, the law of Congress of the 7th of July, 1798. That law declared, “that the United States were of right freed and exonerated from the stipulations of the treaties and of the consular convention heretofore concluded between the United States and France, and that the same should not thenceforth be regarded as legally obligatory on the Government or citizens of the United States.”

This act of Congress, Mr. President, was expressly founded upon the allegation on our part, that the stipulations of the *treaties of 1778* had been repeatedly violated by France, by her depredations upon our commerce; and of this, in respect to the treaty of amity and commerce, there can be no question. But what reason had we to complain of her conduct in respect to the stipulations of the *treaty of alliance*? We had never complained of its violation. The propriety, therefore, of including that treaty in the annulling act of Congress, is not perceived. It was a treaty of a peculiar character—not confined to prospective reciprocity, but of the highest obligation in reference to its original objects and to the blood and treasure which France had expended in support of it; and it was in that view, as well as on account of its obligatory force *forever*, that France asserted that *even war could not have annulled it*.

Sir, nothing could have been more natural, and, I will add, proper, than the anxiety of our Government to be released from the obligations of the

treaty of alliance; but it was impossible to suppose, that the exonerated could have been effectuated without an equivalent on our part given to France, either by an adequate compensation for the surrender of the guarantee, or by an extinguishment of the claims of the citizens of the United States. Accordingly, our Envoys were instructed to reduce the *prospective* obligation of the guarantee at the cost of an annual war subsidy of two hundred thousand dollars—leaving us still liable for all the damages that had arisen from our failure to fulfil the treaties. And what were those damages? Why, sir, France had lost all her valuable islands in the American seas. The United States were bound to cause them to be restored to her, and to assure her property in them against all casualties arising from a state of war. The treaty of alliance contained the obligation, and there was no evading its force. The obligation was not limited to the war of 1793, but it extended to all future wars in which France might be engaged with England.

Sir, with the claims of the American citizens for spoiliations, the Government of the United States was relieved from this enormous and endless responsibility. But this was not the only benefit which ensued to us by the surrender of those claims. The Government purchased with them exemption from the no less onerous stipulation in the treaty of amity and commerce, which gave to France the exclusive use of our ports to her vessels of war and their prizes, and from the undefined claims for damages arising from our withholding that use from her.

In the negotiations that led to the convention of 1800, ten millions of francs was demanded as the price of our exonerated from the guarantee; and not only was *our* offer of three millions more to reduce the *exclusive* use of our ports to her vessels of war and their prizes to the footing of that of the *most favored nation*, declined by the French Plenipotentiaries, but the right was declared to be beyond the reach of purchase at any price we could offer; and hence arose the necessity of consigning the respective claims of the two governments to future negotiation, as was done by the second article of the convention of 1800. The final abrogation of that article resulted not alone in the extinguishment of the American claims upon the Government of France, but in the exonerated of the United States from the stipulations (which money could not purchase) of the treaties of 1778.

But, sir, I maintain that the power to abrogate a treaty does not appertain, under the Constitution of the United States, to one alone of the contracting parties.

The authors of the Federalist, in their commentary on the treaty-making power of the Constitution, explicitly disclaim the power; and in this, as my friend from Delaware has shown, they are sustained by the high authority of Mr. Jefferson and Mr. Chief Justice Marshall. The Federalist (No. 64) thus states the argument:

“Others, though content that treaties should be made in the mode proposed, are averse to their being the *supreme* law of the land. They insist, and profess to believe, that treaties, like acts of assembly, should be repealable at pleasure. This idea seems to be new, and peculiar to this country; but new errors, as well as new truths, often appear. These

gentlemen would do well to reflect, that a treaty is only another name for a bargain; and that it would be impossible to find a nation who would make any bargain with us which should be binding on them *absolutely*, but on us only so long and so far as we may think proper to be bound by it. They who make laws may, without doubt, amend or repeal them; and it will not be disputed that they who make treaties may alter or cancel them; but still let us not forget, that treaties are made not by one only of the contracting parties, but by both; and, consequently, that as the consent of both was essential to their formation at first, so must it ever afterwards be to alter or cancel them. The proposed Constitution, therefore, has not in the least extended the obligation of treaties. They are just as binding, and just as far beyond the lawful reach of legislative acts now, as they will be at any future period, or under any form of government."

The French Ministers, also, during the progress of the negotiations of 1800, declared, in their note to the American Plenipotentiaries of the 27th of July, that "they did not find, in the note (of the latter) of the 25d of July, any reason to determine them to consider the treaties made between France and the United States as broken. The act of Congress of the 7th of July, 1798, is the declaration of one party; but the treaty being the work of two, one alone cannot destroy, otherwise than by war and victory, that which is the engagement of two." "When Congress, (they continued,) declares on one side, that France has contravened the treaties, and that they are exonerated from them, and when, on the other, the French Government declares that it has conformed to the treaties, that the United States have alone infringed them, and it wills their execution, where is the law, where is the tribunal, which authorizes the exoneration rather than the execution?"

Sir, impracticable as I conceive it to be to refute these views, still I do not insist upon them in this place. The whole argument against the liability of the Government for these claims, is, in my opinion, put to rest by a single proposition, so plain as to be almost self-evident. It is this: that a claim, which is the subject-matter of a dispute or controversy, personal or national, and which, both parties fully acknowledge to be due, must be paid by one party or the other, and cannot, afterwards, be justly denied by both.

The argument, then, stands thus: the spoliations on which these claims are founded, were committed by France. That has never been disputed. The property of our citizens was destroyed. The American Envoys in 1800 were instructed by their Government to make the payment of them an indispensable condition of the treaty. They did so. The French Ministers not only admitted them to be due from their Government, but offered the guarantees in the treaties of 1778 and the *exclusive* privilege to use our ports for her ships of war, her privateers and their prizes, during war, as the price of their extinguishment. The offer was accepted by the American Government; the treaty was made and ratified, and the liability of France became forever extinguished. Sir, I put the question to every one: even supposing the treaties to have been annulled, can a doubt exist of the competency of the parties, by such acts and acknowledgments, to create an obligation from the force of which no nation can escape?

My argument is not that it is the duty of this Government to go to war for the refusal of another to pay the claims of individuals founded on the

violation of treaties. The argument is, that when in consequence of such violation, well-founded claims upon a foreign nation accrue to citizens of the United States—claims which are admitted by that nation to be due and payable—and the Government of the United States, by treaty, release that foreign nation from all obligation to pay, for a consideration valuable to itself, in that event, this Government, thus depriving its citizens of the right to recover these claims, takes the place of the Government so exonerated, and becomes manifestly responsible on every principle of justice. The mere statement of the argument is, in my opinion, sufficient.

It is next contended that a state of war extinguishes all pecuniary claims of governments upon each other, and of their respective citizens upon them; and that, when the claims now in question originated, actual war existed between the United States and France. "If," said the honorable Senator from New York, "any doubt remained as to the fact that the treaties had ceased to be of any obligation, it appeared to him that it must be dissipated by a reference to the hostile acts to which he had referred. The two countries were, for all essential purposes, in a state of war." Again, he observed that "he considered the treaties abrogated by both the contracting parties," "by an avowed disregard, by an open violation of their stipulations on one side, and on the other by authorized declared acts of hostility, which were not distinguishable from acts of war." Now, I do not intend to discuss the question whether war does or does not so operate upon subsisting treaties as to extinguish the claims of citizens upon their respective governments. I propose to show that whatever may be the decision of that question, there was, in fact, *no such public war* between the two countries as to produce the effect alluded to; and this I will show, if any meaning is to be attached to the contemporaneous "acts and declarations of the parties."

First, then, I have to say, that there was no formal declaration of war by the American Congress nor by the French republic, nor was there any formal recognition of its existence by either Government. The belligerent legislation of the United States consisted in acts, carefully restricted both in their objects and effects. On the 28th of May, 1798, Congress passed an act authorizing the capture of all armed vessels of the republic of France which should have committed, or should be found hovering on the coast of the United States for the purpose of committing, depredations on the vessels of citizens of the United States. By an act of the 13th of June, 1798, all intercourse was suspended with France. On the 25th of the same month another act was passed, giving authority to our merchant vessels to oppose searches attempted by the French, and to recapture vessels which belonged to our citizens. But this act was to terminate when France should discontinue her depredations. On the 28th of the same month a fourth act directed French armed vessels, captured in pursuance of the act of the 28th of May, to be sold. On the 7th of July of the same year the act already referred to abrogated the treaties of 1778; and on the 9th of the same month Congress authorized the

public vessels of the United States to capture all *French armed vessels*, and gave the President power to issue letters of marque and reprisal against such armed vessels.

These are all the acts which bear upon the subject: and certainly no other war existed on the part of the United States than was thereby authorized and declared.

Sir, the first indication of the construction which was placed by our Government upon these measures is contained in the instructions to Messrs. Ellsworth, Davie, and Murray, of the 22d day of October, 1779, in which, after a recital of the aggressive acts of the French Government, the Secretary of State says: "This conduct of the French republic would well have justified an *immediate declaration of war* on the part of the United States; but, desirous of *maintaining peace*, and still willing to leave open the door of reconciliation with France, the United States *contented themselves with preparations for defence*, and measures calculated to protect her commerce."

Now, sir, it was aptly said by Mr. Livingston, in his report in 1830, that "all the measures which have been considered as equivalent to a state of war had been taken previous to the date of these instructions. Our Government (he continued) did not think the two nations in a state of war. On the contrary, when it became necessary to urge that those treaties were no longer obligatory on the United States, the Ministers rely, not on a state of war, which would have put an end to them without any dispute, but on the act of Congress of the 7th of July, 1798, annulling the treaties—an act which they themselves did not think, in a subsequent part of the negotiation, any bar to a recognition of the treaties so as to limit the operation of an intermediate one made with England."

And upon that principle, our Envoys, in their repeated propositions to the French negotiators, did revive, renew, and confirm, the continuous obligation of the old treaties. In their proposition of August 20, 1800, they say:

"ART. 1. Let it be declared, that the former treaties are renewed and confirmed, and shall have the same effect as if no misunderstanding between the two parties had intervened."

And again, on the 5th September, 1800:

"ART. 1. The former treaties shall be renewed and confirmed."

Sir, if the language of the instructions can be regarded as furnishing proof of the views of our Executive government, the opinion of the Legislative department was expressed in a manner still more explicit. On Monday, the 13th of January, 1800, a committee of the House of Representatives, to whom had been referred "so much of the President's message as related to a system of defence commensurate with the resources and situation of the country," reported the following resolution, which was adopted by the House: "Resolved, That all enlistments under an act entitled 'an act to augment the army of the United States and for other purposes,' shall be suspended until the next session, unless war should break out between the United States and a foreign European power."

It must be manifest, therefore, that our Govern-

ment was not of opinion that war, open, palpable war, existed. Still less was it the opinion of the French republic. When the functions of the Minister of that republic, at Philadelphia, were suspended, on the 7th of October, 1796, the French Minister of Foreign Affairs assured Mr. Monroc, "that the ordinary relations subsisting between the two people, in virtue of the conventions and treaties, should not, on that account, be suspended; but the consuls would remain charged to superintend them."

In the letter of the same Minister of Foreign Affairs, of December 11, 1796, informing Mr. Monroe that Mr. Pinckney would not be recognised, he added: "I beg you to be persuaded that this determination, which is become necessary, does not oppose the continuance of the affection between the French republic and the American people, which is grounded on former good offices and reciprocal interest." And the French Plenipotentiaries, in their note to Messrs. Ellsworth, Davie, and Murray, of the 11th of August, 1800, insisted on the principle laid down in their former note, viz: "that the treaties which united France and the United States were *not* broken; that even war could not have broken them; but that the state of misunderstanding which had existed for some time between them by the act of some agents rather than by the will of the respective Governments, *had not been a state of war*, at least on the side of France."

And again: at the moment of confirmation of the convention by the French Legislature, on the 4th of December, 1801, the report of the Tribunal announcing its ratification by both governments, expressly stated, "that the United States had declared the consular convention, and the treaties of 1778, as null and void, and believed themselves freed from the obligations which they imposed upon them. The government of the republic, in spite of this act of Congress, did not regard the treaties as annulled, thinking that a treaty could only be abolished by the mutual consent of the two contracting parties, or by a declaration of war. But, on the one hand, France had not acceded to the dissolution of the treaties; on the other, there had not been any declaration of war. Commissions granted by the President to attack the armed vessels of France, are not to be regarded as a declaration of war; the will of the President does not suffice to put America in a state of war: it requires a positive declaration of Congress to this effect. None has ever existed. The republic was therefore justified in claiming the enjoyment of the stipulations comprehended in the old treaties, and indemnity for the non-execution of these stipulations."

These declarations of the public authorities of both countries, are conclusive to show, that neither party considered that war existed; and unless it is a practicable thing for two great nations to be engaged in war without the knowledge of either, and in despite of the peaceful intentions of both, I think I have successfully maintained, that whatever were the relations between them at the period in question, they were not those of actual war.

But, sir, if I were to admit the correctness of the honorable Senator's positions in reference to the

termination of the treaties, still it would not follow that these claims upon the Government of the United States are unfounded. The *national claims* on both sides were undoubtedly based upon the old treaties to the extent that the law of nations failed to cover them; and it was for the protection of those claims to that extent, and to that alone, that the treaties were of any consequence. In regard to the claims of individual citizens for spoiliations, the treaties were at no time indispensable to their validity. The *law of nations* fully protected them, and gave to their proprietors an unquestionable right to redress from France, whether the treaties were or were not in operation; or, indeed, whether or not they had ever existed. It results, that the claims under that general law were as obligatory upon France after, as before, the treaties were annulled—even supposing it to have been competent for them to be annulled by the acts or declarations of either party. Will it be contended *here*, that France could, of right, and without incurring responsibility, capture near two thousand of our merchant vessels? Will it be contended *here*, that France could, of right, seize and confiscate our vessels indiscriminately, *since the 7th of July, 1798, because we had no treaty with her*; and that she had the same right *prior to that date, because we did have a treaty with her which expressly forbade it?*

No, sir. France was responsible for those captures. She did not shrink from the responsibility, but, as has been shown, openly and constantly acknowledged it: and for whatever *she* was liable, *we* are now liable, with accumulated damages for the long detention of the amount. The consideration paid by her for these claims was an ample equivalent. Governments do not treat for less. They are not at liberty to *give away* their own property, far less the property of their citizens. The bargain was of our own seeking. It was deemed advantageous, or we would not have made it. The retrenchment of the second article of the convention was our policy and our act. It is unjust now for us to attempt to evade its conse-

quences by arguments or complaints which cannot satisfy ourselves, and much less the despoiled and ruined sufferers by the depredations of France. Napoleon, the great debtor, when out of reach of the influence of the diplomatic subtleties of his court, declared, as a truth, to be perpetuated in history with his glory and fame, "*that the suppression of the second article*" (of the convention of 1800) "*at once put an end to the privileges which France possessed by the treaties of 1778, and annulled the just claims which America might have made for injuries done in time of peace.*"—(Gourgaud's Memoirs, dictated by Napoleon, volume 2, page 95.)

And Mr. Madison, our Secretary of State, in his instructions to Mr. Pinckney our Minister to Spain, on the 6th of February, 1804—when all the facts were known and duly weighed—officially declared: "The claims from which France was released were admitted by France; and the release was for a valuable consideration in a correspondent release of the United States from certain claims on them."

If yet more is wanting, Mr. President, to establish the liability of the Government of the United States for the payment of these claims, I refer the Senate to its direct overture to the claimants, in which its aid and agency were voluntarily proffered, with a pledge officially promulgated by Mr. Jefferson, by the express direction of President Washington, "*that on their forwarding [to the Department of State] well authenticated evidence of their losses, proper proceedings would be adopted for their relief.*" The confidence of the claimants was thus obtained. The overture of agency was promptly accepted. Their proofs of loss were deposited among the national archives, and there remain to this hour. And for the performance of this high trust, the claimants now hold THE UNREDEEMED PLEDGE OF THE FAITH OF THE GOVERNMENT, TOGETHER WITH THE UNREDEEMED PLEDGE OF AN EXPLICIT PROVISION OF THE CONSTITUTION OF THEIR COUNTRY IN THEIR BEHALF.