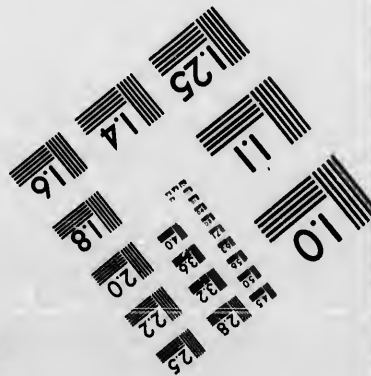
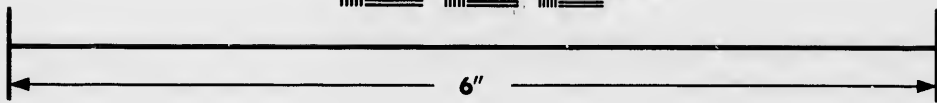
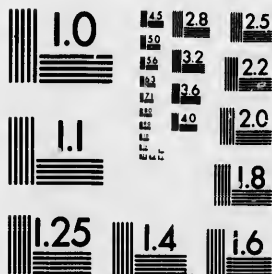


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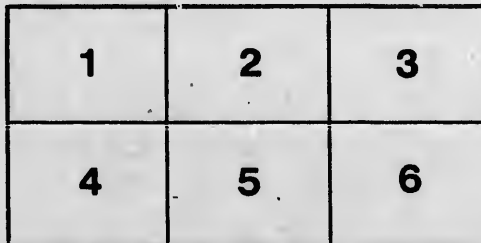
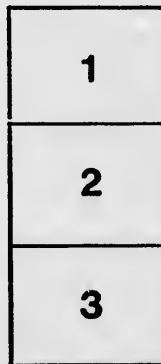
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ANTICIPATION  
OF  
MARGINAL NOTES  
ON THE  
Declaration of Government  
OF THE  
NINTH OF JANUARY, 1813.  
IN THE  
AMERICAN NATIONAL INTELLIGENCER.

---

Festinare nocet, nocet et Cunctatio sape;  
Tempore quæque suo qui facit, ille sapit.

1813.

BR

973.521

A56

Jan. 12, 1968

## PREFACE.

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*Audi alteram partem* is a maxim of some antiquity, and of such universality that, from the sage to the schoolboy, it is uniformly allowed that no cause can be fairly decided without it. *Qui statuit aliquid, parte inaudita altera, Æquum licet statuerit, haud æquus est.*

It is to be regretted that the great affairs of Nations cannot be brought within the compass of this rule, and, considering the importance of the American Question, I confess, I should prefer waiting for the remarks of the Government of the United States, on the Declaration of the 9th ultimo, to discussing it this day.

As these cannot be had, however, I have endeavoured to provide a substitute in the shape of an American Newspaper Comment on that act.

It supposes a Commentator of some candor; and moderation; not violently in love with our measures, but desirous of Peace with us; no statesman, nor partizan of the Government; but a culler of authentic papers;—affecting to contradict nothing that can, and to assert nothing that cannot, be proved.

*February 18th, 1813.*

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## PREFACE TO THE SECOND EDITION.

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**I**N consenting to the publication of a second edition of this work in the Pamphleteer, the author is influenced by the two-fold consideration, of the ephemeral nature of the work; and the utility that may possibly be derived from its preservation. It certainly controverts very general opinions; not to say matters of fact, asserted under very grave authority. Yet a re-consideration of the subject, with leisure to inspect the documents hastily referred to from memory, has produced no wish to amend, and very little to explain or embellish, either the assertions or the sentiments contained in it.

With an honest desire to have the important subjects it treats of fairly before the public; a conviction of the truth it portrays; and a humble assurance of a readiness to abandon any position that may be shown to have been

erroneously taken up ; the author commits it to a more durable form than it at first assumed.

If it be too much to hope that it will do any thing towards checking the strong current of what he conceives an erroneous opinion ; it is very possible a recurrence to it on a future day may show the necessity of a more critical investigation of ministerial pretensions, in time to prevent the mischief that must ensue from allowing them to pass current upon the world.

If there be nothing in a revision of the premises to excite a desire to alter them ; so neither has the author found a motive for such desire in any thing that has since occurred.—In the *Times* of the 22nd of February, a miserable “If” of Buonaparté, (the strongest evidence that he cannot cheer his Myrmidons with the least hope of a connexion with America in the war,) is distorted into an alliance with that country. And, in the same paper of the 6th instant, the epithets of forgery and perjury, that have been used again and again in our own Senate, not only against American certificates of citizenship, but, unfortunately with too much truth, against the very measure to which the President of the United States applies them, have stamped his Message with the character of a document of the most violent and infuriated description.—So cruelly have the public been deceived in respect to the question of the wanton impressment of American seamen, that a man shall walk from Hyde Park corner to Charing Cross, and from Charing Cross to the Exchange, without meeting a subject that does not believe that the cause of complaint is on the side of Great Britain. Nay, the capture of our frigates is unblushingly, and very generally, ascribed to the disaffection of our own seamen fighting for America, with a rope round their necks. Whereas it is notorious all over America, and has been officially communicated to



this Government more than four years ago, "that already the ships of war of the United States had been ordered not to receive any of them, and to discharge such as were at that time on board;"<sup>1</sup> although we have seen no reports of any such being found on board the *Nautilus* that fell without resistance into the hands of our men of war; nor on board the *Wasp*, whose crew, after the capture of the *Frolic*, cannot be rated inferior to any; nor on board the *United States*, where, on the contrary, the officers of the *Macedonian* are said to have made diligent scrutiny without finding a single Englishman or English boy, save one solitary lad of sixteen.—If this report be untrue; the Purser, who is in England, can contradict it.

But the obvious cause of those disasters that have lowered that *Pavilion* that has hitherto rode proud Autocrat of the mountain wave, is the last to be taken into the account.—We look not to the numbers of those men who have been drilled to the trade of death, on board our own Men of War, by a discipline that taught their arm to fight, while it filled their bosoms with that deliberate vengeance that renders discipline invincible. And yet to understand this, we are only to consider what we should expect from our own men, dragooned and scourged, in the same manner, on board the ships of any foreign nation in the world.—If we believe that an honest English Tar would fight on his stumps in such a case, when his legs were shot away; why should we doubt the American doing the same? One would suppose there could hardly be a want of physical strength, or moral valor, in such a man, while a vein of his body was undrained.

<sup>1</sup> Erskine to Canning 4th Dec. 1808.

Time was, when so direct a consequence of such a crying sin would have been considered a visitation of providence. So evident a concatenation of the crime and the penalty rarely occurs ; but we *will not* see it. Ten minutes is ample time to perceive it ; but it will take ten years to comprehend it.—In about that time, perhaps, all the world will be of one opinion on the subject ; as now, on the long contested question of the American revolution.—This is the usual course of things—*Labitur et labetur*—In about that time too, we shall discover that the American propositions on this subject did not exact the surrender of any one of our Maritime Rights, but only such wholesome (it may be said profitable) modification of the practice as would remove a question involving every thing valuable in life, and life itself, from a party tribunal.—We need not look forward indeed for the evidence of this ; we may find it in the letter of instructions of Mr. Madison to Messrs. Monroe and Pinkney of so old a date as the seventeenth of May, 1806 ; where the proposition is not only reduced to a stipulatory form, which leaves the British principle untouched ; but is made in the very words that were agreed to by Lord St. Vincent, with the acquiescence of Lord Hawkesbury and Mr. Addington, in the project of a convention with Mr. King on the approaching renewal of the war ; and then only frustrated by an exception on the obsolete ground of peculiar privilege in the narrow seas.—But we *will* look forward ; and we *will not believe* a thing that happened seven years ago till ten years hence.—About that time too, we shall discover that the Commissioners, appointed in the Fox administration, to treat with the American Commissioners, waited only for the subsiding of a popular prejudice (most artfully raised by their opponents in politics) to accommodate and ad-

just this matter to the satisfaction of all concerned. This may be easily perceived now, in their subsequent correspondence with Mr. Canning ; but we *will not* see it in less than ten years, unless, (which God grant) we should agree on similar terms with some little technical difference ; and then it will be all fair enough to say they would have done it.

The subjoined correspondence' with the Editor of the Times, part of which has been printed in that paper and part refused insertion, is added with an equal view to exhibit these subjects in the light which the author conceives to be the true one; with equal apprehension of the small chance of their meeting attention at present, and with equal confidence that time will develop the truths they contain ;—the truths ;—for, be it remembered, they pretend to no prophetic character ; nor will the author vouch for the correctness of any conjecture that these publications may contain.—There is an opinion hazarded, for example, in the letter of the 24th of October last to the Editor of the Times, that Marquis Wellesley differed pretty stoutly from his colleagues on the American subject ; yet his Lordship is reported to have said since, in the House of Lords, that the American government had been affected with a deadly hatred towards this country, and a deadly affection towards France. This tended to invalidate the former opinion ; and now Vetus, who is supposed to know the noble Marquis's sentiments as well as his own, comes forward to say that he would have proposed more conciliatory measures to America (an idea that his intercourse with the American legation does not discourage ;)<sup>2</sup> and that, had he failed here, he

<sup>1</sup> These will be given in our next No. Ed.

<sup>2</sup> Vide Letters from a Cosmopolite to a Clergyman, p. 21, 31, and 46.

would have taken more vigorous measures against them.—The heart of a statesman is a bottomless pit.—If we can suppose, with Verus, that his Lordship contemplated, or proposed to his late colleagues, measures of greater conciliation with America, than they were willing to adopt; we may take him with us beyond a satisfactory arrangement of the question of impressments, (which he knew to be the *sine qua non*,) to the restoration of the ships taken under the Orders in Council; which is clearly to be inferred by what he said on the subject to Mr. Smith; (the American Chargé d'Affaires;') nor is it improbable that this is one of the cases on which he differed from his colleagues. If this were the view of the Noble Marquis, the prosecution of it would evidently have saved him the trouble of trying his second alternative; and on the contrary, the troops in Canada and Nova Scotia might have formed the garrison of Santona, or have been employed in a flying squadron in the Bay of Biscay, to land occasionally under some one of the heroes of the Peninsula, to the great annoyance of Marmont, and the completion of that destruction of his army, which his noble brother had so well begun at Salamanca.

What can have led the noble Marquis to think that his conciliatory measures would not have produced this effect, it is difficult to imagine. And one must suppose that he has that idea when he charges the Government of the United States with a deadly hatred to England, and a deadly affection for France. “Il n'appartient qu'aux grands hommes d'avoir des grands défauts.” Perhaps his serene highness is thrown into a passion whenever the language of Mr. Pinkney's letter

<sup>1</sup> Cosmopolite, *ubi supra*.

of the fourteenth of January, 1811, occurs to his mind. It is a document, however, that every teacher of statistics ought to put into the hands of his pupil.

It is grateful to see with all this, that the lofty mind of the noble Marquis is not inflexible. And his manners, we all know, are those of a perfect gentleman.—In the Times of the seventeenth ult. he is reported to have said, (on an India subject too where he is so paramount) that “though he had been anxious to extend the measure in question without delay; he now believed that the sentiments which prevailed in other quarters, among persons with whom he had often differed, were a proper correction of his opinions.”—This is really very pretty: one step further, in the acknowledgment that he had been chastised into conviction, (the *pas chrétien*,) would place the noble Marquis on the pinnacle of magnanimity.

There is another great man,—a very great man,—on whom the following sheets have not been sparing of animadversion. Yet the man is hardly to be found that has more strenuously defended Sir William Scott, than the author, according to the measure of his influence and ability.—If, therefore, he can defend him no longer, it is, because, against all the bias of prejudice, and all the pride of consistency, he finds the late decisions of the learned Judge, not less incompatible with his former doctrines, than with those of the original fountain of equity, that flows in the heart of man.—In this secession, the Author is countenanced by a very excellent discussion of the subject, in an unparalleled periodical publication, the *Edinburgh Review*, of February, 1812, No: xxxviii. Although, in that critique, the writer has put a construction on the words of the learned Judge which he has since denied, and surely had right to deny, for

no one can so well interpret his words as the speaker ; yet their ambiguity has been sufficient to create a deal of very grave discussion in the court itself, on a subject of no less magnitude than whether the court is, or is not, bound by an order of the privy council, which it should find contravening the law of nations. Why should the court hesitate to pronounce boldly on this question at once?—it was incidentally, if not pointedly, before it in the case of the Fox ; and we all know, that if an irrelevant point is raised in argument ; to settle that point, is one of those valuable practices of the learned Judge, that give to his decisions the character of lectures on Maritime law, and create an useful addition to the catalogue of cases that may on a future day be referred to his authority.—Such pronouncement would not of necessity decide the question, whether the orders in council were of this description ; though it is worthy of particular remark, that if the same indulgence of interpreting their own meaning were allowed to the administration that issued the orders of May, 1806, and January, 1807 ; the pernicious effects of the subsequent orders would have found no excuse in those.—It is worthy of particular remark, and fairly to be inferred from the debates on the subject, that not a man of that administration, on whom the sin of the initiative has been artfully thrown, would have allowed of the condemnation of any one of those ships, or have admitted a *Retorsio versus communem amicum*, Qui injuriam non fecit, to sanction a measure which, to be justified by the law of retaliation, should be exercised only against the perpetrator of the injury.

It is not intended, however, to bring any party question into discussion. The political sectary will look in vain in these pages for any personal com-

mendation or reprobation on that account ; or for the justification of any measure, not justifiable in itself. At the same time, it is far from the author's intention to reprehend with severity those errors in others, to which he has shown himself liable ; and which are indeed to be found inscribed on the pedigree of every son of Adam.

If an end could be put to the war with America, and the subjects of dispute between the two countries brought into discussion before an equitable tribunal ; it would matter but little to what administration the nation was indebted for so great a benefit. True it is, that on all American concerns, the nation has to deplore the loss of the philanthropic statesman, who considered every blow struck at that country as recoiling on this ; and it would be rather cynical, looking to this object, not to desire a participation in the national councils by the amiable *Elève* to whom he has left with his mantle a double portion of his good spirit. It never could have been the intention of either of these men to invade the rights of the United States. And, if the order of May, 1806, according to the latitude of its terms and the construction which the opposition, become Ministers, found it convenient to put upon it, may be literally pronounced illegal ; we know, on the other hand, that it was neither intended, nor suffered, by those who issued it, to work any practical injury or invasion of the rights of neutrals. It is by no means a solecism, in the history of diplomacy, for a state to issue an order, on the spur of a sudden occasion, which it is easily induced on reflection or remonstrance to abandon. An order not unlike this, but much more extensive, and less equivocal in the invasion of neutral rights, was issued in the first year of William and Mary, in which the Dutch concurred, but it was found not to



conform with the law of nations, and was accordingly withdrawn. The order of the sixth of November, 1793, issued in the Pitt administration, and supposed to be chiefly the work of Dundas, was remonstrated against, as soon as it was known, by the Merchants of London in the American trade, as likely to produce a war with the United States. It was revoked on the eighth of January, 1794; and the mischief done in the mean time was afterwards repaired by a commission mutually appointed between this country and the United States.

That country must be miserably poor in honor, that cannot afford to acknowledge a fault; and if we look for a man or a minister free from error, we must seek him in another world. But if our pride did not blind us, we might see ample room for atonement, and consequent reconciliation.

The declaration of war on the part of the United States, was injudicious and most unfortunate. Unjust, we can hardly call it, when we consider what we should do with any nation that should impress our seamen, or take our ships under arbitrary orders, which we, in common with all the rest of the world, and which a preceding administration of their own, whose seats were hardly cold, denounced as illegal also. But while the piracies of France remained unatoned, the honor of the United States was shielded by the same consideration, which, so much to the dishonor of both the great belligerents, had shielded it before. It was still impossible to strike a blow at one without aiding the other; and it ought not to have been done. The provocation, it must be allowed however, was beyond all bearing. The orders in council were continued, without the most distant encouragement to hope for their being removed, long after the French edicts were withdrawn; and even



with a threat of retaliation against the pacific measures adopted by the United States to bring us to reason. The horrible and insupportable impressment of their seamen, in which the French never had a share, was continued by us alone.

Goaded to war, and obliged, if they embarked in it, to choose their enemy; there could be no doubt, on which, hostilities must fall in the first instance. But the remarkable abstinence from any connexion with France, and the continued injunctions of the President to avoid it, through all the scenes of prosperity and adversity which that power has encountered; the particularly good understanding that he has maintained with Russia, the enemy of that power; the immediate offer of an armistice to us, as soon as the sword was drawn, on terms that posterity will be astonished were not accepted; the policy of the government of the United States at this hour, of excepting from the pressure of the war those portions of our force that are employed against France, by allowing supplies to the Peninsula; all indicate that that government is seeking the redress of its grievances here, not only without the desire of aiding the enemy of England, but with the desire of annoying him. And the subjoined extract from the *National Intelligencer*, which is supposed by good judges to be from the pen of the President, will show to every man, who is willing to be informed, what may be expected to be opposed to the common enemy, in case of an honorable adjustment of the differences between this country and the United States.

As one of the points at issue, and the prominent point indeed, seems to be that which relates to the naturalised seamen;—(a bagatelle in respect to the numbers of this description of persons that can be supposed to

have passed the Ordeal of the American law;) a reference to the following extract from our own statute book, while it demonstrates the much greater facility with which we admit foreign seamen into all the privileges of a British subject, in which, having specially invited, we are specially bound to protect them; will also demonstrate that, with a sincere desire to accommodate, there can be no difficulty, on the score of national honor, in a reciprocal agreement to forbear the practice in future, without any retrospect to the past.

“ And for the better encouraging of foreign mariners and seamen, to come and serve on board ships belonging to the kingdom of Great Britain; be it further enacted by the authority aforesaid, That every such foreign mariner or seaman, who shall from, and after the said twenty-fifth day of April, have faithfully served on board any of her Majesty’s ships of war, or any privateer, or merchant, or trading ship or ships, vessel or vessels, which at the time of such service shall belong to any of her Majesty’s subjects of Great Britain, for the space of two years, shall, to all intents and purposes, be deemed and taken to be a natural-born subject of her Majesty’s Kingdom of Great Britain, and have, and enjoy, all the privileges, powers, rights, and capacities which such foreign mariner, or seaman could, should, or ought to have had and enjoyed, in case he had been a natural-born subject of her Majesty, and actually a native within the Kingdom of Great Britain.” (6. Anne. c. 37. sec. 20.)

The same privilege is re-enacted 13. Geo. II. c. 3. with the exception required by the intermediary statute of 1. Geo. 1, c. 4. of all naturalised subjects from becoming members of parliament, or of the privy council.—It is twice mentioned by Blackstone with the emphatical

words that such foreign seaman is *ipso facto* naturalised; and referred to in a treatise published in the present century by Mr. Abbott, on the law relative to merchant ships and seamen.

Let this be compared to the tedious process of five years' residence under record, and all the formalities of the American law, which a seaman must encounter like every other man; and it will hardly be asserted, by an assertor of our own rectitude, that undue encouragement is held out by the American government, to entice our seamen into their service.

April 19, 1813.

ANTICIPATION  
OF  
MARGINAL NOTES, &c.

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Paragraph 1.—“ The earnest endeavours of the Prince Regent to preserve the relations of peace and amity with the United States of America having unfortunately failed, his Royal Highness, acting in the name and on the behalf of his Majesty, deems it proper publicly to declare the causes and origin of the war, in which the Government of the United States has compelled him to engage.”

Have any such been shown?—Your Government has adopted no measure at all calculated to avoid the long threatened War; but such as it was reluctantly compelled to adopt by the cries of the Nation; and this in two cases liable to objection; 1st, as not explicitly renouncing the illegal Blockades; and 2dly, in reserving the right of restoring the Orders in Council on a contingency depending not on America, but on France.

Par. 2.—“ No desire of conquest or other ordinary motives of aggression, has been, or can be with any color of reason, in this case, imputed to Great Britain; that her commercial interests were on the side of peace, (if war could have been avoided, without the sacrifice of her maritime rights, or without an injurious submission to France,) is a truth which the American Government will not deny.”

Take away this parenthesis, and the fact asserted here, that the commercial interests of Great Britain were on the side of Peace, is a

truth which the American Government will not deny.—Neither is it probable that any Government can be mad enough to contemplate conquests in America, three times as populous, and ten times as powerful, as she was when you made the attempt to keep her in a state of subjugation.

Par. 3.—“ His Royal Highness does not, however, mean to rest on the favorable presumption, to which he is entitled. He is prepared by an exposition of the circumstances which have led to the present war, to show that Great Britain has throughout acted towards the United States of America with a spirit of amity, forbearance, and conciliation; and to demonstrate the inadmissible nature of those pretensions which have at length unhappily involved the two countries in war.”

The spirit of amity, forbearance, and conciliation, here generally asserted, and the inadmissible nature of the American pretensions, will be adverted to as they present themselves in the sequel.

Par. 4.—“ It is well known to the world, that it has been the invariable object of the Ruler of France to destroy the power and independence of the British Empire, as the chief obstacle to the accomplishment of his ambitious designs.”

What has America to do with that? just so much and no more than with the equally well known object of the ruler of Great Britain to destroy the power and independence of the French Empire; *i. e.* nothing at all.

Par. 5.—“ He first contemplated the possibility of assembling such a naval force in the Channel as, combined with a numerous flotilla, should enable him to disembark in England an army sufficient, in his conception, to subjugate this country; and through the conquest of Great Britain he hoped to realize his project of universal empire.”

Par. 6.—“ By the adoption of an enlarged and provident system of internal defence, and by the valor of His Majesty's fleets and armies, this design was entirely frustrated; and the naval force of France, after the most signal defeats, was compelled to retire from the ocean.”

Par. 7.—“ An attempt was then made to effectuate the same purpose by other means: a system was brought forward, by which the Ruler of France hoped to annihilate the commerce of Great Britain, to shake her public credit, and to destroy her revenue; to render useless her maritime superiority, and so to avail himself of his continental ascendancy, as to constitute himself in a great measure the arbiter of the ocean, notwithstanding the destruction of his fleets.”

Answered in the 4th Paragraph.

Par. 8.—“ With this view, by the Decree of Berlin, followed by that of Milan, he declared the British territories to be in a state of blockade; and

that all commerce, or even correspondence, with Great Britain was prohibited. He decreed that every vessel and cargo, which had entered, or was found proceeding to a British port, or which, under any circumstances, had been visited by a British ship of war, should be lawful prize: he declared all British goods and produce, wherever found, and however acquired, whether coming from the Mother Country or from her colonies, subject to confiscation; he further declared to be denationalized, the flag of all neutral ships that should be found offending against these his Decrees; and he gave to this project of universal tyranny, the name of the Continental System."

Here the invasion of Neutral Rights is begun at the wrong end; and two French Decrees are brought together, between which, two British Orders in Council intervened. The Decree of Berlin was preceded by, and predicated upon, the Order of Blockade of the 16th of May, 1806, and the Decree of Milan was subsequent to the Orders in Council of January and November, 1807, and was a direct consequence of the latter. Our Government indeed have not allowed the invasion of their rights by one Belligerent to justify that by the other; and have therefore, in the resistance they have made to them mutually, and their proposals to each for accommodation, fortunately for your Ministers, *sua si bona norint*, put the priority of aggression out of the question. The Blockade of May, 1806, was not accompanied by that adequate and stationary force, which every writer on the subject in the law of Nations, and none more than the very profound and learned Judge at the head of your Court of Admiralty, has pronounced necessary to constitute its legality.—It was therefore illegal.<sup>1</sup>—We are aware of the construction put upon this Act by the administration that issued it, and we are not aware of any actual injury having resulted from it to the United States under that administration. But, whatever may have been the intention of Mr. Fox in respect to the application of a sufficient force to the stations included in that notification, it is notorious that no such force ever was so applied, or maintained in the requisite strictness to confirm its legality. And it is not less notorious that the succeeding administration, constituting the greatest part of the present Ministry, predicated on this precedent their right to extend, by proclamation only, their inhibition of neutral trade with the Enemy's ports, before which there was not ostensibly, or even avowedly, a single ship of war; and proceeded under such proclamation to the confiscation of every ship they could find proceeding to such destination.

The name that Bonaparte chose to give to his system, is of little importance; but since it is mentioned, it may be as well to observe that

<sup>1</sup> See End. Note A.

it has no reference to America.—The Continental System evidently referred to those states upon the Continent of Europe, which, by conquest or treaty, were brought to the adoption of his views.

Par. 9.—“ For these attempts to ruin the commerce of Great Britain, by means subversive of the clearest rights of neutral nations, France endeavoured in vain to rest her justification upon the previous conduct of His Majesty's Government.”

Refer to paragraph 8.

Par. 10.—“ Under circumstances of unparalleled provocation, his Majesty had abstained from any measure which the ordinary rules of the Law of Nations did not fully warrant. Never was the maritime superiority of a Belligerent over his enemy more complete and decided. Never was the opposite Belligerent so formidably dangerous in his power, and in his policy, to the liberties of all other nations. France had already trampled so openly and systematically on the most sacred rights of neutral powers, as might well have justified the placing her out of the pale of civilized nations. Yet in this extreme case, Great Britain had so used her naval ascendancy, that her enemy could find no just cause of complaint; and in order to give to these lawless decrees the appearance of retaliation, the Ruler of France was obliged to advance principles of maritime law unsanctioned by any other authority than his own arbitrary will.”

The Rights of Neutrals depend not on the comparative power of the Belligerent;—they have nothing to do with it. And in respect to the principles of maritime law advanced by the Ruler of France, to say that America had nothing to do with them is saying too little. They were not only not adopted by America, but absolutely and distinctly disavowed, as well in her treaty with this country, as in a diplomatic correspondence of so recent a date, and so spirited a style, that it is utterly inconceivable that any member of the administration can have forgotten it.<sup>1</sup>

Par. 11.—“ The pretexts for these decrees were, first, that Great Britain had exercised the rights of war against private persons, their ships, and goods; as if the only object of legitimate hostility on the ocean were the public property of a state, or as if the Edicts and the Courts of France itself had not at all times enforced right with peculiar rigor; secondly, that the British orders of blockade, instead of being confined to fortified towns, had, as France asserted, been unlawfully extended to commercial towns and ports, and to the mouths of rivers; and thirdly, that they had been applied to places, and to coasts, which neither were, nor could be actually blockaded. The last of these charges is not founded on fact; whilst the others, even by

<sup>1</sup> See on this subject a small Pamphlet, entitled, “ A letter from a Calm Observer to a Noble Lord, on the subject of the late declaration, relative to the Orders in Council.” (Galé and Curtis, 1812.)



the admission of the American Government, are utterly groundless in point of law."

Here it is admitted that the American Government disavow Bonaparte's principles of Maritime Law.—The knowledge of this fact is not derived from any document subsequent to the declaration of the 21st of April last. Why then was America insulted in that declaration by being called on to disavow them? "The British Orders of Blockade, had, as France asserted, been unlawfully extended to commercial Towns and Ports, and to the mouths of Rivers; and thirdly, they had been applied to places, and to coasts, which neither were, nor could be, actually blockaded. The last of these charges is not founded on fact." Does this assertion apply to the "*neither were,*" as well as to the "*nor could be?*" What a miserable equivocal!—That the proclamation extended to places that were not blockaded is beyond all doubt, since many ships arrived at, and sailed from, the ports comprehended in the notice; but, that they could be blockaded, at least, one at a time, will not be disputed. The actual is the only legal blockade. For this the Neutral foregoes his Trade to the port, whose entry is manifestly dangerous, allowing the Belligerent to distress his Enemy into reasonable terms of peace. But if this distress, which is the essence of the Right, cannot be maintained; and still more *if instead of distressing you are supplying the Enemy yourself,* you cannot expect the Neutral to forego his trade.

Par. 12.—"Against these decrees, his Majesty protested and appealed; he called upon the United States to assert their own rights, and to vindicate their independence, thus menaced and attacked; and as France had declared, that she would confiscate every vessel which should touch in Great Britain, or be visited by British ships of war, his Majesty, having previously issued the Order of January, 1807, as an act of mitigated retaliation, was at length compelled, by the persevering violence of the enemy, and the continued acquiescence of neutral powers, to revisit, upon France, in a more effectual manner, the measure of her own injustice; by declaring in an Order in Council, bearing date the 11th of November, 1807, that no neutral vessel should proceed to France, or to any of the countries, from which, in obedience to the dictates of France, British commerce was excluded, without first touching at a port in Great Britain, or her dependencies. At the same time, his Majesty intimated his readiness to repeal the Orders in Council, whenever France should rescind her decrees, and return to the accustomed principles of maritime warfare; and at a subsequent period, as a proof of his Majesty's sincere desire to accommodate, as far as possible, his defensive measures to the convenience of neutral powers, the operation of the Orders in Council was, by an order issued in April, 1809, limited to a blockade of France, and of the countries subjected to her immediate dominion."



His Majesty had an undoubted Right to protest as much as he pleased against the French Decrees, as the French had to protest against his Decrees; but he had no right, nor certainly any occasion, to call on the United States to assert their own rights;—they have never been invaded by either Belligerent, without meeting with prompt resistance, save in the Case of the English Blockade of May 1806, of which we shall have occasion to speak again under paragraph 17.—And here we see the reason why the course of the different Orders in Council and Decrees is deranged. “As France had declared that she would confiscate every Vessel that should touch in Great Britain, or be visited by British ships of war, his Majesty was compelled at length to declare on the 11th of November 1807, that no Neutral Vessel should proceed to France.”—Now mark, gentle reader, that this threat of confiscation, in consequence of what the French call a visit by British ships, this “persevering violence of the enemy,” in which the neutral nations of Lilliput, Brobdingnag, and Laputa acquiesced, (for these were the only neutral nations except the United States, whose acquiescence we mean to dispute) came forth for the first time in the Milan decree bearing date the 17th of December of that year.—No doubt it did operate in the production of the *previous* order of the 11th of November, which the French Tiger pretends to have caused it; but this was by a sort of anticipation, which frequently occurs in the disputes between great Belligerents,<sup>1</sup> which it is difficult for simple and peace-seeking neutrals to understand; and with which, if the Mathematicians in Laputa aforesaid choose to amuse themselves, the United States, at least, have no concern. But as to any acquiescence in it when it did appear, which was quite as soon as the United States knew any thing about it, we assert, and challenge contradiction to the assertion, that to this and all the encroachments of France, the most prompt and spirited resistance was made. Our correspondence with France on this subject is before the world.—The instructions of Mr. Madison, and the letters of General Armstrong, cannot be inspected without convincing every impartial inquirer of this fact.—Is not Bonaparte charged by General Armstrong, *totidem verbis*, with a breach of his own treaty and of the law of nations, and told, that, “to appeal to them therefore, would be liti-

<sup>1</sup> Cadore (14th February 1810) excused his Government to General Armstrong for the issue of the Decree of Berlin, dated the 21st November 1806, as well as that of Milan, dated the 17th of December 1807, as “the necessary consequence of the British Orders in Council, and above all, of those of November 1807.” Famous logicians! *par nobile fratrum belligerentium!*

rally appealing to the dead?" and does not the publication of such a letter to the world, show, that there *can be no* connivance or good understanding between the two Governments? Please to show us something as spirited as this, in the letters of any other Minister at the Court of the Tuilleries, or any thing so galling in the correspondence of the American Minister, at the Court of St. James's.

Par. 13.—“Systems of violence, oppression, and tyranny, can never be suppressed, or even checked, if the power against which such injustice is exercised, be debarred from the right of full and adequate retaliation; or, if the measures of the retaliating power are to be considered as matters of just offence to neutral nations, whilst the measures of original aggression and violence are to be tolerated with indifference, submission, or complacency.”

Retaliate as much as you please upon your enemy.—Cut each other's throats, if you will; we can but regret the mutual depravity which creates so much distress to our fellow men of other nations. But we have had no concern in your wars: otherwise, we should not have been neutrals.—We have even no concern in them now that we are Belligerents.—We cannot fight you both at a time; but do us justice, and you will soon see that our arms will be turned against your enemy.—We can beat his frigates, as well as yours, as the war of 1798 can testify, though they cannot pretend to a disparity of size, and though the arm of our sailors is not loaded against them with the tenfold vengeance that your impressments have excited.

Look to your own construction of the Blockade of May 1806, we mean the construction of the present administration, a question which cannot be agitated but to your disadvantage, and which we are willing to forego, as we have told you, in discussion upon.

Par. 14.—“The Government of the United States did not fail to remonstrate against the Orders in Council of Great Britain. Although they knew that these Orders would be revoked, if the decrees of France, which had occasioned them, were repealed, they resolved at the same moment to resist the conduct of both Belligerents, instead of requiring France in the first instance to rescind her decrees.—Applying most unjustly the same measure of resentment to the aggressor, and to the party aggrieved, they adopted measures of commercial resistance against both—a system of resistance, which however varied in the successive Acts of Embargo, Non-Intercourse, or Non-Importation, was evidently unequal in its operations, and principally levelled against the superior commerce and maritime power of Great Britain.”

All that is here said will redound in all periods of future history to the honor and credit of the United States.—The exact equipoise that they have maintained, while France was accusing them of favoring England, and England of favoring France, under all the varying

conflicts to which the injustice of both subjected them, will be to posterity one of the most astonishing events of these astonishing times.—A higher eulogy could hardly be pronounced upon them than what is here brought against them. If Great Britain found the only possible measure of equal resistance by the exclusion of both France and England to bear hard upon her superior commerce, she should have been the first to have withdrawn her hostile edicts, and retreat from the crusade in which she had joined her forces to those of her enemy, to invade the rights of her Friend.

Par. 15.—“The same partiality towards France was observable in their negotiations, as in their measures of alleged resistance.”

Vide note on paragraph 12, and we will not dispute what is here asserted.

Par. 16.—“Application was made to both Belligerents for a revocation of their respective edicts; but the terms in which they were made, were widely different.”

Here is an assertion, not only without proof, but directly in the face of proof most palpable. Nothing more is requisite to satisfy any impartial inquirer of this, from the most careless to the most inquisitive, than a simple inspection of the terms proposed equally to each.—They are in fact a circular letter requiring of each Belligerent the simple removal of those *existing edicts*, which violated the Neutral rights of the United States, or such modification of them that they should no longer violate those rights; and promising to each the precise consequences of such revocation that were promised to the other.

Par. 17.—“Of France was required a revocation only of the Berlin and Milan Decrees, although many other edicts, grossly violating the neutral commerce of the United States, had been promulgated by that power. No security was demanded, that the Berlin and Milan Decrees, even if revoked, should not under some other form be re-established; and a direct engagement was offered, that upon such revocation, the American Government would take part in the war against Great Britain, if Great Britain did not immediately rescind her Orders; whereas no corresponding engagement was offered to Great Britain, of whom it was required, not only that the Orders in Council should be repealed, but that no others of a similar nature should be issued, and that the blockade of May, 1806, should be also abandoned. This blockade, established and enforced according to accustomed practice, had not been objected to by the United States at the time it was issued. Its provisions were, on the contrary, represented by the American Minister resident in London at the time, to have been so framed, as to afford, in his judgment, a proof of the friendly disposition of the British Cabinet towards the United States.”

What has England to do with what violates the Neutral Commerce of the United States, unless it be their own proper commerce with England? If any such violation exist, America is fully competent to adjust the matter herself. She never found fault with the immense tax that England has always gathered upon her chief staple, Tobacco, nor with her shutting out the manufactures of her Enemies or even of her Friends, from her ports. And it is not more impossible, than unreasonable, that America should force the French to wear English coats and waistcoats. But we cannot help remarking here, that in the resolution to maintain the most rigid impartiality in respect to the restoration of intercourse with the Belligerent who should first revoke what each called his *retaliatory* edicts upon the other, and in confining the proffer to this object, we did not even stipulate the restoration of our impressed seamen, whose fate no mortal man can behold without shuddering with horror; yet if France should upbraid us with this forbearance, we would answer her as on a former occasion, "That the United States have a right to elect their own policy with regard to England, as they have with regard to France; and that it is only while they continue to exercise this right, without suffering any degree of restraint from either power, that they can maintain the independent relation in which they stand to both." It may be added indeed, that we could not anticipate the new injuries of France, but we knew those that England had already inflicted; yet we did not mix them with this new question of mutual recrimination and pretended retaliation of each Belligerent on the other, and if "no security was asked, that the Berlin and Milan decrees, even if revoked, should not be re-established under some other form," neither was any such security demanded of England in the revocation of her obnoxious Orders in Council.—It is utterly impossible to discover any symptom of difference between the proposals made to the different Belligerents.

"And a *direct* engagement was offered that upon such revocation the American Government would take part in the war against Great Britain, if Great Britain did not rescind her Orders, whereas, no corresponding engagement was offered to Great Britain."—Now in the first place, we deny, and challenge the British Ministry to show, that any *direct* engagement was offered to either Belligerent to take part in the war against the other. We might show indeed that no such engagement could be offered without a previous act of Congress; for the constitution does not leave it in the power of the executive Government of the United States. In the next place we aver that every proposition leading to such a consequence, was

made equally to either, with the single exception in favor of Great Britain, "That on her rescinding her Orders in favor of the United States, their Trade should be opened with her, and remain shut to her enemy in case of his failure to rescind his Decrees also;" whereas, to France, the offer was made subject to the contingency of the previous consent of England.

How far the propositions menacing war can be said to have favored France to the prejudice of Great Britain will be seen by the following extracts from Mr. Madison's instructions, viz.

To Mr. Pinkney, 30th April, 1808.

The relation in which the revocation of its unjust decrees by either, (Belligerent) will place the United States to the other, is obvious, and ought to be a motive to the measure proportioned to the desire which has been manifested by each, to produce collision between the United States and its adversary, and which must be equally felt by each, to avoid one with itself.

Should France revoke, "it will be impossible to view the perseverance of Great Britain in her retaliating Orders, in any other light than that of war, without even the pretext now assumed by her."

To General Armstrong, 2d May, 1808.

The relation in which a recal of its retaliating decrees, by either power, will place the United States to the other, is obvious, and ought to be a motive to the measure, proportioned to the desire which has been manifested by each, to produce collisions between the United States and its adversary, and which must be equally felt by each, to avoid one with itself.

Should Great Britain revoke, France could not persist in the illegal part of her decrees, if she does not mean to force a contest with the United States.

To Gen. Armstrong, 22d July, 1808.

"If France does not wish to throw the United States into the WAR against her, for which it is impossible to find a rational or plausible inducement, she ought not to hesitate a moment in revoking, at least, so much of her decrees as violate the rights of the sea, and furnish to her adversary the pretext for his retaliating measures."

Your Ministers must have short memories, if they have forgotten the documents from which these extracts are made, which were printed by order of the British Parliament; and little feeling, if they forget the use made of them by a statesman of the first celebrity in the opposition, when the idea now reiterated, was attempted to be imposed upon the public.—Strictly speaking, indeed, the menace to *take part in the war* against her enemy, was made to Great Britain only. *Such* is the fair construction of the words, *the War* against

France; whereas, in the contrary event, *no conjunction with France is intimated*, neither has any such taken place; but on the contrary, to the last document that was before the British Government, when this declaration was issued, to wit, the President's Message of the fourth of November, *such conjunction was still deprecated*.—God forbid that we should take sides with either of you; but if the events of war should require a combination; you have only to do us justice, and there can be no doubt on which side we should prefer it.

In this important Paragraph, too, we find the uncandid advantage that has been so often taken of the liberal construction, that the pleasing anticipation of an adjustment of all the differences between the two nations, had induced Mr. Monroe to affix to the notification Blockade of May 1806.—When it is asserted that “he represented it to have been so framed as to afford in his judgment a proof of the friendly disposition of the British Cabinet towards the United States;” it should have been added, for it appeared in the same letter, that he made up that judgment hastily: “I have been too short a time in possession of this paper to trace it in all its consequences.” And the public should also have been informed of the still higher evidence, that he had misconceived its purport, in the non-admission of his inference by Mr. Fox, printed in the same correspondence. “He did not seem willing to give his sanction to the inference I had drawn:” but it is less the Blockade that Mr. Fox promulgated, and less still the acts of the Government under it, during the discussion of a treaty which was daily expected to put an end to all the disputes between the two countries, than the distorted construction given to it by his successors in office, and the pretensions that they have derived from it, that have disgusted and dissatisfied us:—a construction which was denied by every member of the administration that issued the decree; and accordingly we find Mr. Monroe saying to Mr. Foster (Oct. 1st, 1811,) “that *as now expounded* it is inconsistent with the sense of his Government when the order was issued.”

Par. 18.—“Great Britain was thus called upon to abandon one of her most important maritime rights, by acknowledging the Order of Blockade in question to be one of the edicts which violated the commerce of the United States, although it had never been so considered in the previous negotiations; and although the President of the United States had recently consented to abrogate the Non-Intercourse Act on the sole condition of the Orders in Council being revoked; thereby distinctly admitting these orders to be the only edicts which fell within the contemplation of the law under which he acted.”

The Order of Blockade in question was supposed at this time to be merged in the Orders in Council, and it is in the face of all fair inference, therefore, that it is here asserted that it had never before been considered as violating the commerce of the United States. It was not suffered in the Fox administration to operate any actual injury to the United States. And it is notoriously known that a modification of this, as well as the Order of the 7th of January, 1807, so as to satisfy the demands of the United States, was in a course of amicable and satisfactory discussion at the time that that administration went out of office, which alone put an end to it.

Par. 19.—“ A proposition so hostile to Great Britain could not but be proportionally encouraging to the pretensions of the enemy; as by thus alleging that the blockade of May, 1806, was illegal, the American Government virtually justified, so far as depended on them, the French Decrees.”

We care not a pin whether your enemy were pleased or displeased with our measures, as long as our only motive was our own redress.— God knows that we have no special desire to please either of you, until we see better occasion in your conduct towards us.

Par. 20 and 21.—“ After this proposition had been made, the French Minister for Foreign Affairs, if not in concert with that Government, at least in conformity with its views, in a dispatch, dated the 5th of August, 1810, and addressed to the American Minister resident at Paris, stated that the Berlin and Milan Decrees were revoked, and that their operation would cease from the 1st day of November following, provided his Majesty would revoke his Orders in Council, and renounce the new principles of blockade; or that the United States would cause their rights to be respected; meaning thereby that they would resist the retaliatory measures of Great Britain.

“Although the repeal of the French Decrees, thus announced, was evidently contingent, either on concessions to be made by Great Britain, concessions to which it was obvious Great Britain could not submit, or on measures to be adopted by the United States of America, the American President at once considered the repeal as absolute. Under that pretence, the Non-Importation Act was strictly enforced against Great Britain, whilst the ships of war and merchant ships of the enemy were received into the harbours of America.”

This document of the 5th of August revoked the Berlin and Milan Decrees from the 1st of the following November. Its prospective operation gave to England the opportunity of adopting similar measures, or, to use her own words, of proceeding *pari passu* with her enemy, so as to have the intercourse restored to her at the same time as to France.—The contingency of its looking forward for three months was so far advantageous to England, as it gave her all that time to consider of the proposition for adopting the like measure. And the Pre-



sident, by a liberal construction of the law, extended the continuance of the intercourse for three months from and after the period when the French engagement took effect; and admitted not only the goods that arrived, but all those that were shipped in England within three months after such period.

The conditions were precisely those, that made it obligatory on the President to restore the intercourse on the terms on which it was restored: that similar conditions on your part would have produced similar effects against your enemy, we are not left to conjecture. The adjustment actually made with Mr. Erskine (of which we shall have occasion to take further notice) has placed that question beyond all doubt.

Par. 22, 23, 24, 25.—“The American Government, assuming the repeal of the French Decrees to be absolute and effectual, most unjustly required Great Britain, in conformity to her declarations, to revoke her Orders in Council. The British Government denied that the repeal, which was announced in the letter of the French Minister for Foreign Affairs, was such as ought to satisfy Great Britain; and in order to ascertain the true character of the measure adopted by France, the Government of the United States was called upon to produce the instrument by which the alleged repeal of the French Decrees had been effected. If these decrees were really revoked, such an instrument must exist, and no satisfactory reason could be given for withholding it. At length, on May 21, 1812, and not before, the American Minister in London did produce a copy, or at least what purported to be a copy, of such an instrument. It professed to bear date the 28th of April, 1811, long subsequent to the dispatch of the French Minister of Foreign Affairs of the 5th of August, 1810, or even the day named therein, viz. the 1st of November following, when the operation of the French Decrees was to cease. This instrument expressly declared that these French Decrees were repealed in consequence of the American Legislature having, by their Act of the 1st of March, 1811, provided, that British ships and merchandise should be excluded from the ports and harbours of the United States. By this instrument, the only document produced by America as a repeal of the French Decrees, it appears, beyond a possibility of doubt or cavil, that the alleged repeal of the French Decrees was conditional, as Great Britain had asserted, and not absolute or final, as had been maintained by America; that they were not repealed at the time they were stated to be repealed by the American Government; that they were not repealed in conformity with a proposition, simultaneously made to both Belligerents, but that in consequence of a previous act on the part of the American Government, they were repealed in favor of one Belligerent to the prejudice of the other; that the American Government, having adopted measures restrictive upon the commerce of both Belligerents, in consequence of edicts issued by both, rescinded these measures, as they affected that power which was the aggressor, whilst they put them in full operation against the party aggrieved, although the edicts of both powers continued in force; and, lastly, that they excluded the ships of war belonging to one Belligerent, whilst



they admitted into their ports and harbours the ships of war belonging to the other, in violation of one of the plainest and most essential duties of a Neutral Nation."

The United States did produce the instrument which satisfied them;—the letter of the Minister of Foreign Affairs to their own accredited Minister;—the usual instrument in such cases. And it was on this document, and the subsequent evidence of its operation as respected the United States, that they required a similar abrogation, and no other on your part. The miserable juggle that you thought fit to adopt, when the cries of your manufacturers, and the arguments that you could no longer resist, obliged you to retreat, would have been spurned at by a more dignified Administration; and the only excuse for our Minister's share in it is, that it was suited to the capacities of those he had to deal with.—Our President gives no credit to it, as you see in his comment upon it.—In all your other measures you have fallen into the snares of your enemy, either by imitating or opposing him, as his policy required; and in this, as it was impossible to devise a more wretched State trick, you have adopted his own.

It tells but little, however, in favor of the integrity of your Government, that this instrument, which must be either genuine or not genuine, should be held good by you as a pretext for yielding to the cries of your manufacturers in revoking your Orders in Council, and not good to prevent the confiscation of our property. On this subject, and the preceding condition of this juggling instrument, we shall have something further to say in what follows; but we must repeat here, that it was not, as you assert, the only document produced by America, as a repeal of the French Decrees. The letter of the Duc de Cadore, of the 5th of August, 1810, asserting that the French edicts were repealed, was also produced.—This is the ordinary mode of revocation; it is your own mode; and the plan of a prospective operation had also been anticipated in your instructions to Mr. Erskine. Neither was there, properly speaking, any contingency to prevent their operation.—The opening left for England to come into the same measure, was provided for in the law of the United States.—The French no doubt agreed to it with reluctance; but the alternative was a *precedent* condition of the agreement, to wit, that the Non-importation law should be put in force against her if she did not avail herself of it.—*No new condition was required*; and it is arrant sophistry to pretend that the French revocation was the consequence of any new measure adopted by the American Government; although it is pompously asserted to have been so, "beyond all doubt or cavil."

And though the contrary is here so positively asserted, nothing is more clear than that the revocation was made in strict "conformity with a proposition simultaneously made to both Belligerents."—What was that proposition?—each Belligerent accused the other of being the aggressor, or invader of the law of nations; each pretended to retaliate against the other; and each promised to recede from the invasion as soon as the other should do it. America proposed to each, that if she would recede from her invasion, as far as respected the United States, and the other should not follow her within three months, she would restore the intercourse to the one so receding, and shut out the other.—France says, I agree to your conditions: I revoke my decrees from the 1st of November upon the precise terms that you propose.—She propounds no new conditions, but repeats those propounded by America equally to both Belligerents; and even refers to the Act of Congress which provides for them without even an injunction, but with merely a *bien entendu*, it being well understood, that one of the alternatives shall follow.—As though she had said, "If England follows me *pari passu*, as she has promised, well; if not, you are engaged to oppose her unjust pretensions—how?—not *vi et armis*,—not *pugnis et calcibus*,—not *unguibus et rostro*; (which is uncommonly modest on her part, considering that we had offered her war against you, without offering you war against her;) but by putting in force that very Act which you were equally engaged to put in force against me in the contrary case."

The word *conformity* is unhappily chosen here. It reminds one of the very words of the French revocation; and of those words which you have on many occasions, and among others in the paper under consideration, most unrighteously withheld.—"Or that the United States, *in conformity with the Act which you have just communicated*, shall cause their rights to be respected by the English."—Why were the words, here italicised, left out in this paper? (Paragraph 20.) why have they been suppressed on all occasions? and why, more especially, have they been omitted in the quotation of the surrounding words by Sir William Scott in his judgment on the Snipe? they would have furnished a solution of his parenthesis, and changed all the doubts, that follow the construction of the words as he has given them, into the precision that he affects to be seeking.—"It being well understood (*it is not said by whom or on what ground*) that the English shall revoke their Orders in Council, and renounce their new principles of Blockade, or that the United States will cause their rights to be respected by the English." After the quotation, he continues—

"how is this clause to be construed?" (Edwards, p. 10.)—why, truly, it is of little consequence how *this clause* is to be construed; but mark the real words, "Or that the United States, *in conformity with the Act which you have just communicated*, will cause their rights to be respected by the English."—There is no difficulty in construing *these* words, "it being well understood" *by both parties and by all the world*, that one of the alternatives is to follow, *because the Act herein specially referred to has so provided.*<sup>1</sup>

The Act of the 2d of March, 1811, too, (in other respects a mere recital of the previous Act, and of the fulfilment of the conditions of it in respect to France,) is only new as it puts an end to all cavil, as to the question of closing the doors of reconciliation with England after the three months had expired; and authorises the President still to admit her to a perfect freedom of intercourse on a similar abrogation of her hostile edicts, to that which had been exacted from France; to wit, that they should cease to violate the Neutral Rights of the United States; (we meddled not with any other question) and it is notorious (for the correspondence is before the world) that the most liberal use was made by the President of this authority to the last hour;—that instead of the expiration of three months, at which War might have been justly declared, three times six months were suffered to elapse before that measure was even proposed;—that every hazard was taken in the hope to avoid it; and that even the Sceptre of England had changed hands, not only without the hoped-for change of men or measures; but with an increased determination to insult us, as combining with France in doctrines which did not apply to us, and which we had distinctly disavowed;—with a renewed resolution to maintain the invasion of our Rights as an independent Nation; and reiterated assurances from your Minister that there was not the shadow of chance for a change.

Most heartily should we rejoice to see an explanation from the learned Judge, that would acquit him of his share of the censure attached to the concealment of these words. It would not be the first time, indeed, that we have found him right where we had supposed him wrong. We would thank him at the same time to inform us who the other Neutrals are, for whose rights we ought to have contended; and whether he has yet discovered that the French communication to the Conservative Senate related to Europe only, and the Continent of Europe, and the Continental System, and the Continental Ports, which are mentioned thrice three times in the instrument,

<sup>1</sup> See end—Note B.

without a word of America, or a word that can be applied to her.

But from the continual omission of the words here restored, to say nothing of the anachronisms, the distortions, the misconstruction and misapplication of other documents, some latent object must be presumed. And if it were even allowed that such were not the intention, it is not the less clear that the want of these words prevents the reader from that natural recurrence to the act itself, which would demonstrate the impartiality of the American government, which is here denied, as well as the fallacy of the reasoning drawn from the recital in the mutilated state in which it is presented. But when we find the same plan of suppressing the same words, in repeated instances of the diplomatic correspondence, state papers, and solemn judgments, we are constrained to pronounce upon it, as the spurious progeny of that incestuous intercourse between the executive and the judiciary, which it has been the pride and the boast of the present reign to divorce; and which cannot surely be less objectionable for being carried on behind the curtain.

It is paying but little compliment to the discernment of the English Nation, to suppose that deceit so palpable can have currency with it; and though it may be hoped that such deception will not last: yet the truth is, that the confiding Englishman is often deceived in this way; his integrity is easily imposed upon; his pursuits of a laudable industry prevent him from a critical investigation of the subject; but when he shall be roused to a personal inspection of the case, it is to be hoped that he will see as well the injustice as the impolicy of the imposition, by which he has been prevailed on to believe that we have an unnatural partiality to France, the only imputation under which he can be prevailed upon to consider us his enemy; and therefore most artfully insinuated, in equal contradiction of the evidence of our most essential interests, as of every document that has ever appeared, or ever can appear upon the subject; and *the manufacturers at least*, in reverting to their testimony on the relief that Mr. Erskine's treaty gave them, will hardly forget that we did actually *maintain against France*, on that occasion, the exclusion from intercourse which we opened to you.

Par. 26.—“Although the instrument thus produced was by no means that general and unqualified revocation of the Berlin and Milan Decrees which Great Britain had continually demanded, and had a full right to claim; and although this instrument, under all the circumstances of its appearance at that moment, for the first time, was open to the strongest suspicions of its authenticity; yet as the Minister of the United States produced it, as purporting to be a copy of the instrument of revocation, the Government of

Great Britain, desirous of reverting, if possible, to the ancient and accustomed principles of maritime war, determined upon revoking conditionally the Orders in Council. Accordingly in the month of June last, his Royal Highness the Prince Regent was pleased to declare in Council, in the name and on the behalf of his Majesty, that the Orders in Council should be revoked, as far as respected the ships and property of the United States, from the 1st of August following. This revocation was to continue in force, provided the Government of the United States should, within a time to be limited, repeal their Restrictive Laws against British commerce. His Majesty's Minister in America was expressly ordered to declare to the Government of the United States, 'that this measure had been adopted by the Prince Regent, in the earnest wish and hope, either that the Government of France, by further relaxations of its system, might render perseverance on the part of Great Britain in retaliatory measures unnecessary, or if this hope should prove delusive, that his Majesty's Government might be enabled, in the absence of all irritating and restrictive regulations on either side, to enter with the Government of the United States into amicable explanations, for the purpose of ascertaining whether, if the necessity of retaliatory measures should unfortunately continue to operate, the particular measures to be acted upon by Great Britain could be rendered more acceptable to the American Government, than those hitherto pursued.'

It will be seen by what is said above, that the instrument here referred to, even if genuine and duly promulgated, which none but a fool will suppose, and which even Lord Castlereagh discovered and pronounced to be the veriest juggle that ever was produced, though he afterwards preferred retreating by it to acknowledging the true fact, that he was beaten from the ground that he had almost sworn to maintain;—it will be seen, we say, that the instrument here referred to, could in no shape be considered any thing more than a corroboration of the French Decrees having been repealed from the 1st of November preceding, to which date, as the period of the revocation, it literally refers. It could, if genuine, only be considered as certifying that the preceding condition of the revocation had been carried into effect by the United States. It added not a tittle to the matter of fact, neither does it even pretend to be the act of revocation; but merely a certificate of facts predicated upon it. Sir William Scott is content with the revocation of the 5th of August 1810, to a certain point—"I am authorized to declare that the Berlin and Milan Decrees *are revoked*,"—(not 'will be revoked,')—"and will cease to have their effect from the 1st of November." (Edwards, p. 9.) And it is only by the following words, in the mutilated state in which he has given them, confounding, as we have shown, the true meaning, that he finds any thing to remove or destroy the satisfaction that he would otherwise have derived from the

words here quoted. We have sought, but in vain, for some erroneous translation of Cadore's letter to Armstrong, to apologize for this mutilation, as well in the letters of the British Secretary of State to Mr. Pinkney, as in the judgments on the Fox, and on the Snipe, and in the paper before us; and we may truly say, that we should have been glad to find it, but we have never seen any such, and in the Appendix referred to in the margin of this passage in the report, the words are stated at length; and they are substantially repeated in another document in this Appendix, equally before the court, "conformably to the act communicated."

But we have in this paragraph a distinct avowal that the condition required of us to insure our emancipation from the effects of your orders, was, that we should obtain of France a general and unqualified revocation of the Berlin and Milan Decrees, as well in respect to other nations as to ourselves. And this is the termination of all the zig-zaggery and equivocation that were used in approaching our Government on the subject.—It was rather too much to demand of us at any rate, since we never belonged to the neutral family that armed to defend their mutual rights against your incroachments; we never interfered with your invasions of those rights, either in the attack on the Spanish frigates, or the bombardment of Copenhagen; though, by the way, had we sought a cause of quarrel, we might have found it as creditors of Spain in this diminution of her means of payment;—we could but deplore these indelible stains on the land of our Ancestors:—but after your instructions to Mr. Erskine to confine the revocation of your decrees to its operations *as far as respected America*; a modest Minister might well be backward in propounding such an absurdity as that of the United States of America legislating for the states of Europe.

It is matter of regret that this inconsistency escaped the researches of the profound civilian; (who, playing Grumio, in his judgment on the Snipe, has given us a lecture on family duty;) as he must have concluded that "the rule could have no locality;" and that what the United States had a right to agree to with Mr. Canning, they had an equal right to agree to with the Duc de Cadore.

Par. 27.—"In order to provide for the contingency of a Declaration of War on the part of the United States, previous to the arrival in America, of the said Order of Revocation, instructions were sent to his Majesty's Minister Plenipotentiary accredited to the United States (the execution of which instructions, in consequence of the discontinuance of Mr. Foster's functions, were at a subsequent period intrusted to Admiral Sir John Borlase Warren,) directing him to propose a cessation of hostilities, should they have com-

menced; and further to offer a simultaneous repeal of the Orders in Council on the one side, and of the Restrictive Laws on British ships and commerce on the other."

Not disputed.

Par. 28.—"They were also respectively empowered to acquaint the American Government, in reply to any inquiries with respect to the blockade of May, 1806, whilst the British Government must continue to maintain its legality, that in point of fact this particular blockade had been discontinued for a length of time, *having been merged in the general retaliatory blockade of the enemy's ports* under the Orders in Council, and that his Majesty's Government had no intention of recurring to this or to any other of the blockades of the enemy's ports, founded upon the ordinary and accustomed principles of maritime law, which were in force previous to the Orders in Council, without a new notice to neutral powers in the usual form."

Here is a distinct avowal that the blockade of May, 1806, was merged in the subsequent Orders in Council. We beg a recurrence therefore to what has been said under Paragraph 18. The construction given to the subsequent orders by our Government is here *distinctly confirmed*, so that it not only appears that we had always imagined that we were demanding the revocation of this deed in demanding the revocation of its successors, but that we *imagined rightly*. How then can it be asserted (Paragraph 18.) that this order was never considered by us as one of the edicts which violated the commerce of the United States. The truth is, and it will so clearly appear by a recurrence to the correspondence, that the view of the case *now formally asserted* was that under which the United States treated it.—It was only relinquished by Mr. Pinkney, when it was found convenient by your Government to adopt another construction.—It was only on finding that Marquis Wellesley had "not adopted," but "had resisted" the idea of incorporation here *re-asserted*, that he treated of it on separate ground. (Pinkney to Wellesley, 21st Sept. 1810.)

The offer made by Mr. Foster, in this case, was not merely that a new notice would be given to neutral powers, which is here attempted by a side wind to be let in as sufficient; but also that the blockade, if renewed, should be accompanied by a sufficient force to make it legal.

Par. 29.—"The American Government, before they received intimation of the course adopted by the British Government, had, in fact, proceeded to the extreme measure of declaring war, and issuing "Letters of Marque," notwithstanding they were previously in possession of the report of the French Minister for Foreign Affairs, of the 12th of March, 1812, promulgating anew the Berlin and Milan Decrees, as fundamental laws of the French Empire, under the false and extravagant pretext, that the monstrous princi-



ples therein contained were to be found in the Treaty of Utrecht, and were therefore binding upon all States. From the penalties of this code, no nation was to be exempt, which did not accept it, not only as the rule of its own conduct, but as a law, the observance of which it was also required to enforce upon Great Britain."

It is notorious on the face of the French document here referred to, that it did not contemplate America at all.—Not only is there no mention made of America in it; but Europe, the continental system, and the ports of the continent, are, as we before observed, the continual burden of the song.—France and the countries in alliance with, or in subjugation to her, as the paper before us expresses it, (and to which, whether incorporated or conquered, we could have no access without the consent of the ruling powers,) were alone parties to this instrument, which announces the continuance of the Berlin and Milan Decrees against those powers only who allow their flags to be denationalized. It is not true then that no nation was to be exempt from the penalties of this code; for from this character of Denationalization the flag of the United States was already exempted by the operation of the law against you, which had been offered to you against your enemy. And it was still in your power, by revoking your hostile edicts, as they affected us, and us only if you please, to liberate your commerce, and your marine, from every restraint that was imposed upon it.—And had it been otherwise;—had the French document had any reference to us, still it was only the declaration of France;—our consent was necessary to make us party to it; and to this we were not only not invited, but it was before your eyes in documents and correspondence to which you were party with us, that we distinctly disavowed the French doctrines promulgated in it, and subscribed to the English in every point of the law of nations, which it embraces.<sup>1</sup>—Your effort, in your declaration of the 21st of April, to lead the world, and none more than your own people, into the erroneous belief of French influence on our councils, by blending us with France, as the supporters of those doctrines, with this evidence before your eyes, has already been treated by our President as an insult, and chastised as it deserves.<sup>2</sup>

Par. 30.—“In a Manifesto, accompanying their declaration of hostilities, in addition to the former complaints against the Orders in Council, a long

<sup>1</sup> See Letter from a Calm Observer to a Noble Lord. (Gale and Curtis, 1812.)

<sup>2</sup> President's Message, 1st June, 1812, par. 12, as printed in the Times, “And as an additional insult, &c.”



list of grievances was brought forward; some trivial in themselves, others which had been mutually adjusted, but none of them such as were ever before alleged by the American Government to be grounds for war."

✧ In this Paragraph, there is the highest evidence of the anxiety of the United States to maintain to the last extremity the relations of Peace; of their forbearance under multiplied injuries;—of their efforts to avert the storm which must be prejudicial to the mutual interests of two countries, whose interest must ever be mutual in the eyes of every enlightened statesman.—We know not whether we can take credit for what is here said, that none of our grievances were ever before alleged by our government to be grounds for War.—Certainly, we have given some broad hints that they were so; though to use the words of Mr. Madison, "it is no less true that we are warmly disposed to cherish all the friendly relations subsisting with Great Britain." If in this temper, and with this view, we have forborne to allege those grievances as grounds for war, can any one look at them for a moment without seeing that they are such, and that such forbearance is the best evidence of patience and long suffering on our part? Can any one look at them without seeing that while the cup of bitterness was swelling to the brim, we were draining the cup of conciliation to the dregs.—The catalogue is too copious, and would indeed be too humiliating, to be recapitulated without some feelings of indignation, that our government had borne them so long, were it not for the hostile feelings excited by the misconduct of your enemy, and our aversion from indulging, at your expense as well as our own, the rapacity of your cruisers. — We will select but one of them: look at the American seaman impressed on board a British man of war; chained to the gun of his oppressor to deal out death to a brother of mankind, perhaps his own brother, and in every case no enemy of his:—see him brought to the gangway for disobedience to an officer who has no right to command him, and even for an effort to advise the officers of his own Government of his situation;—see him wounded in such a cause, and dying by the side of a brave English messmate; and hear their mutual groans;—the one soothed by the reflection that can sweeten death—"I die for my country;"—the other, turning his eyes to the forger of his chains—"I am murdered and unrevenged."—And is it to be imputed to us as a fault that we are at length at war for such, among other causes; because, in the hope of redress, we have worn out years in seeking the abolition of this

See this quotation more at large in *Letters from a Cosmopolite to a Clergyman*, page 55, or the *Monthly Review* for August last.

practice by just and prudent arrangements between the two governments.—You would make war with all the world for treating a single sailor of yours, as you have treated many thousands of ours.—Nay, you would not spare a precious subject of your own that should commit the comparatively venial crime of putting one of them on shore on a desert Island, where at worst he could only starve; and this multiplied and continual aggression on your part is not to be considered a ground for War, because we have borne it so long without alleging it as such.

You ought to know, for it is no secret in your Navy, that many of your officers make no scruple to impress an American seaman, wherever they can find him; and even boast of it.—Perhaps too, if you scrutinize, you will find that your own orders to restore such have not always been obeyed.—We do not acquit you of any share in this iniquity;—the shoals of our seamen sent ashore in the Fox administration, and only then, furnish pretty strong presumptive evidence of connivance in their successors as well as in those that preceded them; but we believe you are sometimes deceived, and clear it is, that the best intentions of an administration must fail, while officers, not immediately under their eye, and wanting men, are licensed judges in their own cause.—We would do every thing in the world,—would even help to procure for you every man to whom you are entitled, according to your own principles and acknowledged practice; but as long as you will not suffer the officer of any nation under the sun to visit your ships, and take out whomsoever he may please to call subjects of his own; you will look in vain for any acquiescence on our part in a measure fraught with such distressing injury to our citizens.

31st Par.—“As if to throw additional obstacles in the way of peace, the American Congress at the same time passed a law, prohibiting all intercourse with Great Britain, of such a tenor, as deprived the Executive Government, according to the President's own construction of that Act, of all power of restoring the relations of friendly intercourse between the two states, so far, at least, as concerned their commercial intercourse, until Congress should re-assemble.”

The law here referred to put an end to those powers for restoring the intercourse which the President had in vain exerted for years, and which were incompatible with a state of war. No encouragement could be entertained in America, at that time, to hope for a revocation of the Orders in Council. It was five days after the declaration of war in America that those orders were revoked in

<sup>1</sup> See the case of Captain Lake.

England, and not a symptom of relaxation, but the strongest pledges to the contrary were exhibited till within a week of that revocation in England, and till the last hour of the declaration of War, and even after that declaration, by your Minister here.—The very document, from which you draw this construction of the President, recommends the adoption of an equitable mode of preventing any inconvenience to individuals from your unexpected retreat.

32d Par.—“The President of the United States has, it is true, since proposed to Great Britain an Armistice; not, however, on the admission, that the cause of war hitherto relied on was removed; but on condition, that Great Britain, as a preliminary step, should do away a cause of war, now brought forward as such for the first time: namely, that she should abandon the exercise of her undoubted right of search, to take from American merchant vessels British seamen, the natural-born subjects of his Majesty; and this concession was required upon a mere assurance that laws would be enacted by the Legislature of the United States, to prevent such seamen from entering into their service. But independent of the objection to an exclusive reliance on a foreign state, for the conservation of so vital an interest, no explanation was, or could be, afforded by the agent who was charged with this overture, either as to the main principles upon which such laws were to be founded, or as to the provisions which it was proposed they should contain.”

In reply to paragraph 30, we have shown some of the precious effects of the practice which it is here attempted to defend. It remains only to add the propositions that were made by us many years ago, when Mr. Monroe was our Minister in England, and which have never yet been withdrawn.—We then offered to enter into engagements to allow of no protection to British seamen; but on the contrary, to deliver them up, whenever they sought refuge among us.—To aid in searching for, seizing, and restoring them; and to enact laws for this purpose; to keep them in our prisons, wher thereunto required, and to prohibit our citizens, under adequate penalties, from carrying them off or employing them. All this was proffered by our Government for an exemption from that seizure upon the high seas of all persons not liable thereto by the laws of Nations, which could not, in the case supposed, attach on any British sailor. For our naturalized citizens, comprising few, if any, of this class of men, and none that have not become so by three years' longer residence among us than is required for the same privilege with you, we ask only the protection which you extend to your own.

Who the agent charged with the reiteration of the overture was, or how instructed, we pretend not to know; but we cannot doubt

that he was authorized to pledge all the power of the executive Government to procure the enactment of adequate penalties to prevent a breach of the contract ; and moreover we are convinced that, under an amicable arrangement to this effect, the American Merchant and seaman, seeing in it his own security and that of his brethren, would exert a vigilance to see it carried into execution, that would leave no escape for those deserters of their country's call, that might possibly escape the hands of the officers charged with it.

We have not a doubt that if the subjects, to which your own laws and practice intitle you, were all you are in quest of, you would recover more of them by this process than by any other that could be adopted.

33d Par.—“ This proposition having been objected to, a second proposal was made, again offering an armistice, provided the British Government would secretly stipulate to renounce the exercise of this right in a treaty of peace. An immediate and formal abandonment of its exercise, as preliminary to a cessation of hostilities, was not demanded ; but his Royal Highness the Prince Regent was required, in the name and on the behalf of His Majesty, secretly to abandon what the former overture had proposed to him publicly to concede.”

34th Par.—“ This most offensive proposition was also rejected, being accompanied, as the former had been, by other demands of the most exceptionable nature, and especially of indemnity for all American vessels detained and condemned under the Orders in Council, or under what were termed illegal blockades—a compliance with which demands, exclusive of all other objections, would have amounted to an absolute surrender of the rights on which those Orders and blockades were founded.”

We cannot comment on these propositions without having them fairly before us.—If an armistice were proposed during the temperate discussion of rights which we have never for a moment abandoned ; and rejected, because we would not tamely surrender a property, in innocent merchandize, *which we have never ceased to demand* ;—which no other nation under heaven conceives you have any right to ; and to the restoration of which we are clearly intitled, by your own construction of the law of Nations, very recently promulgated ; there can be no difficulty in appealing to the world, and to posterity, as to which of us is chargeable with the calamities of war.—It is a subject of easy demonstration, and has been clearly demonstrated, that the Orders under which this property has been seized, will not bear the test of the laws of Blockade.—Nay, it has been demonstrated, that your own administration has denounced them as illegal ; and whatever the law located in England may say, the

<sup>1</sup> See on this subject ' letters from a Cosmopolite to a Clergyman, 2d and 3d letter.'

true law, *diffusa in omnes, constans, sempiterna*, which has no locality, and pronounced in any other part of the world, acquits us.— Moreover you paid us for similar spoliations in the administration of Mr. Pitt: so did your allies in the invasion of neutral rights.— Perhaps in discussing the question we might agree to a similar reference; perhaps our mutual friend Russia might give us a casting vote; or lend us an umpire. You must not expect to be *always* judge in your own cause; were it enemy's property there could be no other tribunal, but this is not even pretended.

35th Par.—“ Had the American Government been sincere in representing the Orders in Council, as the only subject of difference between Great Britain and the United States, calculated to lead to hostilities; it might have been expected, so soon as the revocation of those Orders had been officially made known to them, that they would have spontaneously recalled their ‘letters of marque,’ and manifested a disposition immediately to restore the relations of peace and amity between the two powers.

36th Par.—“ But the conduct of the Government of the United States by no means corresponds with such reasonable expectations.

37th Par.—“ The Order in Council of the 23rd of June being officially communicated in America, the Government of the United States saw nothing in the Repeal of the Orders in Council, which should of itself restore peace, unless Great Britain were prepared, in the first instance, substantially to relinquish the right of impressing her own seamen, when found on board American merchant ships.”

Here again we must refer to paragraph 30. Once for all, we *never did* represent the Orders in Council as the *only* subject calculated to lead to hostilities. And if we have shown, as we have abundantly shown, that we had other most irritating and most cruel causes of hostility; how can you have the conscience to turn our forbearance to commence it, into a jesuitical pretence of insincerity on our part?

38th Par.—“ The proposal of an armistice, and of a simultaneous repeal of the restrictive measures on both sides, subsequently made by the commanding officer of His Majesty's naval forces on the American coast, were received in the same hostile spirit by the Government of the United States. The suspension of the practice of impressment was insisted upon, in the correspondence which passed on that occasion, as a necessary preliminary to a cessation of hostilities: negotiation, it was stated, might take place without any suspension of the exercise of this right, and also without any armistice being concluded; but Great Britain was required previously to agree, without any knowledge of the adequacy of the system which could be substituted, to negotiate upon the basis of accepting the legislative regulations of a foreign state, as the sole equivalent for the exercise of a right, which she has felt to be essential to the support of her maritime power.”

39th Par.—“ If America, by demanding this preliminary concession, intends to deny the validity of that right ; in that denial, Great Britain cannot acquiesce ; nor will she give countenance to such a pretension, by acceding to its suspension, much less to its abandonment, as a basis on which to treat. If the American Government has devised, or conceives it can devise, regulations which may safely be accepted by Great Britain, as a substitute for the exercise of the right in question, it is for them to bring forward such a plan for consideration. The British Government has never attempted to exclude this question from amongst those on which the two States might have to negotiate : it has, on the contrary, uniformly professed its readiness to receive and discuss any proposition on this subject coming from the American Government ; it has never asserted any exclusive right, as to the impressment of British seamen from American vessels, which it was not prepared to acknowledge, as appertaining equally to the Government of the United States, with respect to American seamen when found on board British merchant ships : but it cannot, by acceding to such a basis in the first instance, either assume or admit that to be practicable, which, when attempted on former occasions, has always been found to be attended with great difficulties ; such difficulties as the British Commissioners, in 1806, expressly declared, after an attentive consideration of the suggestions brought forward by the Commissioners on the part of America, they were unable to surmount.”

We shall only add to our former observations on this subject, that the regulations of a foreign state here referred to, were the regulations of the undoubted maritime rights of her own merchant ships ; such regulations, as you neither will, nor ever have suffered to be invaded in your own case, recommended moreover by the continual abuse of the power for which you are contending against all right, and infinitely better calculated to give you all that you pretend to want. And what is this pretence of a readiness to receive and discuss any proposition that may come from the American Government on this subject?—discuss the propositions already made, and recapitulated above, and, which, but for a change of administration, we have little doubt would have been agreed to as soon as the popular deceptions on this subject, which it required time to surmount, could have been removed.—Let us hear your objections to them at once, if you have any to make. We want none of your sailors, nor any of your subjects. We cannot deny them the rights of hospitality,

*Et cunctis undamque auramque patentem.*

*Quod genus hoc hominum, quæve hunc tam barbara morem  
Permittit patria ?*

but you may be assured we covet them not :—they graft not to advantage on our stock :—there are few of them that we would not willingly be rid of :—and if you were to take them back one with the other ;

you would find that you had only acquired the addition of *minus*. We are not so uncharitable as to judge of you by no better sample. Moreover we have no desire to diminish your means of defence against your enemy, with whom we have also a reckoning to settle if we can get you off our hands. But if you will be seven years in discussing the plan, and can produce no better, do not keep our poor fellows imprisoned all the time; nor cajole, nor humbug us, (to use a suitable phrase,) with a pretence, now for the first time set up, that we may exercise a right which you never before allowed to any nation on earth; to impress our seamen, whom we never impress any where, from on board your Merchant ships where they are never to be found.

The only persons that the law allows the ships of a Belligerent nation to take out of neutral ships at sea, are military persons serving in the war. And were it otherwise, and were the rule which you now find it convenient to proffer, the universal rule, and applied in your own case, what would be your language?

“Then take thy bond, take thou thy pound of flesh;  
But, in the cutting it, if thou dost shed  
One drop of English blood; thy ship and goods  
Are, by the laws of England, confiscate,  
Aye, and thy life is forfeit to the State.”

Par. 40.—“Whilst this proposition, transmitted through the British Admiral, was pending in America, another communication, on the subject of an armistice, was unofficially made to the British Government in this country. The agent, from whom this proposition was received, acknowledged that he did not consider that he had any authority himself to sign an agreement on the part of his Government. It was obvious that any stipulations entered into, in consequence of this overture, would have been binding on the British Government, whilst the Government of the United States would have been free to refuse or accept them, according to the circumstances of the moment: this proposition was therefore necessarily declined.”

We don't much wonder at your declining a proposition in this form; though it would have been but civil in you to let the public know what it was.—Perhaps it was of a nature to which you might have committed yourselves without any disadvantage from the United States rejecting or accepting your terms. And at all events, as Mr. Foster and Mr. Baker will tell you that we don't stand upon form, we should like to see a counter project sent hither.

Par. 41.—“After this exposition of the circumstances which preceded and which have followed the declaration of war by the United States, his Royal Highness the Prince Regent, acting in the name and on the behalf of his



Majesty, feels himself called upon to declare the leading principles by which the conduct of Great Britain has been regulated in the transactions connected with these discussions.

Par. 42.—“ His Royal Highness can never acknowledge any blockade whatever to be illegal, which has been duly notified, and is supported by an adequate force, merely upon the ground of its extent, or because the ports or coasts blockaded are not at the same time invested by land.

Par. 43.—“ His Royal Highness can never admit that neutral trade with Great Britain can be constituted a public crime, the commission of which can expose the ships of any power whatever to be denationalized.

Par. 44.—“ His Royal Highness can never admit that Great Britain can be debarred of its right of just and necessary retaliation, through the fear of eventually affecting the interest of a neutral.

Par. 45.—“ His Royal Highness can never admit, that in the exercise of the undoubted and hitherto undisputed right of searching neutral merchant vessels in time of war, the impressment of British seamen, when found therein, can be deemed any violation of a neutral flag. Neither can he admit, that the taking such seamen from on board such vessels, can be considered by any neutral state as a hostile measure, or a justifiable cause of war.

Par. 46.—“ There is no right more clearly established than the right which a Sovereign has to the allegiance of his subjects, more especially in time of war. Their allegiance is no optional duty, which they can decline, and resume at pleasure. It is a call which they are bound to obey: it began with their birth, and can only terminate with their existence.

Par. 47.—“ If a similarity of language and manners may make the exercise of this right more liable to partial mistakes, and occasional abuse, when practised towards vessels of the United States, the same circumstances make it also a right, with the exercise of which, in regard to such vessels, it is more difficult to dispense.

Par. 48.—“ But if, to the practice of the United States, to harbour British seamen, be added their assumed right to transfer the allegiance of British subjects, and thus to cancel the jurisdiction of their legitimate Sovereign, by acts of naturalization and certificates of citizenship, which they pretend to be as valid out of their own territory as within it, it is obvious that to abandon this ancient right of Great Britain, and to admit these novel pretensions of the United States, would be to expose to danger the very foundation of our maritime strength.

Par. 49.—“ Without entering minutely into the other topics, which have been brought forward by the Government of the United States, it may be proper to remark, that whatever the Declaration of the United States may have asserted, Great Britain never did demand that they should force British manufactures into France; and she formally declared her willingness entirely to forego or modify, in concert with the United States, the system, by which a commercial intercourse with the enemy had been allowed under the protection of licenses, provided the United States would act towards her and towards France with real impartiality.

Par. 50.—“ The Government of America, if the differences between States are not interminable, has as little right to notice the affair of the Chesapeake. The aggression in this instance, on the part of a British officer, was acknow-

ledged, his conduct was disapproved, and a reparation was regularly tendered by Mr. Foster on the part of his Majesty, and accepted by the Government of the United States.

Par. 51.—“It is not less unwarranted in its allusion to the mission of Mr. Henry; a mission undertaken without the authority or even knowledge of his Majesty's Government, and which Mr. Foster was authorised formally and officially to disavow.

Par. 52.—“The charge of exciting the Indians to offensive measures against the United States is equally void of foundation. Before the war began, a policy the most opposite had been uniformly pursued, and proof of this was tendered by Mr. Foster to the American Government.

Par. 53.—“Such are the causes of war which have been put forward by the Government of the United States. But the real origin of the present contest will be found in that spirit which has long unhappily actuated the Councils of the United States: their marked partiality in palliating and assisting the aggressive tyranny of France; their systematic endeavours to inflame their people against the defensive measures of Great Britain; their ungenerous conduct towards Spain, the intimate ally of Great Britain; and their unworthy desertion of the cause of other neutral nations. It is through the prevalence of such councils, that America has been associated in policy with France, and committed in war against Great Britain.

Par. 54.—“And under what conduct on the part of France has the Government of the United States thus lent itself to the enemy? The contemptuous violation of the Commercial Treaty of the year 1800, between France and the United States; the treacherous seizure of all American vessels and cargoes in every harbour subject to the control of the French arms; the tyrannical principles of the Berlin and Milan Decrees, and the confiscations under them: the subsequent condemnations under the Rambouillet Decree, antedated or concealed, to render it the more effectual; the French commercial regulations, which render the traffic of the United States with France almost illusory; the burning of their merchant ships at sea, long after the alleged repeal of the French Decrees—all these acts of violence, on the part of France, produce from the Government of the United States, only such complaints as end in acquiescence and submission, or are accompanied by suggestions for enabling France to give the semblance of a legal form to her usurpations, by converting them into municipal regulations.

Par. 55.—“This disposition of the Government of the United States—this complete subserviency to the Ruler of France—this hostile temper towards Great Britain—are evident in almost every page of the official correspondence of the American with the French Government.

Par. 56.—“Against this course of conduct, the real cause of the present war, the Prince Regent solemnly protests. Whilst contending against France, in defence not only of the liberties of Great Britain, but of the world, his Royal Highness was intitled to look for a far different result. From their common origin—from their common interest—from their professed principles of freedom and independence, the United States were the last power in which Great Britain could have expected to find a willing instrument, and abettor of French tyranny.

Par. 57.—“Disappointed in this his just expectation, the Prince Regent

will still pursue the policy which the British Government has so long and invariably maintained, in repelling injustice, and in supporting the general rights of nations; and, under the favor of Providence, relying on the justice of his cause, and the tried loyalty and firmness of the British nation, His Royal Highness confidently looks forward to a successful issue to the contest, in which he has thus been compelled most reluctantly to engage."

We have thrown all this declamation together; not from the least desire to shrink from a critical investigation of it, paragraph by paragraph, but because it will be seen that much of it has no relation to us; much has already been answered: much is employed in the empty cry by which alone the English Nation can be duped into hostility with us, that we are associated with France, which we have shown to be without a shadow of evidence, and of which we challenge a single proof from that correspondence so vainly invoked, or from any other source.—Because our doctrine of Blockade is neither that which France, or England chooses to set up, to answer shifting, and occasional purposes, but that which England has always asserted, till shifting and occasional purposes led her astray from the right path;—because our doctrine of retaliation confines it to the party committing the wrong; and considers it "monstrous," as Sir William Scott does or rather did, "to suppose, that because one country has been guilty of an irregularity, every other country is let loose from the Law of Nations, and is at liberty to assume as much as it think fit." (1 Rob. 142.) We do not allow that your Officers have any excuse in the similarity of language and manners for seizing our seamen; they are easily distinguished. You naturalize a seaman after two years' service on board any ship: (6 Anne, c. 37.—13 Geo. II. c. 3.) we, after five years' residence like any other man. We neither entice nor harbour them, but take the few that fall in our way, as we do your manufactures, because they are offered at a fair price.

What the President has said of forcing your manufactures into France *after they had become neutral property*, is the fair inference of the words of Mr. Foster. On the subject of the Chesapeake, you are quite right that we ought to be silent; and considering the mistake that one of our own officers, of considerable reputation, has since made in East Florida, we are disposed to mutual forbearance.

That the plot of Henry did not originate with you, we don't mean to dispute; that you knew and did not discourage it, we presume, will not be denied: to say that you did not promote and encourage it indeed, to a certain point and period, would be to deny your share in

the correspondence; which you never have done, because, indeed, you cannot. And that you looked to unfavorable consequences to the Union from it, we strongly suspect;—it is impossible to refer to the Debates in the House of Lords, at the time this plot was in operation, without perceiving that such effect was fondly anticipated. We believe that Spain is satisfied with the measures we have adopted in respect to our claim upon her; we are sure she ought to be;—we mean to adjust that claim with honor and liberality; and should have no objection if at Peace, to make you the referee in any matter of dispute with her, which however we do not anticipate.

We have, it is true, some very serious demands upon France, but they do not affect you, and are not of a nature with which you have any right to interfere. We have only to regret that we are not strong enough to fight you both; and hope that, after the alternations of ill treatment, that you have been running a race to inflict upon us, you will give us the opportunity of repelling the calumnies so liberally bestowed upon us, without a particle of foundation, by retiring from the field, that we may enter the lists with your enemy.

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### POSTSCRIPT.

SINCE the first impression of these sheets, which were written and sent to Press as soon as the answer of Lord Castlereagh to Mr. Baring appeared in the *Chronicle* of Tuesday last; and before they were ripe for the public eye; a debate on the subject of them has been held in Parliament, of which it may be useful to take a brief notice. Mr. Canning is reported to have said last night, that he did not impute to the Americans, that they were the friends of France. For this concession, after his manifold charges of manifest partiality, we are perhaps indebted to the previous assertion of Mr. Foster; but reverting soon to the enmity which he cannot conceal, he refers to the contest in which Russia has been since engaged, and of which America, at the time when War was resolved on, could not have had even a prospective view, as influencing her determination at that time; and he talks of America as leagued with the Oppressor of the world; with the Document before his eyes in which the American Executive, (five months already at War with us, and at a period when, according to all appearances, in America, success was attending, and likely to con

tinue to attend, the Arms of France against Russia,) had enjoined on the Legislature, not to entangle itself in the views of that power. It is extremely important, to a right understanding of those things, that we should remember the distance from Europe to America, and from America to Europe: the Orator, that is, allowed to annihilate both space and time, can have no difficulty in establishing his point.

Another remark on the Debate attaches to the Speech of Mr. G. H. Rose; who, in asserting the number of British sailors on board the American frigates, before the employment of foreigners was disallowed, let the house into the secret that it was the easiest thing in the world to discriminate between an English and an American sailor:—"they are easily distinguished by their manners and habits, which are very different from ours." Meaning thereby, from those of our sailors—so says the Anticipation. But with this fact before our eyes, and ten thousand impressed American seamen on board our ships, can we hesitate to substitute for the practice of our officers, (wanting men, and subjecting the *property* of a free man *in himself* to their rapacity,) the mode in which the American Government has proposed to join its efforts to ours to procure us all our own, but without any of our neighbour's, goods?

Another subject remains to be noticed, though last, not least Mr. Foster has informed the house that Mr. Madison is no Frenchman; and Mr. Munroe is no Frenchman: and Mr. Canning, whatever he *has* done, or *may* do, ceased for a moment to impute to the Americans that they were the friends of France. I congratulate the world on the developement of this discovery:—not on the discovery itself, for it is some years-old—it is to be found in the Diplomatic Correspondence, and in the personal averments of all the Ministers that we have sent to America, including Mr. G. H. Rose, and with the single exception, it may be, of Mr. Jackson, who had little opportunity of knowing any thing about it. Hear what Mr. Erskine says on the subject to this same Mr. Canning, (who is first melted into a momentary contrition by the Speech of Mr. Foster,) in a Letter of the 25th of March, 1809.

"I *continue* to be *firmly persuaded* that Mr. Madison, *would most willingly* seize the first opportunity of recommending to the next Congress to assert the Neutral rights against France, should His Majesty deem it to be just or expedient to cause his Orders in Council to be withdrawn, as he has frequently, in conversation, said to me, that no hesitation would be felt in this Country of en-

tering upon hostilities with France, if she did not repeal her Decrees; but he always added that it was impossible the United States could take such a step, while His Majesty's Orders were in force."

But, says Mr. Canning, in his melting moments, brushing the dew from his prolific brow, "I do not say, Mr. Madison is the enemy of this Country,—no man is the enemy of a country,—but the determined enemy of its institutions, &c."

Let us hear Mr. Erskine on this point, in his letter to this same Mr. Canning, of December 4, 1808.—"He" (Mr. Gallatin, Secretary of the Treasury,) "turned the conversation immediately upon the character of Mr. Madison, and said that *he* could not be accused of having such a bias towards France: and remarked that Mr. Madison was known to be an admirer of the British Constitution, to be generally well disposed towards the nation, and to be intirely free from any enmity to its general prosperity. He *appealed to me*, whether *I had not observed* that he frequently spoke with approbation of its *institutions*, its energy, and spirit, and that he was thoroughly well versed in its history, literature, and arts."

Now, to this appeal, the whole scope of the correspondence shows that Mr. Erskine bowed assent:—his "confident belief" in the "unfeigned desire" of the American Government for "an Adjustment of their difficulties, and the maintenance of amity with Great Britain," runs through the whole, and has been corroborated by the testimony of all who have had equal opportunity of judging.—Yet, strange to tell, if any thing can be strange in these times, Ministers have adopted the clamors of party, *unsupported by a single overt act, or the least appearance of a concealed one*, in preference not only to the evidence before all the World, but to that of their own legitimate correspondents.

We have not time to comment upon the very pertinent and manly recognition of Mr. William Smith, who reprobated all idea of reciprocity between the state of the British Seaman employed in America, from his own choice, (excess of freedom) and the American Seaman impressed on board our Men of War, (excess of bondage.) But we cannot forego the remark, that Mr. Whitbread, (who, if he does not stand alone, stands pre-eminent, in asserting the rectitude of the American Government,) is always greeted by his opponents on such occasions with a multitudinous exclamation of *hear, hear, hear*, and thus truths, which posterity will find most clear, are brought into that temporary discredit which cannot fail to be followed by lasting regret.

February 19, 1813.

## NOTES OMITTED.

## Note A. Page 504.

Mr. Canning is reported to have "acknowledged" in the debate of the 18th of February, "that in this blockade there did arise matter for grave inquiry and serious distrust; but when explained there appeared no cause of dissatisfaction, for the force applied to carry the blockade into effect was specific and peculiarly framed for the accomplishment of the object designed." We shall not here stop to consider the construction put on this measure, and on that of the order of the 7th of January following, by his administration, when they found it convenient to predicate their own subsequent orders upon them, and to assert that the latter differed from the former "by an extension in operation only, but not in principle." The reader that wishes to see a disquisition on this subject will find it in the first and second letters of a Cosmopolite to a Clergyman. (Gale and Curtis, 1812.) If it were even pretended (and no evidence to such effect has been produced, though the production of it should certainly have preceded the condemnation of any property under these orders,)—if it were even pretended that a fleet were continually cruising about the North Sea and the Channel, to intercept any ships that they might thus by accident fall in with, bound to any of the ports within the notification; (the only force that Mr. Canning can refer to, and this without proof;) this would not amount to a legal blockade, which could only be constituted by that stationary force before each interdicted port, that would make the entrance to it, or the exit from it, manifestly dangerous.—This alone would meet the construction of the law by Sir W. Scott, and by British diplomatists as well as judiciary authorities. In the year 1711, in resistance of the blockade of certain ports of the Baltic by the King of Sweden, a memorial from Great Britain contained the following words: "Si les dites Villes étoient actuellement assiégées ou bloquées, les sujets de sa Majesté, et de leurs hautes Puissances n'auroient point de prétexte d'y aller, mais le cas est bien différent par rapport à quelques Vaisseaux, qui croissent seulement dans la mer Baltique." (Memoires de Lambert, v. 6. p. 466.) The doctrine here is quite unequivocal; neither is it contested, but on the contrary it is confirmed by the opposite party; who, with a resolution like that of England to contend against all the world rather than surrender a maritime right, maintains this right only on the ground of a close investment of the different places "in quorum vicinio aut conspectu naves nostræ constitutæ et locatæ sunt," "ad omnes illos portus, claudendos, arctique obsidendos." (Ibid. p. 451. et 454.) The quotations are here abridged and combined for brevity's sake; but the documents more at large amplify the doctrine, without any contradiction of it.—See also the treaty of June, 1801, between Great Britain and Russia, in which the necessity of a *stationary* force is asserted not as a special stipulation but as a general principle; and Sir William Scott in Robinson's Reports *passim*, and particularly in the case of the *Juffrow Maria*—Schroeder. v. 3. p. 155. "This fact I will venture to assume, that orders must have been given to these cruisers, in the most regular manner; yet I cannot shut my eyes to a fact that presses upon the court, that the blockade has not been duly carried into effect." (p. 156.)—"There can be no doubt then of the intention of the Admiralty, that neutral ships should not be permitted to go in; but the fact is, that it was not, in every instance, carried into effect," "What is a blockade, but to prevent access by force?"



If the ships stationed on the spot to keep up the blockade will not use their force for that purpose, it is impossible for a court of justice to say, there was a blockade actually existing at that time, so as to bind this vessel." (p. 157.) "It is in vain for governments to impose blockades, if those employed on that service, will not enforce them." (p. 158.) "ship restored." The learned Judge had abundant authorities to justify this decision.—Among others, there was one before him from Bynkershoek in complete analogy with the last words here quoted, that a blockade is virtually relaxed; *si segnius Ora observata fuerint*.

Note B. Page 517.

So also in the case of the Fox. "From every thing that must have preceded, and from every thing that must have followed, the revocation of the French Decrees, if such revocation had taken place, I think I am justified in pronouncing that no such event has ever occurred. The only document referred to on behalf of the claimants is the letter of the person styling himself *Duc de Cadore*. That letter is nothing more than a conditional revocation: it contains an alternative proposed—either that *Great Britain* shall not only revoke her Orders in Council, but likewise renounce her principles of blockade, principles founded upon the ancient and established Law of Nations; or that *America* [here the important words are also omitted] shall cause her neutral rights to be respected; in other words, that she shall join *France* in a compulsive confederation against this country. It is quite impossible that *England* should renounce her principles of blockade to adopt the new-fangled principles of the French Government, which are absolute novelties in the law of nations; and I hope it is equally impossible that *America* should lend herself to an hostile attempt to compel this country to renounce those principles on which it has acted, in perfect conformity to ancient practice and the known law of nations, upon the mere demand of the person holding the government of *France*. The *casus fœderis*, therefore, if it may be so called, does not exist; the conditions on which alone *France* holds out a prospect of retracting the decrees, neither are, nor can be fulfilled." (Edwards, v. i. p. 324.) It will be seen here, independently of the evidence referred to, under paragraph 10, of the American doctrine of blockade following the English, and not the French construction, that, as in the case of the Snipe, an inference is drawn from the words, as erroneously quoted, which the true text would not allow. Dr. Adams in his argument against the Snipe says, "the court was pleased to put its own interpretation upon these words 'causing her rights to be respected.'"—Be it the court's monopoly! he might have added that the interpretation fitted the words, for the words were made to fit the interpretation; and who shall say, if my livery be too small for a new servant, that I have not the right to take the man in.

In the letters from Marquis Wellesley to Mr. Pinkney, the same omission is followed so closely by the same inference, that one would almost suppose them the work of the same hand: "that letter states," says the noble Marquis, "that the decrees of Berlin and Milan are revoked, and that from the 1st of Nov. 1810, they will cease to be in force, it being understood, that in consequence of this declaration, the English shall revoke their Orders in Council and renounce the new principles of blockade which they have attempted to establish." And here he stops:—converting a semicolon into a period, and thus omitting the precise alternative which demonstrates the equal proffer of the United States to both belligerents; but not content with this omission of the precise condition of the alternative, a paraphrase is added by his Lordship, without travelling out of the paragraph, which perverts the particular mode of resistance offered by the United States, to either belligerent revoking her hostile edicts, against the other refusing, into a general resentment against *Great Britain* alone. A separate condition, relating to *America*, seemed also to be contained in this declaration, by which *America* might understand, "that the decrees of Berlin and Milan would be actually repealed on the 1st of November 1810, provided that *America* should resent

any refusal of the British Government to renounce the new principles of blockade, and to revoke the Orders in Council." (Wellesley to Pinkney, 29th Dec. 1810.) There is another evident omission of reference to the act of Congress of the 1st of May, 1810, in the subsequent letter of the Noble Marquis to Mr. Pinkney of the 11th of February, 1811. "If Great Britain shall not submit to these terms, it is plainly intimated in the same letter that France requires America to enforce them." France only required of America to put this act in force.

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#### FROM THE NATIONAL INTELLIGENCER OF AUG. 4.

WE have seen, with great regret and surpris, the many misrepresentations of the views of the Government which are daily published in the federal prints. At a time like this, when the exertions of every individual should be directed to an efficient prosecution of the war, solemnly declared by the constituted authorities, such misrepresentations cannot but have the most baneful influence as well on the present as on the future prospects of our country.

To put an end to them, so far as is in our power, we will remark, that although the Government are making the most vigorous efforts to prosecute the war against England with effect, they are disposed to accommodate all differences on the most reasonable conditions.

As an inducement to the British Government not to impress seamen from our vessels, our Government is yet willing, as it is well known it has long been, to enter into an arrangement, to be reciprocal, to prevent the employment of British seamen in American vessels, public or private. Such an arrangement would put an end to all pretext on the part of Great Britain for impressing men from our vessels; and the great advantage she would derive from it, if her only object, as is alleged, is to get her own subjects, ought to induce her to accede to it; for it must be evident that the exclusion of British seamen from our service, would secure to her more than she can gain by impressment: seamen must have employment, and the exclusion of those of Great Britain from our service would confine them in a great measure to that of their own country. Such an arrangement, then, would be advantageous to Great Britain, merely as an expedient to increase her maritime strength; while it would have the effect of bringing into our service our seamen, and also of augmenting their numbers.

We state with pleasure another fact, which we believe to be equally true—that our Government will not, under any circumstances that may occur, form a political connexion with France. To the injuries received from her, a just sensibility has always been felt. The war with England has not abated it, nor has it diminished the zeal or weakened the effort to obtain redress. The idea of a political connexion with France, as an expedient to extort justice from England, is treated with disdain by every person connected with the Government. It is not desirable to enter the lists with the two great belligerents at once; but if England acts with wisdom, and France perseveres in her career of injustice and folly, we should not be surprised to see the attitude of the United States change towards those powers. We are now at war with England; let her Government do us justice—let the other continue to refuse it; and from that moment we have no doubt that the United States will assume a correspondent relation with both.

The United States are placed by the injustice of the belligerents in an important crisis; but we are confident they will go through it with honor and advantage. If the citizens of the United States make common cause, and support with energy and decision the measures of Government, the result is certain. They will obtain what they have a right to demand,—first of Great Britain, and afterwards of France. Success in this struggle will secure them the respect of both the belligerents and of all Europe. It will also secure them a permanent peace, and in other respects, a just reward for all their exertions. We are confident that nothing will be wanting on the part of the Government to ensure success. It has boldly taken on itself a great responsibility,—one which the exigency of the times required; and we are satisfied it will acquit itself to the just expectations of the country.

