

CHAPTER VII.

THE ARTICLES OF CONFEDERATION.

The Articles of Confederation, (formed in 1778,) contained no recognition of slavery. The only words in them, that could be claimed by any body as recognizing slavery, are the following, in Art. 4, Sec. 1.

"The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, *the free inhabitants* of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all the privileges and immunities of *free citizens* in the several States; and *the people* of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions, as the inhabitants thereof respectively."

There are several reasons why this provision contains no legal recognition of slavery.

1. The true meaning of the word "free," as used in the English law, in the colonial charters, and in the State constitutions up to this time, when applied to persons, was to describe citizens, or persons possessed of franchises, as distinguished from aliens or persons not possessed of the same franchises. Usage, then, would give this meaning to the word "free" in this section.

2. The rules of law require that an innocent meaning should be given to all words that will bear an innocent meaning.

3. The Confederation was a league between states in their corporate capacity; and not, like the constitution, a government established by the people in their individual character. The confederation, then, being a league between states or corporations, as such, of course recognized nothing in the character of the state governments except what their corporate charters or state constitutions authorized. And as none of the state constitutions of the day recognized slavery, the confederation of the state governments could not of course recognize it. Certainly none of its language can, consistently with legal rules, have such a meaning given to it, when it is susceptible of another that perfectly accords with the sense in which it is used in the constitutions of the states, that were parties to the league.

4. No other meaning can be given to the word "free" in this case, without making the sentence an absurd, or, at least, a foolish and inconsistent one. For instance,—The word "free" is joined to the word "citizen." What reason could there be in applying the term "free" to the word "citizen," if the word "free" were used as the correlative of slavery? Such an use of the word would imply that *some* of the "citizens" were, or might be slaves—which would be an absurdity. But used in the other sense, it implies only that some citizens had franchises not enjoyed by others; such, perhaps, as the right of suffrage, and the right of being elected to office; which franchises were only enjoyed by a part of the "citizens." All who were born of English parents, for instance, were "citizens," and entitled to the protection of the government, and freedom of trade and occupation, &c., &c., and in these respects were distinguished from aliens.—Yet a property qualification was necessary, in some, if not all the States, to entitle even such to the franchises of suffrage, and of eligibility to office.

The terms "free inhabitants" and "people" were probably used as synonymous either with "free citizens," or with "citizens" not "free"—that is, not possessing the franchises of suffrage and eligibility to office.

Mr. Madison, in the 42d No. of the Federalist, in commenting upon the power given to the general government by the new constitution, of naturalizing aliens, refers to this clause in the Articles of Confederation; and takes it for granted that the word "free" was used in that political sense, in which I have supposed it to be used—that is, as distinguishing "citizens" and the "inhabitants" or "people" proper, from aliens and persons not allowed the franchises enjoyed by the "inhabitants" and "people" of the States.—Even the privilege of residence he assumes to be a franchise entitling one to the denomination of "free."

He says: "The dissimilarity in the rules of naturalization," (i.e. in the rules established by the separate states, for under the confederation each state established its own rules of naturalization,) "has long been remarked as a fault in our system, and as laying a foundation for intricate and delicate questions. In the fourth article of confederation, it is declared, 'that the *free inhabitants* of each of these states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of *free citizens* in the several states; and the *people* of each state shall, in every other, enjoy all the privileges of trade and commerce,' &c. There is a confusion of language here, which is remarkable. Why the terms *free inhabitants* are used in one part of the article, *free citizens* in another, and *people* in another; or what was meant by superadding to 'all privileges and immunities of free citizens,' 'all the privileges of trade and commerce,' cannot easily be determined. It seems to be a construction scarcely avoidable, however, that those who come under the denomination of *free inhabitants* of a state, although not citizens of such state, are entitled, in every other state, to all the privileges of *free citizens* of the latter; that is, to greater privileges than they may be entitled to in their own state; so that it may be in the power of a particular state, or rather every state is laid under the necessity, not only to confer the rights of citizenship in other states upon any whom it may admit to such rights within itself, but upon any whom it may allow to become inhabitants within its jurisdiction. But were an exposition of the term 'inhabitant' to be admitted, which would confine the stipulated privileges to citizens alone, the difficulty is diminished only, not removed. The very improper power would still be retained by each state, of naturalizing aliens in every other state. In one state, residence for a short time confers all the rights of citizenship; in another, qualifications of greater importance are required. An alien, therefore, legally incapacitated for certain rights in the latter, may, by previous residence only in the former, elude his incapacity, and thus the law of one state be preposterously rendered paramount to the laws of another, within the jurisdiction of the other.

"We owe it to mere casualty, that very serious embarrassments on this subject have been hitherto escaped. By the laws of several states, certain description of aliens, who had rendered themselves obnoxious, were laid under interdicts inconsistent, not only with the rights of citizenship, but with the privileges of residence. What would have been the consequence, if such persons, by residence, or otherwise, had acquired the character of citizens under the laws of another state, and then asserted their rights as such, both to residence and citizenship, within the state proscribing them? Whatever the legal consequences might have been, other consequences would probably have resulted of too serious a nature, not to be provided against. The new constitution has accordingly, with great propriety, made provision against them, and all others proceeding from the defect of the confederation on this head, by authorizing the general government to establish a uniform rule of naturalization throughout the United States."

Throughout this whole quotation Mr. Madison obviously takes it for granted that the word "free" is used in the articles of confederation, as the correlative of aliens.—And in this respect he no doubt correctly represents the meaning then given to the word by the people of the United States. And in the closing sentence of the quotation, he virtually asserts that such is the meaning of the word "free" in "the new constitution."