

which has been produced, and bears date the 20th August 1812, either under the authority of the Prince Regent's order before mentioned, or of the general powers vested in the Lieutenant Governor of the Province by his commission as Lieutenant Governor, and Commander in Chief, and Vice Admiral, and his Majesty's instructions which accompany them.

The question therefore, resolves itself into four points.

1st Whether the vessel became a commissioned ship by the order in council alone.

2d Whether she was commissioned by the instrument granted, upon the supposition that it was authorized by the order in council.

3d Whether by that instrument itself, independent of the order in council, as a mere embargo authority.

4th As a letter of marque and reprisals.

1 In the first point of view. What is a commissioned ship? It is a vessel authorized by an express commission emanating from a competent authority, directed to its commander to exercise hostilities against a particular country, or confining it to private ships as it is described in the Prince Regent's order for distribution, such a vessel as has a commission of letters of marque and reprisal. But the order is not designed for the exercise of hostilities it is only to detain and bring into port. It is of the nature of a provisional Embargo, and was so considered by the Prince, in the subsequent order of the 13th October. An authority for any other purpose than to take as prize, is foreign to the question, it must be a commission to take jure belli. Neither could a vessel be said by this order to be commissioned. It was a general order, and no particular commission was in fact issued under it, or directed to be issued.

2 If the commission from the Governor was founded merely upon this order it could have no further authority, and could be subject to no other construction than the order itself, and therefore could have no further effect in commissioning the vessel.

3 It was argued that this instrument was not a letter of marque, or warlike commission, but a mere authority to make a peaceable seizure, something in the nature of an Embargo, and which was a measure which every Governor of a Province, as of common right had full power to have recourse to whenever occasion required. But an Embargo is of a very different nature. It is a temporary detention of vessels within the ports of a country, and consequently within the operation of the municipal laws, and power of the country. To seize the vessel and goods of the subjects of another country, upon the high seas, whatever may be the ultimate object of it, is *prima facie* an hostile act, and though merely provisional, can flow only from the same powers which can declare war, and order general reprisals.

4 This instrument in its form is a letter of marque and reprisal. The operative part of it is couched in the same words. "I