

TREATIES.

TREATY-MAKING POWER.

By the ARTICLES OF CONFEDERATION of July 8, 1778, the following provisions were made relative to treaties by the United States:

Article 6, section 1. "No state, without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any confirmed agreement, alliance or treaty with any king, prince or state; nor shall any person holding any office of profit or trust under the United States or any of them, accept of any present, emolument, office or title of any kind whatsoever, from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility." Vol. I. 5.

SEC. 2. "No two or more states shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue." Vol. I. 5.

Article 9, sec. 1. "The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in cases mentioned in the sixth article; of sending and receiving ambassadors, entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding in all cases what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be decided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of captures; provided that no member of Congress shall be appointed a judge of any of the said courts." Vol. I. 6.

SEC. 6. "The United States in Congress assembled shall never engage in a war nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point except for adjourning from day to day, be determined unless by the votes of a majority of the United States in Congress assembled." Vol. I. 8.

THE CONSTITUTION OF THE UNITED STATES, article 2, section 2, provides — "He (the President of the United States) shall have power, by and with the advice and consent of the Senate, to make treaties, provided

two-thirds of the Senators present concur; he shall nominate, and by and with the advice and consent of the Senate, appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which may be established by law." Vol. I. 17.

Article 6. "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding." Vol. I. 19.

CASES DECIDED IN THE COURTS OF THE UNITED STATES, AS TO THE OBLIGATION AND CONSTRUCTION OF TREATIES.

The obligation of a treaty, the supreme law of the land, must be admitted. The execution of the contract between the two nations is to be demanded from the executive of each nation; but where a treaty affects the rights of parties litigating in court, the treaty as much binds those rights, and is as much regarded by the Supreme Court as an act of Congress. *United States v. The Schooner Peggy*, 1 Cranch, 103; 1 Cond. Rep. 256.

The termination of a treaty, by war, does not divest rights of property already vested under it. *Society for the Propagation of the Gospel v. The Town of New Haven*, 8 Wheat. 464; 5 Cond. Rep. 489.

Nor do treaties, in general, become extinguished, ipso facto, by war between the two governments. Those stipulating for a permanent arrangement of territorial and other national rights, are, at most, suspended during the war, and revive at the peace, unless they are waived by the parties, or new and repugnant stipulations are made. *Ibid.*

Where a treaty is the law of the land, and as such affects the rights of parties litigating in court, that treaty as much binds those rights, and is as much to be regarded by the court, as an act of Congress. To condemn a vessel, therefore, the restoration of which is directed by the law of the land, though restoration be an executive act, would be a direct infraction of that law, and, of consequence, improper. *United States v. The Schooner Peggy*, 1 Cranch, 103; 1 Cond. Rep. 256.

A treaty, under the sixth article, section 2, of the Constitution, being the supreme law of the land, the treaty of peace of 1783 operated as a repeal of all state laws previously enacted, inconsistent with its provisions. *Ware v. Hylton*, 3 Dall. 199; 1 Cond. Rep. 99.

Whenever a right grows out of, or is protected by, a treaty, it prevails against all laws, or decisions of the courts of the states, and whoever may have the right under the treaty, is protected. But, if the person's title is not affected by the treaty, if he claims nothing under the treaty, his title cannot be protected by it. *Ibid.*

The stipulation in a treaty, that "free ships shall make free goods," does not imply the converse proposition, that enemy's ships shall make enemy's goods. *The Nereide*, Bennet, Master, 9 Cranch, 388; 3 Cond. Rep. 439.

A treaty is, in its nature, a contract between two nations, not a legislative act. It does not generally effect of itself the object to be accomplished, especially so far as its operation is infra-territorial; but is carried into execution by the sovereign power of the respective parties to the instrument. *Foster et al. v. Neilson*, 2 Peters, 314; *United States v. Arredondo*, 6 Peters, 735.

In the United States, a different principle is established. Our Constitution declares a treaty to be the law of the land. It is, consequently,

to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision. But, when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract before it can become a rule for the court. *Ibid.*

By the stipulations of a treaty, are to be understood its language and apparent intention, manifested in the instrument, with a reference to the contracting parties, the subject matter, and the persons on whom it is to operate. *United States v. Arredondo et al*, 6 Peters, 710.

A treaty of cession is a deed of the ceded territory, and the sovereign is the grantee; the act is his, as far as it relates to the cession; the treaty is his act and deed, and all courts must so consider it: and deeds are construed in equity by the rules of law. *Ibid.* 738.

Where a treaty is executed in two languages, each the language of the respective contracting parties, both parts of the treaty are originals, and both are intended to convey the same meaning. *Ibid.*

Where a treaty has been ratified according to the provisions of the Constitution, it becomes the law of the land; and it is perfectly immaterial, whether or not the persons who signed it did or did not transcend their instructions. *Hamilton v. Eaton*, *North Carolina Cases*, 77.

A treaty does not necessarily annul prior statutes, if there is no interference with them. *Ibid.*

The stipulations in a treaty between the United States and a foreign power, are paramount to the provisions of the constitution of a particular state, or the confederacy. *Lessee of Harry Gordon v. Kerr et al* 1 Wash. C. C. R. 322.

A treaty between the United States and one belligerent, does not affect a question of prize, as between two belligerents, where the prize (captured from the belligerent making the treaty) is brought by the other belligerent into the ports of the United States; nor is it important that the capturing vessel was commanded by an American citizen. The treaty can bind only the parties to it; and whatever operation it may have on the American citizen, individually, it cannot affect the general question of the validity of prizes made between belligerents. *The Santissima Trinidad*, 1 Brockenb. C. C. R. 478.

A judgment of a state court, where jurisdiction was acquired, not by the common law, but by a statute of a state, which, before the rendition of the judgment, had been virtually repealed by the adoption of a treaty, was voidable, and not void. *Livingston v. Van Ingen*, *Paine's C. C. R.* 55.

In 1780, the ancestor of the lessors of the plaintiff was indicted, he being a British subject, in the Supreme Court of New York, under the act entitled "An act for the forfeiture and sale of the property of persons who have adhered to the enemies of this state," &c.; and in October, 1783, a judgment of forfeiture against his estates was rendered. The treaty of 1783, against any subsequent confiscation, was signed in September, 1783. Held, that the proceedings were void. *Ibid.*

The stipulations of a treaty are paramount to the provisions of the constitution of a particular state of the United States. *Gordon's lessee v. Kerr*, 1 Wash. C. C. R. 322.

Whenever a right grows out of or is protected by a treaty, it is sanctioned against all the laws and judicial decisions of the states; and whoever may have this right is protected. But if the person's title is not affected by the treaty, if he claims nothing under the treaty, his title cannot be protected by the treaty. *Owing v. Norwood's lessee*, 5 Cranch, 344. 2 Cond. Rep. 275.

The adoption of a treaty, with the stipulations of which the provisions

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of a state law are inconsistent, is equivalent to the repeal of such law. *Lessee of Fisher v. Harnden*, 1 Paine, C. C. R. 55.

A treaty goes into operation from the date of the signature, if no other period is agreed upon between the parties. *Lessee of Hylton v. Brown*, 1 Wash. C. C. R. 343.

The Constitution of the United States confers absolutely on the government of the United States the power of making war and of making treaties. Consequently that government possesses the power of acquiring territory, either by conquest or by treaty. *The American Insurance Company v. 356 bales of Cotton*, 1 Peters, 542.

The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace. If it be ceded by treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession, or on such as its new master shall impose. On such transfer of territory it has never been held, that the relations of the inhabitants with each other are changed. Their relations with their former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory. The same act which transfers their country transfers the allegiance of those who remain in it, and the law which may be denominated political is necessarily changed, although that which regulates the intercourse and general conduct of individuals remains in force until altered by the newly created power of the state. *Ibid.*

