CONSIDERATIONS RESPECTING THE MARRIAGE OF THE DUKE OF MONTPENSIER, WITH REFERENCE TO THE TREATY OF UTRECHT

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Trieste

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CONSIDERATIONS,

&c. &c.

CHAPTER I.

The appeal to the provisions of the Treaty of Utrecht, which has been made in consequence of the marriage of the Duke of Montpensier with the Infanta, sister of the Queen, and heiress to the crown of Spain, has given rise to so much controversy, that, although the subject may be considered a dry one, we have been induced to enter into some details with the view of showing what is the real sense of that treaty, and of the acts incorporated in it. And we have the more readily undertaken to do so, because we have reason to think that the nature of the arrangements made by that treaty is not generally known, owing to the circumstance of its not being contained in the modern collections of treaties. Martens commences only at the year 1760, and Koch does not give more than an abstract of it. It is only to be found in old collections, no longer in general use, such as the voluminous work of Dumon, or that of Chalmers. We propose therefore to cite the text of the most important passages bearing upon the question under discussion. To us the sense of those passages appears to be so very

obvious and simple, that we think it can scarcely be necessary to enter into any lengthened argument for the purpose of expounding them; but we will notice briefly a few of the principal arguments which have been urged against the interpretation which seems to us to be the natural one.

Before doing so, however, it may be as well to remark that there are three different courses pursued by those who wish to escape from the obligations imposed by this treaty.

I. To deny altogether its validity.

II. To endeavour to set aside its provisions by interpretations more or less ingenious.

III. To adopt a course between these two; and to argue that the treaty, though not absolutely invalid, is no longer applicable to the present times.

Upon the first course it will not be necessary to say much, because it is sufficient to ask by what treaty it is supposed that the provisions of the peace of Utrecht have been annulled? Their validity moreover is not, we believe, contested by the French Government. In the Spanish Cortes, indeed, it was boldly stated by some deputies that the treaty was not in force; and that statement was not contradicted by the Spanish Government. But this diversity of language between Spain and France does not serve to confirm the soundness of their respective views upon this subject; but rather tends to show that the Spaniards considered the words of the treaty, and of the acts incorporated in it, to be too clear and precise to be explained away, and thought it easier at once to deny its validity. It is worthy of remark also, that those of the French journals which have admitted the

validity of the Treaty of Utrecht, have nevertheless denied that of one of the acts which are incorporated in it, namely the law of Philip V., excluding the French princes from the throne of Spain, the terms of which are too positive to admit of a quibble. The Spaniards, moreover, may have been influenced by the consideration that, if the Treaty of Utrecht could be set aside, the reciprocal renunciations incorporated in it, of the French princes to the crown of Spain, and of the Spanish princes to that of France, would be thereby annulled, and the Spanish princes would thus acquire a claim to the crown of France superior to that of the House of Orleans. It is needless to observe that such a result would not suit the views of the French Court or Government, and hence they have been reduced to the necessity of admitting the validity of the treaty, and trying to alter its natural signification.

There was another motive for denying the validity of the law of Philip V., which excludes all French princes from the succession to the Spanish crown.

The 3rd paragraph of the 47th article of the Spanish Constitution is as follows:—

"Neither the sovereign, nor his immediate successor, are allowed to contract marriage with any person excluded by the law from the succession to the crown." Now the Duke of Montpensier being excluded by the law of Philip V., his marriage with the heiress to the crown was a direct violation of the Spanish constitution.

It has been said, indeed, that this article of the Constitution was intended to apply only to the family of Don Carlos. But there is no such distinction made

by the words of that article; and at the time when it was framed it was stated by the Minister of the day that the article was intended to apply equally to all those who were excluded from the succession. We think it unnecessary to say more on this head.

II. Before entering upon the consideration of the various arguments brought forward under the second head, it will be advisable to make a few remarks for the purpose of stating clearly what is the precise question under discussion. A great deal has been said and written, more especially in an evening London Journal which receives its inspirations from the other side of the Channel, upon the assumption that those who have invoked the faith of the Treaty of Utrecht, have contended that it contains a stipulation expressly prohibiting the marriage of any prince of the blood of France with a Spanish Infanta. And the Journal above alluded to has been continually harping upon this one idea, which it has imported from foreign parts, and stating with an air of triumph that the word "*marriage*" is not so much as mentioned in the treaty. Now no one who has made himself acquainted with that treaty ever pretended that it contained any stipulation such as that above described. There could be no reason for forbidding all marriages between members of the different branches of the House of Bourbon, many, and indeed most of which might be perfectly innocent. Thus the marriage of a French princess with a Spanish prince might be quite harmless, because, as the Salic law exists in France, no claim to the crown of that country could thereby be conveyed to the issue of that marriage. But, because the treaty does not expressly prohibit all such

marriages, it does not follow that each particular one must be consistent with the spirit of the treaty. It appears to us that, if the consequences of any act be inconsistent with the spirit of a treaty, the act itself is so likewise, even though it may not be prohibited in express terms. For instance, if a King of France had married a Queen of Spain, it might equally be alleged that no express stipulation was thereby violated. But would such a marriage be consistent with the spirit of the treaty?

The assertion which we make, however, with respect to the treaty of Utrecht is not that it expressly prohibits the marriage of the Duke of Montpensier with the Infanta Luisa Fernanda, but that it absolutely excludes the children of the Duke of Montpensier from the succession to the crown of Spain; and if there is any meaning in words, the truth of that assertion will be fully established.

With respect to the fact that the word "*marriage*" is not to be found in the treaty, we can only look upon the manner in which that fact has been stated, and the frequency with which it has been repeated, as extremely puerile, and as a proof that those who prompted the journal which has laid so much stress upon it, are conscious of the weakness of the cause which they advocate. For, although that word may not be used in the treaty, there can be no doubt that the case of "marriage" is included in the comprehensive phrase, "*de quelque manière que la succession puisse arriver à notre ligne,*" which is contained in the act of renunciation of the Duke of Orleans of 1712. And, even supposing it were not so, the omission would be of little importance in the present case.