

of nations? If so, what necessity is there for a positive law to ascertain them? The law of nations is the law of reason applied to states, and it remains with the reason of each particular state to say what is law. This it can say in no other manner than by its declarations or its public acts. The bill in question is a declaration, and the measure will be a public act of the body politic. It respects "aliens," and is a sentence, according to the law of nations, and not the enacting of a new law. It is necessary that commissioners be appointed to dispose of the estates of the condemned, and, in the mean time, that they have a warrant, of which nature is this bill. It is in vain to say, that these men ought to have a trial by jury, and before the judges, for they are not of any vicinage in this country, nor within the jurisdiction of the judges.

The Senator (for as he takes upon himself that title, we shall consider him as such) boldly avers, that the declaration of the British king and parliament could not convert the lawful and justifiable resistance of these colonies into rebellion. "The very supposition of a whole country being in rebellion is a monstrous absurdity." This I take to be a pleasant satire on all those who assert with much seeming earnestness what is self-evident. The declaration of the British court and parliament could not change the nature of our resistance, and make it rebellion, but it could give us to see that they considered it as such, and when it should be in their power, they were disposed to punish it accordingly. It is indeed absurd to suppose, that "a whole state can be in rebellion; for rebellion is the opposition of a part to the supreme authority; and unless the whole can take up arms against itself, the whole cannot be in rebellion. This proves not any thing that I know of; but the argument deduced from it, is, that as it would be wrong in the court of Britain to treat us as rebels, so it would be wrong in us to treat the British nation as tyrants. For though some of them may be tyrannical enough in their conduct, yet there are others of them who have good intentions, and are "unoffending members." The authority of Rutherford is adduced as making this distinction. He observes under head "Thirdly," which the delegates omitted, "That though an injury which is done by a nation is communicated to all the members of it, as far as this injury produces an obligation to repair damages, yet the guilt of it, as it implies a disposition to do harm, is confined to the collective person of the nation, and to those particular members of it, who have made it their own act by their immediate and direct consent." Nothing is more true; for though the property of every individual of the nation, even women and children, is answerable for the damages and expences of the war, and may be applied for that purpose, whenever it shall be in the power of the injured state, yet, as to what may be imposed by the victors, as a punishment, it shall be levied on the collective body of the nation, or the property of the criminal members shall be confiscated on that account. It will be time enough for us to make this distinction in our treatment, of "criminal or unoffending members" of the British nation, when full reparation shall have been made for damages sustained, and for the expences of the war. Until that shall have been done, we have, by the words of Rutherford, an undoubted right to take the property of British subjects, under what ever predicament the owners are to be considered.

The Senator, quoting Rutherford, who speaks of the property of goods that are not to pass until the conclusion of the war, thinks he cannot mean, "such goods only taken from the enemy, as may exceed the damages sustained by the injured party." But Rutherford himself, towards the conclusion of what he says under head "Thirdly," expressly tells us, that he does mean such goods. His words are, "I have here spoken of the property of all goods which are taken in war, as ultimately transferred by consent in treaties of peace, without having any regard to what is taken for damages, or for current expences." It then follows, that the author has not discovered due compliance to Rutherford, in affirming "the supposition to be inadmissible in fact, of course idle in theory, that the value of goods taken from the enemy may exceed the damages and expences of the war incurred by the nation taking them, and consequently amount to more than an equivalent for such damages and expences." But it must either have been, that in reading the book, he has turned over two leaves at once, as a man may very innocently do, and so missed the passage; or that through the whole of this essay, he is ironical, and having it in view to ridicule gross mistakes, he has given us one on purpose.

* Vattel, L. I. c. 19, § 7.

If it should be said, that we cannot convert the property of the enemy to our own use, until the conclusion of the war, not being able before that time to tell what are the damages and expences of it, and so be in danger of taking more than we ought to take, the author very justly obviates this objection by observing, that "in modern wars, this is never the case; to write, therefore, and reason upon a thing which never does happen, is an unprofitable waste of time and paper, to say the least of it."

"All the cases adduced from Rutherford, and his reasoning on them, seem to apply solely to goods forcibly taken from the enemy on the high seas, or during inroads made into their territory, &c." The cases and the reasoning may seem to apply, but it is certain that they do not apply. To me indeed they do not seem to apply. But were it even so, surely no man can seriously mean to support an argument by the reasoning of an author, which may only "seem to apply."

What Rutherford only seemed to say, Vattel, in the opinion of the Senator, speaks fully out, for he talks of "lands possessed by foreigners in an enemy's country." But as by foreigners he means "neutral strangers," such as the Dutch or the Danes are to us, it does not even "seem to apply" to British subjects. Vattel proceeds, and observes, that "he who declares war does not confiscate the immovable goods possessed in his country by his enemy's subjects; permitting them to purchase and possess these goods, he has in this respect, admitted them into the number of his subjects; but the income may be sequestered, &c." The intermediate sentence of this paragraph, which the gentleman judiciously omitted, explains the matter, shewing us, that this indulgence extends to those of the enemy's subjects who continue to reside in the country, and concerning whom there can be a presumption, that they are subjects. But, as to those who have departed, and mixed with their friends in the territory of the enemy, there is no such indulgence granted, because no such presumption can be formed.

"The quotation," therefore, "from Vattel discovers" nothing to the purpose; nevertheless, the Senator goes on to observe, that "to judge from the passage cited from Vattel, there does not appear to be any treaty, by which the above described property is secured to individuals among the several nations of Europe; such individuals owe the preservation of such property to the usage and custom merely of these nations, and not to any particular or special treaty." "Usage, or custom," is that which gradually and insensibly takes place between nations by mutual consent; and indeed, this more than "special treaty" is the rule of conduct, to all nations in their treatment of each other. It is known that every outrage shall be retributed, and it becomes the general interest, and hence the general practice of nations to soften their conduct to each other. But where a nation departs from this humanity, and, instead of making war like men, makes war like devils, it becomes necessary to turn the law of nations, which is the law of reason, in its full rigour on them, to bring them back, if possible, to a more civilized practice. Nothing but the experience of a similar treatment to that which has been given and intended can effect this. It may be well enough in common life, to talk of mild treatment to honest men who are our neighbours, and whose "custom" or practice it is to adjust, with as little bitterness as possible, the differences that, from the nature of their affairs, will unavoidably arise between them; but to hold out the like treatment to robbers, murderers, and cut-throats, would be the readiest way to encourage them, and to fill the earth with blood-shed." If the conduct and intention of the British nation, as evinced by their declaration, ought to be the measure of our conduct to them, which is certainly the case, there will be nothing more just, than what, according to "Rutherford," is warranted by "the law of nature," to make slaves of those who shall fall into our hands, "by way of reparation for damages," if their property suffice not for this purpose. Nay, as their practice has been to starve our prisoners, to murder in cold blood, &c. and as by their law, which they have "declared" shall be executed on us, as far as they shall have it in their power, we are liable to lose, not only our property, but our lives also, it would be justifiable in us to retaliate, by putting to death the more criminal amongst them, that is, "in the present cause," the tyrant himself, and those, "for instance," who, by approving and engaging in the war, in address to the crown, by voting for it in parliament, or by carrying it on in person, have made the guilt properly their own." If we do not execute justice to this extent, with regard to any of them who shall fall within our power, it will be owing to our clemency, not to their desert. Nor would even then the scenes of

Marius and Sylla be renewed; for these men proscribed and shed the blood of their fellow citizens, over whose liberties they had trampled, but we should imitate only what was done by Harmodius and Aristogiton, by whom the tyrant Pisistratus, and those whom he had around him were put to death, and to whose memory, statues were erected at Athens.

It is made a question, "what British subjects are to be deemed, upon legal principles, aliens in this state? The answer is, that, on the principles of common sense, all British subjects are aliens. As to their being in "this state," that is another point. It is to be dreaded that there are too many amongst us who consider themselves as British subjects, writing and speaking on all occasions to assist the falling cause of their brethren.

It is again asked, amongst other things, "is the acceptance of a pension from the king of Great-Britain, &c. to render the pensioner British subjects, and alien enemies? If so they would be punished for the want of foresight." I think so, inasmuch as it has been the ground of their conduct; for could they have foreseen that the arms of the states would prevail, it is probable, that instead of offering their services to the king of Great-Britain, they would have offered them to the congress; and if they had not drawn pay in the mean time, yet they would have saved their lands, which perhaps would have been much better. As to "the not coming into this, or some one of the United States, before a particular day, &c." that "particular day" is, according to the law of reason, the first day of the war. For as no one, consistent with his obligations to the society of which he is a member, can remain an inactive spectator when it is engaged in war, so the first hostilities commenced against his country, is a signal for him to return. If he shall be absent after this time, and afterwards appear, it will remain, not with the judges, but with the supreme authority of the state, to admit or reject his apology. As to those who have withdrawn after the commencement of the war, without the consent of the public body, they are considered as no longer members, but, by the law of reason, have forfeited their property, having violated that condition on which they originally held it, which was the mutual defence and preservation of the commonwealth. Vattel calls them "infamous deserters which the state has a right to punish severely." † There is therefore no necessity for a law declaring such departure unlawful; for it is originally understood to be so, and the very constitution of society explains it. Should any act of the body politic announce this, it would be no "retrospective" law, but, a fresh promulgation of what had been law, and a bill to dispose of their effects, if they had left any, operating as we have said before, in the nature of a warrant, to commissioners appointed for that purpose. If any subsisting law of this state has held out to such, that on returning before a certain day they shall enjoy their possessions, it is unjust to ourselves, and though it cannot be prevented that those who have returned may take the benefit of it, yet it behooves that it be repealed as soon as possible. The bill in question being an act of as high authority as that by which the law was constituted, will be a virtual repeal of it. It indeed ought to be repealed, and we have a right, not only to take away the property of these "absentees" of whom the Senator speaks, but if at any time hereafter they shall come within our power, to "punish them as deserters." Nor will this be thought hard, if we consider, that the angel of God himself enjoins it on the Hebrews to curse the family of "Merem" who were absent in the contest; and some years afterwards, amongst the same nation, in the civil war with the tribe of Benjamin, the whole-canton of Jabelh Gilead was put to the sword "because they came not to the battle."

The Senator supposes, that to confiscate the property of "absentees," who merely resided in the enemy's country during this contest, "is not consonant to the principles, either of natural or common law." We have shewn that it is "consonant to the principles of natural law," and all who know that the feudal system, which is the ground of the common law, made the oath of fealty and service in war, peculiarly above all others, the condition of holding landed property, will not doubt that the common law, above all others, enjoins this service, and if any one shall chuse to understand this beyond a doubt, we shall refer him to lord Hardwick on fines and forfeitures. As to the trial of these men, how shall we try them, when no writ of exigent can lay hold upon them? How shall we proceed against them as subjects, when they are no longer

* Grot. L. II. C. X. 2. Ruther. 55. 2 Earl. 220. † Vattel L. I. C. 19, § 220. ‡ Vattel, ibidem.

ger members of undertakes to purchase American subjects are British conceive how to for my part I as the declaration swallow himself adduced on the first 6, "that th do any thing, th wil things, &c. b its power; for make a man to b that where he re lows the deducti cannot make a m subject who is r subject cannot b attemble cannot the syllogism; an a man a civil bir all civil respect act of banishment that is, can caus He that is not a an act of assembl But these men b ven themselves a

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* It would fan in 4 Bac. 639, th ble a man to have 220, "or can m lord mayor or a ju

† After having authority over him all of parliament allegiance be lives of nature. 4 Ba. C

‡ The fallacy of his using the term jus, and in the o ought to be used i sense.

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