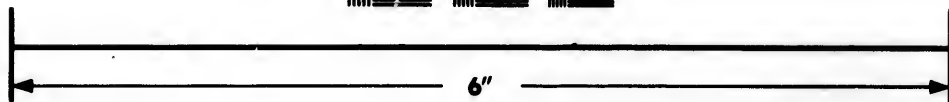
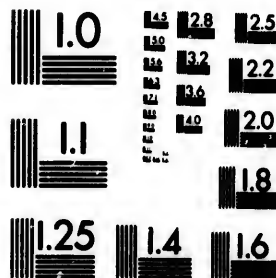


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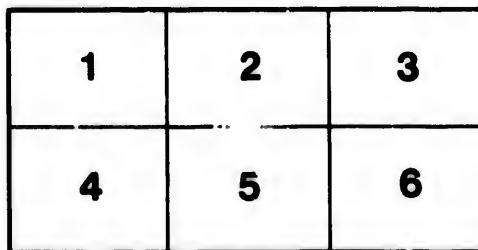
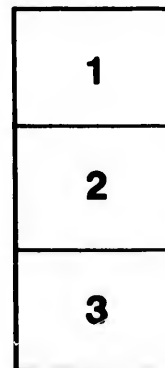
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A
DISCOURSE
ON THE
CONDUCT
OF THE
GOVERNMENT OF GREAT BRITAIN
IN RESPECT TO
NEUTRAL NATIONS.

A NEW EDITION.

By CHARLES LORD HAWKESBURY.

LONDON:

UNIVERSITAS
BIBLIOTHECA

Printed for J. DEBRETT, opposite BURLINGTON HOTEL,
PICCADILLY.

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THE following discourse was written in 1757 by CHARLES JENKINSON, Esq. now LORD HAWKESBURY. Great Britain was at that time engaged in war with FRANCE, and the REPUBLIC of HOLLAND refused to conform to those treaties of defensive alliance, by which she was then bound to assist Great Britain, and suffered her subjects not only to trade with France, but to afford protection to the property of the enemy; to supply him with naval and military stores, and to bring to the French ports in Europe the produce of the French West India islands. The British government ordered all Dutch ships, laden with the property of the enemy, or with naval or military stores, or with the produce of the
French

French West India islands, to be seized, and to be brought into port for legal adjudication. The merchants of Holland remonstrated against this measure, which deprived them of a most lucrative trade; but the British government persevered. This DISCOURSE was written in support of the principles on which the BRITISH GOVERNMENT at that time acted. It was translated and re-printed in almost every language of Europe; and it is now re-published, from the best edition, at the desire of several noblemen and gentlemen, who think, that in the present circumstances it may be equally useful.

Piccadilly, Jan. 27, 1794.

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IT is unhappy for the race of mankind, that those collective bodies, into which it is divided, should be subject to the same passions and animosities, as the individuals, of which they are composed, and not have, like them, some visible superior tribunal, which might hear and compose their dissensions: this might, perhaps, prevent those appeals, which are too frequently made to the sword, where the events of war alone decide the cause, and the sentence, which passeth on the transgressor, brings also to the injured party a large share of misfortunes in the execution of it. The welfare of mankind however requires, that this necessary evil should be confined within the narrowest bounds; and that a trial, where the proceedings are so

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destructive, should be made as short and as equitable as the nature of it will admit : it is the duty therefore of those who are not concerned in the dispute to be extremely attentive to their conduct, that they may not thereby contribute to render the contest unequal : as far as man is concerned, it is force alone on which the decision depends ; to add therefore, by any means, to the power of one party is manifest injustice to the other, and is besides highly injurious to the rest of mankind, since it necessarily tends to spread discord among nations, and from a single spark of contention to light up a general flame.

It might be hoped, that a duty like this, enforced by such powerful motives, would be universally observed ; and that no private inferior interest could induce any power to transgress it ; if some little profits, the object of greedy individuals, should, perhaps, arise from the violation of it ; can a nation in general reap a benefit, where public justice receives a wound ? To act in opposition to this, in hopes of some present advantage, is to establish a dangerous example, which may hereafter prove injurious to ourselves ; it is to untie the only band, which holdeth nations happily together, and to banish mutual confidence

confidence from the various communities of the world.

Such, however, hath been the mistaken conduct of some neutral states during the present war.—France consented to the treaty of Aix-la-Chapelle, that she might the more securely pursue the objects of her ambition; and that under the disguise of peace she might extend and fortify her possessions in a part of the world, where her arms in time of open war had always, till then, been unsuccessful: for this purpose she had artfully contrived, that the American rights should not be determined by that treaty, but be left to the consideration of commissaries, to whose decisions she never meant to pay any regard.—Canada was her vulnerable part: this therefore she resolved first to strengthen, and then to enter again with more confidence into war; while we were employed in debating our rights, she took more effectual means to end the contest in her favour; she sent frequent supplies to America; she seized and fortified the passes and navigable rivers of that country, drove the English from their possessions, and built forts on the dominions of Great Britain; when the design was thus far advanced, England saw it in all its ter-

rors, and with spirit determined to support her just rights: though forsaken now in her distress by those allies, who owe their independency to her protection, she feared not in such a cause to stand alone against all the efforts of France; she sent forth her naval strength, but the enemy soon rendered the attempts of that ineffectual, by resolving never to try its force: In what manner was she now to employ it?—One only object remained worthy of its attention, and that was to destroy the trade of the enemy, and to intercept the succours which she sent to her dominions in America. Though this would not crush at once the evil, it would stop at least the sources that fed it, and might in the end contribute to induce the enemy to consent to a reasonable peace.

France endeavoured again to obviate this stroke by her policy. She took off the tax of 50 sous per ton, which she always chuses to keep on foreign freightage: she opened even her American ports, and admitted other countries into that choice part of her commerce, which, by her maritime regulations, she hath at other times so strictly reserved to herself. Neutral nations seized at once on the advantage, and opened to the enemy new channels
for

for the conveyance of those riches, by which the war was to be nursed and protracted: under the banner of friendship they thus served the cause of the adversary, whose wealth secured by that protection would have passed safe and unmolested through our fleet; if Britain, again raising her spirit, had not resolved, that by this means her naval power should not be rendered useless, and seized on the enemy's property, which she found on board neutral ships.—It is well known, however, that her conduct in this respect hath not been universally approved, and that some neutral nations think they have a right to carry in their vessels unmolested the property of our adversaries.—As I here differ with them in sentiment, this is the point, on which I intend to discourse.

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Great and wise governments have always been jealous of national glory: it is an active principle which, properly cultivated, operates in virtuous actions through every member of the state; to preserve this therefore in its purity is the duty of every one who loves his country.—Can it then be wondered, that the native of a kingdom, always celebrated for its public spirit, and its upright faith, at a time when these are called in doubt, should
 inte-

interest himself in its defence? No indecent charges shall here be urged against other countries, it is meant only to vindicate the honour of our own. It is to be lamented, that the necessity of affairs should at such a season have given occasion to this dispute, particularly with that ancient ally of England, who hath so often fought with her under the same banner, in support of the just rights and privileges of mankind: the zeal of any government to encourage the industry of its people, is what a British pen can never disapprove: the principle is noble, and merits even our applause; I only mean to shew, that the present object of it is not just.

I shall therefore examine the right, which neutral powers claim in this respect; first, according to the law of nations, that is, according to those principles of natural law, which are relative to the conduct of nations, such as are approved by the ablest writers, and practised by states the most refined.---I shall then consider the alterations, which have been made in this right by those treaties, which have been superadded to the law of nations, and which communities, for their mutual benefit, have established among themselves.

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The right of protection then must have its foundation in some law, and, when considered in relation to any particular case, it must be founded on that law, by which the interests of the parties concerned are generally determined, and which hath force in that place, where the right of protection is claimed. Thus in the present case, if neutral nations have any right to protect the property of the enemy, it must take its rise from those laws, which are the established rules of conduct between nations, and particularly on that element, where this right is supposed to be exerted. No civil or municipal institutions, and much less the privileges arising from them, can here take place; they have no force but under the dominion of those who agreed to their establishment. The question then is---How far, according to the law of nations, doth this right of protection extend?---To answer this clearly, we must observe, that governments can have succeeded to no other rights, but such as their respective members enjoyed in a state of individuality; and that one nation is now to another, as it were in a state of nature, that is, in the same condition in which man was to man before they entered into society; the right therefore of protection, which individuals would have enjoyed

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enjoyed in such a situation, is the same which government can claim at present :---An individual then in a state of nature, would have had an undoubted right to protect his own person and property against any attack ;---but if I am engaged in contention with another, would he then have had a right to protect him against me ?---most certainly not ;---since he thereby would deprive me of a right, which the law of nature, for my own security, would in such a case give me, of seizing the property of this my enemy, and destroying his person : if he thought my conduct manifestly injurious, so as to call for general resentment, he would, on that account, become my enemy himself ; but as long as he calls himself a neuter, to act in this manner against me would be no less absurd than unjust :—such therefore, and no more, is the right of protection, which governments enjoy at present in those places, to which their own dominions do not extend ; they have succeeded to the rights only of their respective members, and by consequence these alone they can protect.

But it will be asked,—From whence then arises the right, which governments always enjoy, of protecting the property of the enemy
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 ---It is a consequence of the right of do-
 minion ; unless, therefore, their dominion
 extends over the ocean, the right of pro-
 tection cannot there take place : dominion
 gives a right of enacting laws, of establishing
 new jurisdictions, and of making all (whe-
 ther its own subjects or those of other coun-
 tries) submit to these, who come within the
 pale of its power. Here then the trial, which
 the law of nations gives, is, as it were, su-
 perseded ; and any proceedings upon it would
 of course be unjust ; but as soon as you are
 out of the verge of this particular jurisdiction,
 the laws thereof and the privileges which at-
 tend them cease at once, and the general laws
 of nations again have their force : here the pro-
 perty even of an ally hath no other protection
 than what these laws allow it : being joined,
 therefore, to the goods of an enemy, it cannot
 communicate its protection to these, since the
 same law which gives security to the first, al-
 lows you to seize and destroy the latter. These
 reasonings are exemplified by a common fact ;
 ---within the precincts of the dominion of any
 government, you are not at liberty to search
 the ships of any country ; but is not this li-
 berty universally and immemorially practised
 over all on the main sea ? and wherefore is

this search made, but that, according to the law of nations, all are here answerable for what they may convey ?

There is something analogous to this in most civil governments. Few countries are without some places which enjoy a right of protection from the general laws of the state, such as palaces, houses of religion, and the like ; and this right generally arises from some pretence to an exclusive jurisdiction ; as long, therefore, as any particular property remains within the verge of these, however justly it may be the object of the law, it is not subject to the power of it ; but suppose it conveyed from hence into the public roads, beyond the precincts of this particular palace, or convent, the protection it received would vanish at once, and the general laws of the community would fully then have force upon it. Thus the protection which governments can give within their dominions extends not to the sea ; the ocean is the public road of the universe ; the law of which is the law of nations, and all that pass thereon, are subject to it without either privilege or exemption.

If this manner of reasoning should not clearly establish my point, I can appeal in
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support of it to the ablest writers on public law, who will be found to have decided the question in my favour.

And first I will produce the testimony of that learned native of Delft, who wrote so nobly on the freedom of navigation to serve his ungrateful country. In one of the passages, which are now before me, it is remarkable, how much he labours to give the greatest extent to the rights of commerce; and yet with all his laudable bias to this favourite point, he is clearly of opinion, that the ship of a neutral nation cannot protect the property of an enemy: he manifestly implies,* that the vessels even of allies are subject to condemnation on account of the enemies property, with which they are laden; when it appears that this property was put on board them with the consent of the owners of the vessels, but not otherwise. His words are, “*Neque amicorum naves in prædam veniunt ob res hostiles, nisi consensu id factum sit dominorum navis;*” and producing several authorities in confirmation of this opinion, he afterwards adds, “*Alioqui res ipsæ solæ in prædam veniunt;*” but if

* Grotius de Jure Belli ac Pacis, lib. iii, c. 6, sec. 6. in notis.

the enemies property should be found laden on board a neutral vessel, without the connivance of the owner, in such case, " that " property alone is lawful prize:" and speaking again in another place on this point, he says, that if the wrong done me by my enemy is manifestly unjust, and that any one, by affording succours, should encourage him in his enmity against me, " jam non tantum ci- " viliter tenebitur de damno, sed & crimina- " liter, ut IS, qui judici imminente reum " manifestum eximit."* A fine and animated manner of expression, which shews how clear the opinion of this great author was upon the question.

To the testimony of Grotius I shall add that of Bynkershoek, a native also of Holland, and whose sentiments, in point of maritime jurisprudence, Barbeyrac often prefers even to those of the former; and what makes even his opinion at this time of great importance, is, that he wrote principally for the use of the courts and states of the United Provinces, and generally confirms what he advances by their judgements and resolutions. He speaks expressly in favour of my point:

* Grotius de Jure Belli ac Pacis, lib. iii. cap. 1.

“ Ratione consultâ,” says he,* “ non sum qui
 “ videam, cur non liceret capere res hostiles
 “ quamvis in navi amicâ repertas, id enim
 “ capio, quod hostium est, quodque jure belli
 “ victori cedit.” He then assigns this reason
 also for his opinion, that as it is lawful to stop
 on the ocean any vessel, though she carry the
 colours of a neutral nation, and to examine
 by her papers to whom she really belongs,
 and in case she appear to be the property of
 an enemy, to seize her as a lawful prize ; so
 he can see no cause why this rule should not
 extend to the effects which any ship may
 have on board ; and if the goods of an enemy
 should lie there concealed, why they also, by
 the right of war, should not be taken and
 condemned : he even declares it to be his opi-
 nion, that the owner of the neutral vessel
 should, in such a case, lose the price of the
 freight ; a severity which the English courts
 of admiralty never practise, where some par-
 ticular circumstance doth not require it.

I shall add to these the opinion of Albericus
 Gentilis,† esteemed the ablest writer on national
 jurisprudence till Grotius bore the palm from

* Bynkershoek, *Questionum Juris Publici*, lib. i. cap. 14.

† Albericus Gentilis *de Advocacione Hispanica*, lib. 1. cap.
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him; and his fame in this respect was so great, that Philip the Third of Spain appointed him perpetual advocate for his subjects in all causes, which they might have depending in the courts of England. This author states a case, where the Tuscans had taken the effects of the Turks, at that time their enemies, which they found on board some English ships; and he determines, that the Turkish goods are legal prize, but that the captor must pay the freight to the English. "Trans-eunt res," says he, "cum suâ causâ, victor succedit in locum victi, tenetur etruscus pro toro nauulo." The property of the enemy passeth to the captor, but all its consequences attend it; the goods justly belong to him, but he must pay to the freighter all which the enemy would have paid, to whose right he hath in every respect succeeded.

To enter particularly into the sentiments of any more writers on this subject would be equally tedious and unnecessary; it will be sufficient to mention the names alone of such others as are in favour of the question.—Among these I find Heineccius,* no less famed for his knowledge of laws, than for his

* Heineccius de Navibus ob Vecturam de Vecturam Mercium committis, cap. 2.

learning in what are the best expositors of laws, the antiquities of governments. — Zouch,* who for many years presided in the courts of admiralty of this kingdom.—Voet,† Zuarius,‡ and Loccenius,§ all of them writers of reputation, and whose opinions are universally relied on by all who treat on public jurisprudence.

I might indeed have wholly omitted the sentiments of these learned individuals, since we shall find, that great communities themselves have confirmed our opinion both by their laws and by their practice.—It will not be proper on this occasion to look far back into the early annals of the European states; when the governments of these were yet in their infancy, the advantages of commerce were but little understood, and of course the rights of it were not sufficiently regarded; war was then too much the season of rapine, and they who entered into it meant less to conquer than to plunder. As soon, however, as some better order began to be introduced into these affairs, it then became usual for each party at the com-

* Zouch de Judo. inter Gentes, pars 2.

† Voet de Jure Militari, cap. 5.

‡ Zuarius de Ufû Maris, Consil. ii.

§ Loccenius de Jure Maritimo, lib. ii. cap. 4.

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mencement of the war to publish a declaration, wherein he specified what kind of trade he would permit neutral nations to carry on with his enemy ; and the regulations of these were sometimes attended to, and sometimes not, either as the interest of the party neutral inclined him to submit to the restraint, or as the power of the party belligerent enabled him to enforce the execution of it. True it is, that the prohibitions which these declarations contain are various, according to the sentiments of the different governments which made them ; and on that account they are, perhaps, too unsteady a foundation on which to establish a right ; there plainly, however, follows from hence one powerful inference in our favour, that not one can be found amid all this variety, which ever permitted neutral nations to protect the property of the enemy : this branch of freighting they all agree unanimously to prohibit.

The free states of Italy cultivated first the interests of commerce : before any vessel had as yet passed the Cape of Good Hope, and a shorter passage had been discovered to the East Indies, Venice and Genoa drove the principal trade of the world, and dispersed the manufactures of Asia to the different parts of Eu-

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rope: it naturally followed, that these two
 commercial republics soonest understood and
 defined the just rights of navigation; their
 maritime constitutions still remain collected
 in the *Consolato del Mare*; and the reputa-
 tion of these was so great, that as the laws of
 Rhodes were once to the Romans, and the
 laws of Oleron to the western parts of Eu-
 rope, so these Italian laws became of force
 universally to all nations which border on
 the Mediterranean sea: these have determined
 the point expressly in our favour. In one
 of them it is asserted, “ *Se la nave o navilio,*
 “ *che pigliato farà, fusse di amici e le mer-*
 “ *cantie, che lui porterá faranno d’inimici, lo*
 “ *armiraglio della nave o del navilio armato,*
 “ *pou forzare & constringere quel patrone di*
 “ *quella nave o d’quel navilio, che lui pigliato*
 “ *haverá, che lui conquella sua nave gli debba*
 “ *portare, quello, che di suoi inimici fara;”*
 “ If the ship or vessel which shall be taken
 “ belong to an ally, and the merchandize
 “ which she has on board belong to an ene-
 “ my, the captain of the armed ship may
 “ force or constrain the master of the ship or
 “ vessel which he has taken, to carry into
 “ some port for his account, the effects of his
 “ enemy which are on board;” and it is af-
 terwards added, that the master of the vessel

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must be paid for the freightage of the goods of the enemy.*—And such was not only the constant purport of their laws, but the practice of their governments was always conformable to it. Their historian † tells us, that in the war between the Venetians and the Genoese, the ships of Grecians, who were neuter, were always searched, and the enemies who lay hid in them were taken out and made prisoners.

It is unnecessary to dwell longer in giving a further detail of the conduct of every nation in this respect; I will, therefore, confine myself to those who are most concerned in the present dispute; and will shew, that as England claims no more at present than what she always enjoyed, so France and Holland have constantly supported the same opinion whenever their interest required it.

It was in the reign of the first Edward, a prince who thoroughly understood the rights of his crown, and had a spirit equal to the support of them, that Philip the Fair of France, being engaged in a war with the Duke of Burgundy, the French admiral took

* *Il Consolato del Mare*, c. 273.

† *Niceph. Gregoras*, lib. ix.

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the ships of several neutral nations, which were passing through the British Channel into the ports of Flanders: great complaints were made on this head, and commissioners were appointed to examine into the conduct of the admiral; a libel was there presented against him by almost every trading nation of Europe; the record* of this is still remaining; and if neutral nations had at that time pretended to enjoy the right of protecting the property of the enemy, and that the effects which they carried on board their ships, could in no case, except in that of contraband, be made lawful prize, we might well expect, that this right would here have been claimed and asserted: fear could not, in this case, have prevented it; for all the world, except France, was on one side of the question; but the record contains no such claim: the injured demand their right on a different principle, because their ships were taken on those seas, “ where the kings of England “ (saith the record) have time out of mind “ been in peaceable possession of the sovereign “ lordship, with power of appointing laws, “ of prohibiting the use of arms, of giving “ protection as occasion should require, and

* Sir Ed. Coke's Fourth Inst. chap. 22.

“ appointing all things necessary for the main-
 “ taining peace, justice, and equity among
 “ all, as well foreigners as natives, who na-
 “ vigate those seas.”* Here then the right of
 protection is placed on that basis, on which
 alone it can properly be founded, the right of
 dominion; no other pretence is offered; and
 if I may be allowed to sum up the evidence,
 as their names are written in the record,
 “ Genue, Catelaigne, Espaigne, Alemaine,
 “ Seland, Hoyland, Frise, Denmarch, Nor-
 “ way, & plusours aultres lieux del Empier,”
 all join here in asserting the principles on
 which I first established my argument.

The annals of Edward III. afford still other
 facts in favour of my opinion: this prince
 added to his military accomplishments, great
 sagacity in the science of laws, and uncom-
 mon attention to the commercial interests of
 his kingdom; in the second year of his reign
 he confirmed the Charter of Privileges, which
 some of his predecessors had before granted to
 foreign merchants, and particularly to those
 of the Hanse-towns, † who were at that time
 the greatest freighters of the Western parts of
 Europe: this instrument may well be confi-

* See all this more fully stated in the record.

† Rymer's *Fœdera*, tom. 4. p. 361.

dered as a sort of maritime regulation, by which England meant to direct her conduct at that time in affairs of this nature : in this, liberty of navigation is fully confirmed ; foreign merchants are allowed to carry their goods, whether purchased within the kingdom or without, “ Quocunque voluerint ;” but with this exception, “ præterquam ad Terras notiorum & manifestorum hostium Regni nostri ;”* and some offences being afterwards committed against this charter in the succeeding wars, it was again renewed in the same manner in the 6th year of this reign ; in both these instances the exception is express, that no trade whatsoever should be permitted with the enemy ; but this good king, perhaps through a principle of justice, and his ardent love to commerce, seems to have practised this right with more moderation, that is, in much the same manner in which the government of England claims it at present ; for in his wars with Scotland, some ships of Great Yarmouth having taken several vessels belonging to the burgessees of the town of Bruges, “ Præterdentes Bona in iisdem existentia fuisse hominum de Scotia,” he directed his precepts to the Sheriff of Norfolk, † com-

* Rymer's *Fœdera*, tom. iv. p. 516.

† *Ib.* p. 328.

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manding him to set at liberty, and to cause full restitution to be made of the ships, and of such of the goods as belonged to the merchants of Bruges, and that he should detain only that part of the cargo which was the property of the Scotch, his enemies. We find also, that when Queen Elizabeth was engaged in war with Spain, she seized several vessels of the Hanse-Towns, which were entering into the port of Lisbon; and she urged, among other arguments, the charter above mentioned in defence of her conduct: she was in this respect so satisfied of the justice of her cause, that the threats of the German Empire, and other neutral powers, could not oblige her to relinquish her right; and though she might perhaps on this occasion give too great extent to this right, yet it is remarkable that Monsieur de Thou, who was himself a great lawyer, and had long sat in the first court of judicature in France, even when he blames the conduct of the Queen in this affair, passeth his censure upon it, not as defective in justice, but only in policy: “*In tam alieno tempore,*” says he,* “*Rerum prudentiores existimabant, imprudenter factum esse a Regina ab Anglis.*”

* Thuanus, lib. 96.

We have as yet mentioned the conduct alone of those English princes, who knew how to assert their rights, and who ruled their people with glory; but we shall find that even under a weaker government, and in a latter period, this right of seizing the property of the enemy found on board neutral ships hath been fully claimed and practised: when Villiers, Duke of Buckingham, presided over the naval affairs of England, and to gratify his own private resentments, had engaged his country in a war against Spain, the British fleet under Pennington took several French vessels, to the number of between thirty and forty, which had Spanish effects on board; they were brought into the ports of England, and our courts of admiralty condemned the goods of the Spaniards as legal prize, but ordered the vessels of the French to be released, and the freightage to be paid to them. This conduct was avowed by the Court of England, and a full representation of it transmitted by the Lord High Admiral to the administration of France: about 15 years after this, when the French themselves were at war with Spain, the navy of France took a great many English ships which were laden with the property of Spaniards; and their courts of admiralty condemned not only the enemy's effects,

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effects, but the English ships which conveyed them: the Earl of Leicester, then ambassador in France, made great complaints on this head; he was answered, that the English always acted in this manner; and this answer being transmitted to the Earl of Northumberland, at that time Lord High Admiral, he consulted upon it Sir Henry Martin, the best English civilian of that age, and the most versed in maritime jurisdiction; and by his advice he returned to Lord Leicester the following answer, which at the same time proves the constant opinion, and shews the moderation of the British Admiralty on this point: "that," says he,* "which is alledged by the French
 "to be practised in our courts of admiralty
 "is absolutely denied; and that neither the
 "law nor practice hath ever been here to
 "confiscate the goods of friends for having
 "enemies goods among them: we are so far
 "from doing any such act of injustice, as
 "when in time of war we have met with
 "any such prizes, the freight hath always
 "been paid by the taker for those enemies
 "goods that he took, and those that belonged
 "unto friends were duly restored to them."

* The Sidney Papers, Algernon Earl of Northumberland to Robert, Earl of Leicester, Nov. 5, 1640.

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Thus much may suffice to shew the conduct of the people of England:—history will also prove to us, that Holland hath always exerted the same right:—At the beginning almost of that war which the United Provinces sustained in support of their liberties, and even before their sovereignty was as yet fully established, the people of Zealand scrupled not to carry into their ports all such neutral vessels * as were conveying the effects of the enemy, under pretended names, from Flanders into Spain; and the courts of admiralty of that province adjudged the Spanish property to be legal prize; and though they released the neutral ships, they made them no compensation for their freightage: among these there were some English vessels, and Queen Elizabeth, angry that so young a state, and one which had placed itself under her protection, should in any degree interrupt the commerce of her people, at first shewed the effects of her resentment, by seizing their ships, and imprisoning their merchants; the Zealanders upon this made reprisals; several English vessels were detained, and their commanders put under confinement: to endea-

* *Historia Belgica Metereni*, lib. 5. Camden, anno 1575.
Zouch de *Judicio inter Gentes*, pars 2.

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vour at some settlement of this affair, the Queen sent over to Holland Mr. Robert Beal, her secretary; and for the same purpose the Prince of Orange dispatched a minister to London; by these means the dispute at last was compromised: the ships and the prisoners were on both sides released; but the Queen never obtained restitution of the enemies goods which were taken on board the vessels of her subjects; this fact is worthy of observation, not only as it relates to the conduct of Holland, but as it shews how far a Princess thought herself obliged in equity to yield, whom historians have always described as positive in her temper, and, whenever her right was concerned, of a very tenacious disposition.

Holland, whenever she was engaged in war, almost constantly pursued the same conduct: she sometimes even prohibited the commerce of neutral nations beyond all justice and moderation. In the year 1599,* when the government of Spain first prohibited the subjects of the United Provinces from trading to the ports of that kingdom, a liberty which had unaccountably been allowed them, from

* Grotii Hist. lib. 8.

the commencement of their revolt to that period; the States General, in revenge, published a placart, forbidding the people of all nations to carry any kind of merchandise into Spain; the words of Grotius, in the relation he has given of this affair in his *Belgic History*, are very full and express: "Per edictum," says he, "vetant populos quoscunque ullos commeatus resve alias in Hispaniam ferre; si qui secus faxint, ut hostibus faventes vice hostium futuros." This placart they publicly notified to all kings and nations, for this reason, as the historian expresses it, "ne quis inscitiam excusaret." The consequences of this notification deserve also our attention; the historian continues: "Paruit Rex Gallix, ac si quis suorum sex intra menses in Hispaniam navigat, professus est privatum periculum fore." Henry the Fourth, at that time king of France, though delivered then from all his distresses, and arrived at the summit of all his power, scrupled not to submit to this placart, and gave up the interests of all his subjects, who should attempt within six months to transgress it; the historian concludes, "Cæteri (reges) silentio transmisere;" the other powers of Europe made no clamorous complaints against this measure of the States; in

silence they passed it over: How unlike was this conduct to that of Holland at present! —Charles the Second, in a letter to the States General, of October 4, 1666, charges them with a remarkable violence of this nature; being at war with some Asiatic Princes in the East Indies, they seized all the ships and goods of the English merchants which were trading to those countries; and the Dutch governors scrupled not only to profess in their declarations, “*Qu’ ayant depuis peu annoncé la guerre aux Princes, avec qui ils avoient dessein de trafiquer, cette guerre devoit par consequent leur interdire tout commerce avec les dits Princes.*”*

I omit citing many other instances of their conduct in this particular, lest I should appear tedious, especially as one fact still remains, which is alone sufficient to evince the opinion of Holland on this point; and the which I rather chuse to mention, as it happened even after the Dutch had by their negotiations endeavoured to establish, as a general maxim among nations, that the goods of an enemy under a neutral banner should pass unmolested.—At the commencement of that war

* Charles the Second's Letter to the States General, October 4, 1666.

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which broke out immediately after the revo-
lution, when the first grand alliance was
formed against France, Holland entered into a
convention * with England to prohibit totally
the commerce of neutral powers with the
enemy : in the preamble of this, they assign
publicly their reasons for it ; they say, “ that
“ having declared war against the Most Chris-
“ tian King, it behoves them to do as much
“ damage as possible to the common enemy,
“ in order to bring him to agree to such con-
“ ditions as may restore the repose of Chris-
“ tendom : and that for this end it was neces-
“ sary to interrupt all trade and commerce
“ with the subjects of the said king ; and
“ that to effect this, they had ordered their
“ fleets to block up all the ports and havens
“ of France ;” and afterwards, in the second
and third articles of this convention, it is agreed,
“ that they would take any vessel, whatever
“ king or state it may belong to, that shall
“ be found sailing into or out of the ports of
“ France, and condemn both vessel and mer-
“ chandise as legal prize ; and that this reso-
“ lution should be notified to all neutral
“ states.” Such therefore was at this time

* Convention concluded at London, Aug. 22, 1689.

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the avowed opinion of Holland, and England was induced to join with her in this convention, exceeding thereby those bounds of equity and moderation, which she had almost always practised in this point before, and which she will, I hope, most faithfully observe for the future. The Northern Crowns, who were particularly affected by this prohibition, contended very vehemently against it; in answer to their objections were urged, the circumstances of affairs, the danger of Europe, and the mighty strength of that ambitious power; which, if some extraordinary effort was not made, would bring mankind under its subjection. It is remarkable, that Puffendorf,* who owed his fortune and employments to one of those Northern Crowns, was of opinion in this case against them, and thought that the convention might be justified. It is not meant here at present either to censure or commend it: circumstances may sometimes make a thing to be lawful, which considered by itself, would be unjust; but such times are truly unhappy, when necessity must be pleaded in support of a right.

* See a Letter of Puffendorf in Jno. Groningii Bibliotheca Universalis Librorum Juridicorum, p. 105.

It remains that I now inquire into the conduct of France; my proofs * on this head will be clear; they are indeed nothing less than the public laws of that kingdom; by some very old French ordinances it is declared, not only that the enemies goods shall be adjudged to be lawful prize, but that the neutral vessel which carries them, or the property of any ally which shall be joined with them, shall be joined also in the condemnation. It has always been a maxim of the courts of maritime jurisdiction of France, “*Que la robe d’am con-*”
 “*fisque celle d’ennemie:*” and so clear were they in this opinion, that the laws which established it were repeatedly enacted in the reigns of two of their kings, Francis I. and Henry III.—That the practice of the French marine hath in this particular been conformable to their laws, may be proved by a thousand instances: I shall select one upon the authority of a Minister of Holland, which will shew what their conduct was in that Spanish war which preceded the Pyrenean treaty. In a letter of Monsieur Boreel from Paris to Monsieur de Wit, December 26th, 1653. “*On tient ici,*” says he, “*pour*

* See the Ordinances of France, Francis I. 1543. c. 4.
 and Henry III. 1584. c. 69.

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“ maxime favorable à leurs interests, que
“ leurs ennemis ne doivent recevoir ni defense
“ ni service des subjects de leur H. H. P. P.
“ en transportant de chez eux quelques mer-
“ chandises ou commodités ou d’autres, qui
“ seroient pour le compte de l’ennemie, sous
“ peine, au cas qu’ils les trouvent dans les
“ batiments Hollandois, qu’ils seront de bonne
“ prise, & qu’on les puisse enlever les dits ba-
“ timents & les confisquer.”

But it is not the old laws of France alone, that thus determine this point, their more modern regulations confirm it: one of the last and greatest services which Colbert performed to his country, was the establishment of a system of naval laws, the wisest and best digested which the spirit of legislation hath ever yet produced; it is observable, that although the ordinance which contained these laws was registered in 1681, several years subsequent to those treaties, by which France agreed that neutral vessels should protect the property of the enemy, yet it pays no attention to them, and establishes the contrary doctrine. This proves how little regard France always shewed to that article. The words of the ordinance expressly condemn not only the enemies

mies goods, but the neutral ship which carries them: "All ships (saith the law *) which " have goods on board that belong to the ene- " my, shall be good prize."

These laws continue still to be observed in France: at the commencement even of the present war, the French government delivered to *Monf. Berkenrode*, the Dutch minister at Paris, a memorial, " *Contenant les Precau- " tions,*" (as the title expresses it) " que " *doivent prendre les negociants Hollandois* " *conformement à l'ordonnance de la marine* " *aux reglements de la France, pour* " *que leurs navires soient déclarés de bonne " prise.*" In the preamble of this, the words of the above-mentioned law are repeated, and the same rule of condemnation is declared to be still in force: And the seventh article of the memorial lays even a greater restriction on neutral commerce, than the ordinance of 1681 seems to have intended; it is there said, " *Si les navires Hollandois transportoient des " marchandises du cru ou fabriques des ene- " mies de la France, ces marchandises seroient " de bonne prise, mais le corps du navire se- " roit relaché.*"—By this memorial, there-

* Naval Ordinance of 1681, Title ix. Art. 7.

fore, every thing which is either of the growth or manufacture of the enemy's country, when found on board the ships of Holland, though the property does not appear to belong to the enemy, is declared to be good prize. The same restriction evidently extends to all other neutral traders.* Is not this almost a total prohibition to neutral powers, of any commerce with the enemies of France?

Let us now look back on what has been said: the deduction which I have made hath, I fear, been tedious; but the importance of the subject by force led me into it:—I flatter myself, however, it has appeared, that reason, authority, and practice, all join to support the cause I defend:—by reason, I have endeavoured to trace out those principles on which this right of capture is grounded; and to give that weight to my own sentiments which of themselves they would not deserve, I have added the authorities of the ablest writers on this subject;—and lastly, I have entered largely into the conduct of nations, that I might not only lay thereby a broader foundation for this right, but that I might the more fully illustrate, by the extravagant pretensions

* See the preamble of the Memorial.

of other states in this respect, the present moderation of England: no age or country ever gave a greater extent to the commerce of neutral nations, and we have seen that most in the same circumstances have confined it within much narrower bounds,

There remains still, however, one objection to what has been said, and that of so plausible a cast, that I cannot leave it without an answer: it has been pretended, that the liberty of navigation is destroyed by means of these captures, and that a violent restraint hath been put on the lawful industry of mankind. The liberty of navigation, in fair construction, can mean no more than the right of carrying to any mart unmolested the product of one's own country or labour, and bringing back the emoluments of it: but can it be lawful that you should extend this right to my detriment; and when it was meant only for your own advantage, that you should exert it in the cause of my enemy? Each man hath a right to perform certain actions, but if the destruction of another should follow from them, would not this be a just reason of restraint? The rights of mankind admit of different degrees, and whenever two of these come into competition, the lowest in the scale must always

give place to the higher;—but you will say, that you have a profit in doing this; if, however, it is otherwise unjust, will that consideration convert it into a right?—If you mean, that your own commerce ought to be free, that right is not in the least denied you; but if under this disguise you intend to convey freedom to the commerce of the enemy, what policy or what justice can require it? What can neutral nations desire more, than to remain amid the ravages of war in the same happy circumstances which the tranquillity of peace would have afforded them? But can any right from hence arise, that you should take occasion from the war itself to constitute a new species of traffic, which in peace you never enjoyed, and which the necessity of one party is obliged to grant you, to the detriment, perhaps destruction, of the other? If this right was admitted, it would become the interest of all commercial states to promote dissension among their neighbours; the quarrels of others would be a harvest to themselves; and from the contentions of others they would gather wealth and power.---But, after all, the rights of commerce are not the real cause of this dispute: and liberty of navigation is only a fair pretence, which ambition hath thought fit to hold forth, to interest the trading states
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of the world in its cause, and to draw down their indignation upon England; this is not the first time that a deceit like this has been practised: when the power of Spain was at its greatest height, and Elizabeth wisely contended against the mighty designs of Philip, the capture of some vessels belonging to the Hanse Towns gave occasion to a contest of this nature: but they were the emissaries of Philip that then blew up the flame, and pretending a love to commerce, promoted the ambitious projects of their master: the Queen of England published an apology for her conduct, and this was answered in a virulent and abusive manner, not from any of the Hanse Towns, but from Antwerp, a city under the dominion of Spain, and it seemed to be written (says Thuanus) “*per hominem Philippi* “*partibus addictum, non tam pro libertate* “*navigationis et in Germanorum causâ de-* “*fendendâ, quam in Hispanorum gratiam,* “*et ad Reginae nomen proscindendum:*” the interests of commerce were the pretended cause of this dispute, but the real cause was the interest of Philip; the pretended design was to preserve the liberty of navigation, but the real end was to serve the cause of ambition, and to destroy the government of England;— this case need not be compared with our own at present, the resemblance is too obvious.

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Here then we might rest our cause, if the law of nations was the only foundation on which this point could be argued; but the bands of equity have been found alone too weak to hold the nations of the world to their duty; their interest taught them to renew and confirm these by contracts among themselves, and frequently to add thereto certain mutual advantages, greater than what the law of nations singly would have allowed them: — let us consider therefore, what influence these may have in the present case; — whatever they are, I mean to give them all the force which reason or justice can require: if our ancestors have betrayed the interest of their country in granting any privileges of this nature, we, who have succeeded to their rights, are bound to abide by their concessions; it is the happiness of great kingdoms, whose power is equal to the support of their own independency, to be able to act up to those principles, which necessity hath often forced little states unhappily to abandon; those scandalous maxims of policy, which have brought disgrace both on the name and the profession, took their rise from the conduct of the little principalities of Italy, when distressed by the successive invasions which France and Spain made upon them,

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they broke or conformed to their leagues, as their own security obliged them; and their refined shifts and evasions formed into systems by able doctors of their councils, have composed that science, which the world hath called politics; a science of fraud and deceit, by which kingdoms are taught to be governed on principles, which individuals would be ashamed to profess; as if there could be no morality among nations, and that mankind being formed into civil societies, and collectively considered, were set free from all rules of honour and virtue: maxims like these I mean to avoid; to follow them would bring dishonour on my country.

It must then be allowed, that there are articles in some of our maritime treaties with other nations, which have stipulated, that, “All which shall be found on board the
“vessels belonging to the subjects of those
“countries, shall be accounted clear and free;
“although the whole lading or any part thereof
“shall, by just title of property, belong to
“the enemies of Great Britain;” such an article is inserted in those maritime treaties, which Great Britain hath made with France*

* Treaty between Great Britain and France, 24th Feb. 1677.

and Holland :* it has indeed by some been supposed, that the subjects of the crown of Spain have a right to enjoy a privilege of the same nature ; certain, however, it is, that no such article as that above mentioned, can be found in the maritime treaties between that country and Great Britain, and particularly in that of Madrid of 1667, which is the principle maritime treaty at present in force between the two kingdoms ; but as a mistake in this respect may possibly have arisen from a false interpretation of two articles in the treaty of Madrid, which declare in general,* that “ the
 “ subjects of the two crowns respectively
 “ shall have liberty to traffic throughout all
 “ countries, cultivating peace, amity, or neutrality with either of them, and that the
 “ said liberty shall in no wise be interrupted
 “ by any hindrance or disturbance whatsoever,
 “ by reason of any hostility which may be
 “ between either of the said crowns and any
 “ other kingdoms :” and as the liberty here stipulated, may be by some erroneously imagined to extend so far, as to grant a right to carry freely the effects of the enemy ; it will be proper here to remove this error, and to

* Treaty between Great Britain and Holland, 1st Dec. 1764.

† Treaty of Madrid, 1677.

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stop a little to shew the true design and meaning of these articles. This explanation is at present more necessary, as it will tend to illustrate the true sense of other stipulations of precisely the same purport, which may be found in several of our commercial treaties, and particularly in the first and second articles of that with Holland of Dec. 11, 1674: a wrong interpretation of which hath already given occasion to great confusion and much false reasoning upon the present question.

It cannot, I think, be doubted, that according to those principles of natural equity, which constitute the law of nations, the people of every country must always have a right to trade in general, to the ports of any state, though it may happen to be engaged in war with another, provided it be with their own merchandise, or on their own account; and that under this pretence, they do not attempt to screen from one party the effects of the other; and on condition also, that they carry not to either of them any implements of war, or whatever else, according to the nature of their respective situations, or the circumstances of the case, may be necessary to them for their defence. As clear as this point may be, it has sufficiently appeared by the facts de-

duced above, that amid the regularities of war, the rules of equity in this respect were not always enough regarded; and that many governments in time of war have often most licentiously disturbed, and sometimes prohibited totally, the commerce of neutral nations with their enemies: about the middle therefore of the last century, when the commercial regulations, which at present subsist between the European powers, first began to be formed, it became absolutely necessary to call back the attention of governments to those principles of natural right, from whence they had strayed; and to fix and determine what was the law of nations, by the articles of their respective treaties: for this purpose, the negociators of that age inserted in their commercial regulations, articles * to the same purport as those above-mentioned, asserting, in general, a right to trade unmolested with the enemies of each other; and these they usually placed among those articles of general import, which are commonly first laid down in treaties, as the basis on which the subse-

* Treaty of Commerce between France and Holland, 1662.—Treaty of Commerce between England and Holland, Feb. 17, 1668.—Treaty of Commerce between England and Holland, Dec. 1, 1674.—Treaty of Commerce between England and France, Feb. 24, 1677.

quent stipulations are founded: the rule therefore of equity in this case being thus defined, they came afterwards to erect upon it such privileges as that rule alone would not have allowed them; and among the rest, some nations, as their interest prompted them, granted mutually to each other, by new and express articles, the right of carrying freely the property of their respective enemies. These last articles therefore must be considered as wholly distinct in their nature from those before-mentioned, and in their meaning totally different: the first are an affirmation of an old rule, the last create a new privilege; those only confirm a right which was determined by the law of nations before; these make an exception to that law:—if they both imply the same sense, why are both so often found inserted in the same * treaties? Would the repetition in such a case have been necessary; and to what purpose were new articles added to grant a privilege which was already included in the terms of the preceding? The same exception also of contraband goods is again repeated in the last case, as well as in the former; and shews clearly,

* See the Treaties mentioned in the last note.

that the property, which is the object of the exception in the different articles, must likewise in its nature be different ; the one relates to the ordinary means of traffic which every nation enjoys, its own produce or property ; the other to the property of the enemy.

But this point is still more clearly explained by the assistance of other treaties, where articles of the same force, as the 21st and 22d of the treaty of Madrid, are inserted, and the intention of them fully made appear from the subsequent parts of the same treaties.—In the treaty of commerce between Great Britain and Sweden, of the 21st of October, 1661, it is stipulated by the 11th article, that “ it is by
“ no means to be understood, that the sub-
“ jects of one confederate, who is not a party
“ in a war, shall be restrained in their liberty
“ of trade and navigation with the enemies
“ of the other confederate, who is involved
“ in such war ;” and then in the article which immediately follows, the meaning of these words become manifest beyond a doubt : it is there so far from being supposed, that the liberty here granted can be so interpreted, as to imply a right of conveying the effects of an enemy, that the very attempt to
practise

practise it under favour of this liberty, is there called "a fraud;"* and as a "most heinous crime," is ordered "to be most severely punished;" and to prevent any collusion in this respect, the vessels of both parties are required to be furnished with passports, "specifying "of what nation the proprietors are to whom "the effects on board them belong."—And in the treaty of commerce between Great Britain and Denmark, of the 11th of July, 1670, a right of free trade with the enemy is stipulated in the 16th article; and afterwards by the 20th article; the extent of this right is made apparent: here the means are set down to prevent the designs of those, who under favour of this stipulation should attempt to protect the effects of the enemy; and the illegality of such a practice being supposed, as not necessary to be expressed, the article then declares, "but lest this "liberty of navigation and passage for one "ally might, during a war which the other "may be engaged in, by sea or land, with "any other state, be of prejudice to such "other ally; and the goods belonging to the "enemy be fraudulently concealed, under the "colourable pretence of their being in amity

* See the Treaty of Commerce between Great Britain and Sweden, Oct. 21, 1661.

“ together ; to prevent, therefore, all fraud of
“ that sort, all ships shall be furnished with
“ passports ;” the form of which is there set
down, and is the same as that mentioned
above.—From these treaties then it manifestly
appears, that by a general stipulation in fa-
vour of trade with the enemy of another
power, negotiators never intended to imply a
right to carry freely the effects of that enemy ;
but that to establish such a right, it is neces-
sary to have it expressly mentioned. The
21st and 22d articles therefore of the treaty of
Madrid, in which liberty of traffic to the
countries of the enemies of Great Britain is
thus in general stipulated, can be explained
to grant to the subjects of the Crown of
Spain no other right but that of carrying on
without any injuries, “ molestation,” or
“ disturbance,” such traffic as would other-
wise be legal according to the law of nations,
and by this law, in time of war, it never
could be legal to protect the effects of an
enemy ; — a privilege, however, like this
Great Britain hath consented to grant in her
commercial treaties with France and Holland ;
the first of these is put an end to by the pre-
sent war ; it remains, therefore, that I now
discourse on this privilege, as it is stipulated
in the British treaties with Holland ; and I

propose to shew that here also it is extinct.—
 But to give a fuller view of my subject, and
 to shew the origin and intention of this pri-
 vilege, it will be necessary to enter a little into
 the history of it, and to relate the manner in
 which the article that grants it was first ad-
 mitted into treaties.

When the United Provinces had put an end
 by the treaty of Munster, to that long war,
 which they had so nobly maintained in sup-
 port of their liberties, and had happily crowned
 their labours by obtaining a full acknowledge-
 ment of their sovereignty; delivered from
 the cares of war, they wisely turned their
 thoughts towards the arts of peace: after long
 contentions among themselves, their com-
 mercial provinces had at length obtained the
 greatest lead in the state; the interest of trade
 was of course the principal object of their
 council; their armies were reduced; all who
 favoured war were no longer in credit; and
 the views of their ministers terminated chiefly
 in giving permanence to that extensive traffic,
 which had supported them through all their
 distresses, and to the effects of which they
 principally attributed all their power and free-
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They were, indeed, at this time so fully masters of almost all the commerce of the world, that they had little else to do but to preserve the possession of it: the public was, on this occasion, amused with a new species of policy, the offspring rather of avarice than ambition, desirous of keeping the rest of mankind in indolence, that it might more fully reap the fruits of its own industry: where wealth was at least the first object in view, though in the end it might be accompanied by its usual attendant, power: the arts which they practised to preserve their fisheries, and to secure to themselves alone the trade of the Asiatic spices, are well known, and not at present to our purpose; they urged loudly the freedom of navigation, till they had made it free indeed for themselves; but they have been charged with practising a different doctrine on the other side of the line to what they professed on this; and with seeking to establish an exclusive trade on those very seas, whose freedom from papal grants and Spanish pretensions the pen of their Grotius had so ably defended.

There was, however, another species of commerce which demanded their attention even more than either of the former; as it
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was not only a profitable branch of traffic in itself, but as it greatly tended to the security of the rest, by being the principal basis of their naval power: this was the trade of freightage, or the carrying trade, the subject of our present discourse.—To understand their views in this respect, we must first take notice of the foundation on which their policy was built; they had succeeded to the Hanseatic traders, in becoming the carriers of the world: long possession had, therefore, furnished them with great numbers of sailors and ships; and to these they added uncommon parsimony and industry, the natural endowments of their people: these made them contented with small profits, and enabled them to carry the manufactures of each country even cheaper than the natives of it themselves: with such happy circumstances in their favour, they were sure of making this branch of trade wholly and perpetually their own, if they could, by their negotiations and policy, establish two points:—The first was, that no nation should grant to its own natives any privileges in relation to freightage, which the people of Holland should not equally enjoy. And as the consequences of war should otherwise frequently interrupt the the course of this traffic, they laboured to ob-

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tain, as their second point, that whenever any other nation was engaged in war, they might then enjoy, as neutrals, the right of protecting the property of its enemies. These points, once obtained, would open a larger field, on which their industry might exert itself, than what they could otherwise of right pretend to enjoy: they were wise, however, in endeavouring to obtain it: no nation besides themselves had more shipping than what was equal to the carriage of their own manufactures! they alone, therefore, could carry on the freightage of other countries, and largely reap, when their neighbours were at war, the advantages proposed.

The regency of Holland laboured with great perseverance for the establishment of these two points: their great minister De Witt* filled all instructions and dispatches with every argument and motive which his active mind could invent in support of these favourite maxims: they were willing to give up any temporary advantage to gain that, which, once acquired, would prove for ages an overflowing spring of wealth. By their negotiations they earnestly laboured to induce France

* Lettres de Monf. De Witt, passim.

to comply with their desires in these respects; but here they were a long while unsuccessful: in opposition to the first point of their policy, Fouquet, while he was at the head of the French marine and finances, established the tax of 50 sous per ton on all foreign shipping; and endeavoured thereby to encourage and augment the freightage of his own country; and when, upon his disgrace, Colbert succeeded to his employments, this tax of 50 sous was almost the only part of the former's policy which the latter thought fit to adopt. It is amazing, with what zeal and application the ministers of Holland contended for the abolition of it: France at length relaxed her severity on this head, not so much to favour the trade of the Dutch, as in compliance with the interests of her own. Colbert's great schemes to improve the manufactures of his country had met with better success than his plans for the augmentation of its marine; and the frequent wars in which his ambitious master involved his kingdoms gave repeated checks to the freightage of his people. France, therefore, at last found it necessary to give a larger vent to her manufactures, by opening her ports to foreign vessels; and for this purpose she took off the tax of 50 sous, by the treaty of Rys-

wick, as far as it related to the ships of Holland alone: and since that time she has regulated her conduct in this particular as the interest of her trade requires. In time of war, she always remits this tax, as she is then forced to make use of the freightage of neutral nations, her naval power not being equal to the protection of her own: and in time of peace she preserves the tax, or not, as the increase or diminution of her shipping requires, always giving the greatest encouragement to her own marine, which is consistent with the preservation of her manufactures.

France consented sooner to the other point of Dutch policy, and granted by treaty to the vessels of Holland, as neuters, the right of protecting the effects of an enemy: the laws of France, indeed, have continued always to determine against this right; and in this respect, therefore, their laws and treaties contradict each other: some very ancient ordinances of that kingdom (as we have shewn above) had adjudged as lawful prize in this case, not only the enemies goods, but had joined also in the condemnation the neutral vessel which carried them; the last, however, of these points was remitted as early as 1646, by a temporary treaty then made with Holland;

land; the neutral vessel, and all the effects of a friend found on board it, by this were ordered to be spared: by a subsequent negotiation, Holland endeavoured to get this privilege farther confirmed and extended: it was one great part of Monsieur Boreel's employment in his long embassy at Paris: at last, however, in the memorable treaty of defensive alliance between Holland and France, of the 27th of April, 1662, this favour was obtained in its full extent; by the 35th article* it is reciprocally agreed, that all which shall be found on board the vessels of either of the contracting parties, "encore que la charge
 "ou partie d'icelle fut aux enemies, sera libre
 "& affranchie." This article was again renewed by the marine treaty of 1678, and by several subsequent treaties: the marine treaty of December 21, 1739, was the last in which it was inserted: this continued in force during part of the last war; but in the year 1745 the French Government declared this treaty void by an act of council, and it hath never since been renewed: France, from the condition of her marine, could certainly reap no advantage from the insertion of this article in her own treaties; but it was wise

* See the treaties in the Letters of D'Estrade, tom. i.

in her to endeavour to establish the point as a general maxim of national law among other countries; experience hath proved to her the use of it in time of war.

But Holland most exerted her policy to bring that nation to a compliance with her maxims, whom she most apprehended as her rival in trade: the scandalous ignorance of the English ministers in point of commerce, and the little attention which they paid to the interests of it, gave such advantages for some time to the Dutch, that more vessels of that country were seen in the ports of our colonies than even of our own; the shipping of England, from the reign of Elizabeth, had been in a constant decline; we should hardly have believed, that in the reign of Charles I. England could not have furnished more than three merchant vessels of 300 tons, if Sir Josiah Child had not affirmed it: the time at length arrived, when we were to be put in this respect on an equality with our neighbours, and to vindicate (as it were) the advantages of our own industry and produce to ourselves; in 1651, the Parliament of England passed into an ordinance that noble strain of commercial policy, called since, the act of navigation; Mr. St. John returning about
this

this time from his embassy at the Hague, became the happy instrument, which Providence made use of, to accomplish this great work;* resenting highly the refusal, which had there been given to his proposals, and the insults which had been offered to his person, he warmly solicited, and at length induced the council of state, to move the parliament to pass it; the committee sat five days in forming it; and it was at last published by order of the house with great pomp and ceremony at the Royal Exchange; the Dutch were so sensible of its consequences, that it was the principal cause of the ensuing war: they called it in a manifesto,† published soon after, “A vile act and order.” At the negotiations for that peace which put an end to the war, De Witt laboured with his usual industry and acuteness to procure the abolition of it; his efforts were happily in vain; they who made the law attended with vigour the execution of it; the effects of it were immediately apparent. This act of policy alone hath fortunately outweighed all our other follies and extravagancies; though condemned by some of our historians, and unnoticed by others, it hath proved the fertile source of all our naval

* Ludlow's Memoirs, vol. i. p. 345.

† The manifesto of Holland, 1652.

power :

power: it hath operated insensibly to our preservation, and hath been the spring from whence hath flowed the wealth and greatness of England.

Our ancestors, with equal constancy, for some time withstood the other maxim of Dutch policy, and would not permit their vessels, as neutrals, to protect the effects of the enemy. By a very ancient and remarkable treaty, made when the dukes of Burgundy were sovereigns of the Low Countries, the contrary opinion had long been established; in that it was determined, "*Quod subditi Unius Principum Prædictorum,*" (that is, Henry VII. King of England, and Philip, Duke of Burgundy) "*non adducent aut adduci facient per mare, fraudulose, vel quocunque colore, aliqua bona seu merchandizas inimicorum alterius eorundem principum.*" And it farther stipulated, that in case the master of the neutral vessel shall endeavour, by a false report, to defraud the captor of any of his enemy's effects, he shall be obliged to make good the loss sustained thereby, by the forfeiture of as much of his own. Frequent applications were made before the restoration, both to the parliament and to the protector, to alter the course of proceeding in this respect;

spect ; but those heads which formed the act of navigation were too wise to consent to this ; a particular occasion, however, at last induced England to make the concession ; by the treaty of commerce made at the Hague, 17th of February, 1668, this point was fully settled to the satisfaction of Holland ; by the 10th article* of which it was fully stipulated, that the shipping of each country should carry freely the goods of the enemies of the other. The circumstances of the time, and the situation of affairs when this article was framed, account for its admission into this treaty, and very strongly apologise for the authors of it ; Lewis the XIVth had then just commenced the first career of his ambition, and England resolved with spirit to throw herself in his way. Holland was then engaged in a strong defensive alliance with France, from whom it was necessary to separate her, and to make her join with England to support the independency of Europe. The Dutch ministers seized this fortunate opportunity of obtaining from England the same advantages which they had already acquired by their treaties with France. It hath been the policy of most republics never to

* *Intercursus Magnus* in Rymer's *Fœdera*, vol. xii. p. 585.

enter into any alliance where some benefit doth not accrue to themselves ; and Holland could not be expected to deviate from this maxim on the present occasion, in compliment to the king of England, who had always shewn but little affection to the States ; the war also with that monarch was but lately ended, and the wound but weakly healed : the French treaty of 1662, besides its defensive stipulations, contained also several commercial regulations, the favourite object of Holland ; these had been provisionally referred to a few months before at Breda, with a design to prevent any intermediate disputes between England and Holland, until a treaty of commerce, which was then under deliberation, was concluded ; but unless these were perpetuated on the present occasion, and formed into a permanent national treaty, to which England was averse,* the States were resolved not to join in the alliance proposed : Monf. De Witt expressly told Sir William Temple,† “ That the treaty of defensive alliance must, for a basis, have at the same time an adjustment of matters of commerce ;” and unless this could be obtained,

* Sir William Temple to Lord Arlington, Feb. 12, 1668.

† *Ib.* Jan. 24, 1668.

it was the avowed opinion of that great pensionary not to conclude. Influenced by the sentiments of their minister, the States persisted in the same resolution; they forced, at last, Sir William Temple to yield the point; apprehensive of the least delay, and of the uncertainties which would necessarily follow from it, he ventured to comply with their desires, though he exceeded thereby his instructions; a private promise passed first between him and *Monf. De Witt*, and in consequence of that, a few weeks after, a treaty of commerce was concluded.

We have before observed, that in the 35th article of the treaty of 1662, the French consented to grant the right of protection to neutral vessels; this, therefore, came of course to be inserted in our commercial treaty of 1668, and the advantages which would arise from thence in favour of the trade of Holland, were the concessions which England then chose to make, that she might obtain the assistance of that republic against France. To what other purpose could England at this time establish a rule of commerce, which she had before so often refused, and now so reluctantly granted to the earnest solicitations of the States? Any benefit which the British

trade might reap from the mutual stipulation of this article, could never be the object which the ministers of this country had in view. The article, considered by itself, is of the most fatal consequence to the power and trade of Great Britain; when she is at peace, and her neighbours are at war, she cannot reap any benefit from it, as her own shipping is not more than equal to the trade of her people; and when, on the other hand, Great Britain is at war, and her neighbours at peace, it tends to defeat the best part of her power, and to render fruitless the efforts of her naval force; while at the same time, considered as a general maxim of right among other nations, Great Britain neither wants the use of it, as she is equal in time of war to the protection of her own shipping; neither can her merchants enjoy the advantage of it, as the employment of foreign freightage is in most respects directly contrary to her laws. This article was again renewed in the treaty of commerce 1674, in consequence of its having been before stipulated in that of 1668. The treaty of 1674 is the maritime regulation that at present subsists between Great Britain and Holland.

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In this manner, therefore, the article having obtained existence in these treaties, we are now to consider whether it is still in force.

Treaties of alliance being nothing more than stipulations of mutual advantages between two communities in favour of each other, ought to be considered in the nature of a bargain; the conditions of which are always supposed to be equal, at least in the opinion of those who make it; he, therefore, who breaks his part of the contract, destroys the equality or justice of it, and forfeits all pretence to those benefits, which the other party had stipulated in his favour: “ Si pars “ una” (says Grotius) * *Fœdus violaverit, “ poterit altera a Fœdere discedere, nam Ca- “ pita Fœderis singula conditionis vim ha- “ bent.”* And Puffendorf, † speaking of conventions, says, “ *Nec hæc alterum obli- “ gant, ubi ab uno legibus conventionis non “ fuerit satisfactum.”*

The next question then is—Hath Holland complied with her part of the treaties or con-

* Grotius de Jure Belli ac Pacis, lib. ii. cap. xv. sec. 15.

† Puffendorf de Jure Nat. & Gentium, lib. iii. cap. viii. sec. 8.

tracts,

tracts, to which she is mutually bound with England?—Hath she performed all that she hath stipulated in our favour?—Or hath she been deficient in the execution of some article in which the very life of our alliance is contained?—If so material a part should be extinguished, it would be unnatural to suppose, that any lesser limb of the treaties should have vigour. Holland, in this case, could have no pretence to require the execution of what may have been conceded in her favour; especially, if the performance of it would operate to the detriment of that ally whose friendship she hath forsaken.

I doubt not but my reader hath already answered in his own mind the question proposed—that the possessions of the crown of Great Britain in Europe have been attacked by the armies of France—that in consequence of this, on the 2d of August, 1756, the British government made to the States General in proper form the necessary requisition—that in such case Holland is obliged by treaties to grant immediate succours, and after a certain time to join with Great Britain in open war—that she hath not performed these conditions, and hath therefore forfeited all title to any advantages contained in those
treaties,

treaties, and above all, to such as may arise from the nature of the war itself?

I shall state, however, this point something more particularly; Holland is engaged in three different guaranties or defensive treaties with Great Britain: the first is that ancient original defensive alliance, which hath been the basis of all the subsequent treaties between the two nations: this treaty was designed to have been made immediately after the triple alliance, but the unsteady conduct of the ministers of Charles the Second, and the unfortunate attachment of that monarch to the French court, for some years delayed it: it was at last, however, concluded at Westminster the 3d of March, 1678: it is (except in two immaterial alterations) an exact copy of the twelve first articles of the French treaty of 1662; and both were negotiated by the same minister, Monsieur Van Beuningen. In the preamble of this treaty, "the preservation of each other's dominions" is set forth as the cause of making it; and the stipulations of it are, "a mutual guaranty of all they already enjoyed, or might hereafter acquire by treaties of peace, in Europe only." They farther guaranty, "all treaties which were at that time made, or
" might

“ might hereafter conjointly be made with
“ any other power.” They promise also,
“ to defend and preserve each other in the
“ possession of all towns or fortresses, which
“ did at that time belong, or shall for the fu-
“ ture belong, to either of them ;” and for
this purpose it is determined, that “ when
“ either nation is attacked or molested, the
“ other shall immediately succour it with a
“ certain number of troops and men of war,
“ and shall be obliged to break with the ag-
“ gressor in two months, immediately after
“ the party that is already at war shall re-
“ quire it ; and that they shall then act con-
“ jointly with all their forces, to bring the
“ common enemy to a reasonable accommo-
“ dation.”

That Holland hath not complied with the terms of this guaranty is evident ;—Minorca, “ a possession of the crown of Great Britain, “ and which she acquired by treaty,” hath been attacked : this is one case of the guaranty ; by that attack, “ a treaty that was “ made in common concert,” the treaty of Utrecht hath been broken ; this is a second case of the guaranty ; and by these means “ England hath been deprived of a possession “ which of right belonged to her :” this is a

third case of the guaranty; and notwithstanding all this, Holland hath not as yet granted the succours stipulated; and many more than two months have passed without her having entered into war conjointly with England, as the treaty requires.

The second species of defensive alliance which subsists between Great Britain and Holland, is that which was first agreed to, in the treaty of barrier and succession of October the 29th, 1709, and again more particularly stipulated in another treaty to the same purpose of January 29th, 1713: the design of this treaty is the guaranty of the Dutch barrier on one part, and the guaranty of the firmest barrier of British liberty, the Protestant succession, on the other: the stipulations are,* “that in case either should be attacked, the other should furnish at the requisition of the party injured, but at his own expence, certain succours there expressed; and if the danger should be such as to require a greater force, that he shall be obliged to augment his succours, and ultimately to act with all his power in open war against the aggressor.” I pretend not

* Article xiv. of the treaty of Barrier and Succession of January 29, 1713.

to make any use of this treaty in the present case; and only mention it to give a fuller view of the alliances which subsist between us. Here, however, I will indulge a wish, that the case of this guaranty, as far as it relates to the right of the crown of Great Britain, may never again exist. I always read with sorrow, that there ever was a time when the unfortunate dissensions of our people, in a point where the whole of their happiness was concerned, should have made it necessary to add any other sanction to our own laws, than such as our own power can afford them. These days, however, of shame now, I hope, are passed; more than forty years experience of the mildest government must have won the most obdurate heart to confess the present felicity, and bless the hand which bestows it. When, forgetting ancient errors, we are thus united in defence, the affections of his Majesty's subjects are the happiest guaranty of his right.

I come now to the last species of defensive alliance which subsists between Great Britain and Holland. This was concluded at the Hague the 4th of January, 1717. To this treaty France was a party. The intention or view of it was, "the preservation of each
" other

“ other reciprocally in the possession of their dominions, as established by the treaty of Utrecht;” and the stipulations are, “ to defend all and each of the articles of the said treaty, as far as they relate to the contracting parties respectively, or each of them in particular; and they guaranty all the kingdoms, provinces, states, rights, and advantages, which each of the parties at the signing of that treaty possessed:” and in a separate article all this is confined to “ Europe only.” The succours stipulated in support of this guaranty, are much the same as those mentioned above; first, “ interposition of good offices,”—then, “ a certain number of forces,”—and lastly, “ declaration of war.” This treaty was renewed by the quadruple alliance of 1718, and again by the accession of Holland to the treaty of Hanover of 1726, and last of all by the 3d article of the treaty of Aix-la-Chapelle, 1748.

Holland hath by no means executed the terms of this guaranty,—Minorca, “ a possession of the crown of England in Europe, which she enjoyed at the signing of this treaty,” hath been attacked; this is one case of the guaranty. By this attack, “ the article of the treaty of Utrecht, by which

“ that possession was ceded to England,” hath been broken ; this is another case of guaranty. I need not again observe, that Holland, in consequence of this, hath neither granted the succours, nor declared war, as this treaty also requires.

It will, however, perhaps be objected, “ that
“ Great Britain was the aggressor in the pre-
“ sent war, and unless she had been first at-
“ tacked, the case of the guaranties doth not
“ exist.” True it is, that the treaties which contain these guaranties, are called defensive treaties only ; but the words of them, and particularly of that of 1678, which is the basis of all the rest, by no means express the point clearly in the sense of the objection ; they guaranty in general “ all the rights and “ possessions” of both parties, against “ all “ kings, princes, republics, and states ;” so that if either “ shall be attacked” or “ molest-
“ ed,” whether it be “ by hostile act or
“ open war,” or “ in any other manner
“ whatsoever, disturbed in the possession of
“ his estates, territories, rights, immuni-
“ ties, and freedom of commerce ;” it then declares what shall be done in defence of these objects of the guaranty, by the ally, who is not at war ; but it is no where mentioned, as
necessary

necessary, that the attack of these should be the first injury or attack. Nor doth this loose manner of expression appear to have been an omission or inaccuracy. They who have framed these guaranties, certainly chose to leave this question without any farther explanation, to that good faith which must ultimately decide upon the execution of all contracts made between sovereign states. It is not presumed they hereby meant, that either party should be obliged to support every act of violence or injustice which his ally might be prompted to commit through views of interest or ambition. But, on the other hand, they were cautious of affording too frequent opportunities to pretend, that the case of the guaranties did not exist, and of eluding thereby the principal intention of the alliance; both these inconveniencies were equally to be avoided; and they wisely thought fit to guard against the latter of these, no less than the former. They knew that in every war between civilized nations, each party always endeavours to throw upon the other, the odium and guilt of the first act of provocation and aggression, and that the worst of causes was never without its excuse. They foresaw that this alone would unavoidably give sufficient occasion to endless cavils and disputes, whenever

whenever the infidelity of an ally inclined him to avail himself of them. To have confined therefore the case of the guaranty, by a more minute description of it, and under closer restrictions of form, would have subjected to still greater uncertainty, a point, which, from the nature of the thing itself, was already too liable to doubt; they were sensible, that the cases would be infinitely various, that the motives to self-defence, though evidently just, might not always be universally apparent; that an artful enemy might disguise the most alarming preparations, and that an injured nation might be necessitated to commit even a preventive hostility, before the danger which caused it could be publicly known. Upon such considerations these negociators wisely thought proper to give the greatest latitude to this question, and to leave it open to a fair and liberal construction; such as might be expected from friends, whose interests these treaties were supposed to have for ever united, and such on the present occasion Great Britain hath a right to demand.

If, however, we should, for the present, wave this interpretation, and allow the treaties to have all the meaning, which they who make this objection require, the evidence
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of facts will sufficiently prove, that France was the aggressor in the present war. If we look to America, the present war there is little more than a continuation of the last; repeated usurpations of the possessions of Great Britain have been there the constant employment of France, almost from the hour in which the treaty of Aix was signed; and these were at last followed by an avowed military attack upon a fort belonging to the crown of Great Britain, by regular troops, acting under a commission from the court of France. If we consider America as having no concern in the present question, the same ambitious power will also be found to have been the aggressor in the European war; France early manifested her hostile intentions in Europe; in 1753, in direct opposition to the express stipulations* of three solemn treaties she began to restore the port of Dunkirk; and Holland then considered this action in such a light as induced her, in conjunction with the British government, to present a memorial against it. France also gave another proof of her hostile intentions by her design to invade Great Britain, avowed by her ministers in every court in Eu-

* Ninth article of the treaty of Utrecht; fourth article of the treaty of the Hague, 1717; and seventeenth article of the treaty of Aix-la-Chapelle.

rope, and sufficiently manifested by the preparations which she publicly made for it. And these were likewise followed by an open attack upon an European island belonging to Great Britain, an attack upon the island of Minorca. It seems, indeed, allowed, by the opinion of the parties concerned, that by the attack of Minorca, the European war was first completely opened; notwithstanding all which had passed elsewhere, proposals for an accommodation of the American disputes were never discontinued, nor the war considered as universal, till that island was absolutely invaded. As for the captures at sea, the avowed cause upon which these were taken, sufficiently evince that they undoubtedly belong to the American war; they were made in consequence of the hostilities first commenced in America, and were seized as reprisals, for the injuries there committed upon the property of the people of England; as such they were always declared to be taken by the ministers of that kingdom, and the value of them to be on that account retained;* and upon application made to parliament soon after the seizure of them, the legislature expressly refused to distribute them among the captors, as they

* See the British declaration of war.

have

have done in respect to all other prizes, which have been made since the war of Europe began. But even if this distinction, which puts the question out of all doubt, had not been made by the ministers of England, these captures surely can never be looked upon but as a part of the American war; it will not certainly be denied, that such a war may extend itself to the ocean, without having changed either its nature or denomination; what but captures at sea have been the great constituent part of every American war before the present; as a war upon the American continent must always be supported by succours sent from Europe, it is absurd to suppose that either party in this case would not endeavour, as far as he was able, to take or destroy entirely the shipping of his enemy, by which alone those succours could be conveyed. Countries which have very little internal force within themselves, cannot be defended but by such troops as are thrown into them; to defeat, therefore, the only means by which this relief can be effected, must be esteemed as material a part of such a war, as the means to invest a fortress are a material part of a siege. But after all, these captures were subsequent to the restoration of the port of Dunkirk, or

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the * preparations to invade Great Britain ; and these can never be considered but as undoubted acts of aggression ; it is not the first military action alone, but hostile preparations, where the design is apparent, † the usurpation of another's rights, or the denial of justice, which in the opinion of the ablest writers denominate the aggressor. The object of the defensive treaties are "rights, immunities, "and liberties," no less than "towns or "territories," and "the disturbance" or "molestation" of the former, as well as "the "attack" of the latter, are expressly declared to be cases within the guarantees.

A more subtle objection will still perhaps be made to what has been said. It will be urged, "that though France was the aggressor "in Europe, yet that it was only in consequence of the hostilities commenced before

* Undoubted intelligence was received of this before the 27th August, 1755, when general orders were given to bring in French vessels; the Lys and the Alcide were taken on the coast of America, and are therefore in every light a part of that war.

† *Quoniam et aliquando favor defensionis ad illius partibus stat, qui prior arma alteri infert, ut si quis hostem invasionis jam certum, per celeritatem opprefferit, dum ille adhuc in adparando bello est occupatus. Puffendorf de Jure Nat. &c. Lib. 8. cap. 6. sec. 3.*

“ in America ; with which it is determined
 “ by treaties, that Holland is to have no con-
 “ cern, and that the rights contested at pre-
 “ sent are not contained in the guaranties.”—
 If the reasoning on which this objection is
 founded was admitted, it would alone be suffi-
 cient to destroy the effects of every guaranty,
 and to extinguish that confidence which na-
 tions mutually place in each other on the
 faith of defensive alliances : it points out to
 the enemy a certain method of avoiding the
 inconvenience of such an alliance : it shews
 him where he ought to begin his attack ; let
 only the first effort be made upon some place
 not included in the guaranty, and after that
 he may pursue his views against the very ob-
 ject without any apprehensions of the conse-
 quence ; let France first attack some little
 spot belonging to Holland in America, and
 her barrier would be no longer guaranteed :
 To argue in this manner would be to trifle
 with the most solemn engagements. The pro-
 per object of guarantees is the preservation of
 some particular country in the possession of
 some particular power. The treaties above-
 mentioned promise the defence of the domi-
 nions of each party in Europe, simply and
 absolutely, whenever they are “ attacked” or
 “ molested.” If in the present war the first

attack was made out of Europe, it is manifest that long ago an attack hath also been made in Europe: and that is beyond a doubt the case of these guarantees.

Let us try, however, if we cannot discover what hath once been the opinion of Holland on a point of this nature.—It hath already been observed, that the defensive alliance between England and Holland of 1678 is but a copy of the twelve first articles of the French treaty of 1662; soon after Holland had concluded this last alliance with France she became engaged in a war with England; the attack then first began; as in the present case, out of Europe, on the coast of Guinea; and the cause of the war was also the same, a disputed right to certain possessions out of the bounds of Europe, some in Africa, and others in the East Indies: Hostilities having continued for some time in those parts, they afterwards commenced also in Europe; immediately upon this Holland declared, that the case of that guaranty did exist, and demanded the succours which were stipulated. I need not produce the memorials of their ministers to prove this; history sufficiently informs us, that France acknowledged the claim, granted the succours, and entered even into open war
in

in the defence of her ally : Here then we have the sentiments of Holland on the same article in a case minutely parallel : France also pleads in favour of the same opinion, though her concession in this respect checked at that time her youthful monarch in the first essay of his ambition, delayed for several months his entrance into the Spanish provinces, and brought on him the enmity of England.

If any doubt can yet remain about the meaning and intent of this article, it may farther be proved from the opinion of the Minister who made it :—Immediately after Holland was engaged in the war above-mentioned, she sent to the Court of France Monsieur Van Beuningen to press the execution of that guaranty, which he had himself concluded. It is remarkable, that in his conversations on this subject with Monsieur de Lionne, the same objection was debated against which I now contend : Van Beuningen treated it with great contempt ; he asked Monsieur de Lionne,* if the pretence of the European war being only a continuation of that of Africa, was what the English alone alledged to deprive

* Lettre de M. Van Beuningen à M. De Witt, December 26, 1664.

them of the succours of France, or whether the French Minister laid any stress upon it as an argument at all to be supported. De Lionne at first gave him to understand that he thought it of some weight, "A quoi, je repondis," says Van Beuningen, "que je ne croyis pas, que cette objection fut serieuse, puis qu' il dit alors, que celui, qui a commence la guerre en Guinée, & de la en Europe, n'a pas commencé de guerre en Europe; & ne pouvoit passer pour troubler la paix & le commerce en Europe, parce qu' il l'avoit troublé ailleurs auparavant:" and then he adds, "Ce, que j'ajoutai à ce raisonnement pour refuter cette objection, resta sans replique." This was the same Monsieur Van Beuningen who negotiated our defensive treaty of 1678; he made the terms of both these guaranties precisely alike; and we before shewed that our common case at present is exactly the same as this on which his opinion hath been produced.

If, however, the words of these treaties had been against the interpretation which hath been given them, I might justly have appealed to the spirit of them, as alone a sufficient foundation on which to build my opinion: The whole design of all these our alliances
with

with Holland is to form a barrier against the power of those mighty kingdoms, whose ambition might otherwise induce them to destroy the independency of Europe: They are, in fact, a regular continuation of that policy which gave birth to the Triple Alliance, when the dangerous spirit of the French councils first began to appear. To answer this great end, they guaranty the possessions of those two maritime countries, who, from their wealth, their internal strength, and their incapacity of having any ambitious views themselves, are the best security against the designs of others: But as the obligations of these guaranties are too considerable to be made use of on trifling occasions, for this purpose the contracting parties have made one exception: The rights of the European kingdoms in the distant parts of the world, and particularly in America, are very uncertain, and the cause of frequent dissensions, and it is well known that wars have there subsisted for many years between the trading subjects and commercial companies of the several nations, while the mother countries have lived, if not in friendship, at least in peace; this then is the case particularly excepted from the guaranty; but this exception must always be so interpreted as to be made consistent with the principal intention

tion of the alliance :---If some great country out of Europe should become of so much importance, that for the interest of Europe it ought to remain in the hands of the present possessors ; if the same great disturber of mankind, after many fruitless attempts in his own neighbourhood, should now turn his thoughts another way, and should endeavour, by distant diversions, to enfeeble that power on whose consideration the safety of the public very much depends, and to deprive her of the sources of her wealth, which she hath always so largely expended in support of the common cause, would a generous friend, who attends to the spirit of his engagements, say, that the case of the guaranty did not then exist ? and, when the reason of the exception is vanished, would he urge the pretence of it as an excuse for giving up the principal point on which the alliance was constructed ?--- But if to this distant attempt the enemy should add an open and avowed war in Europe, should threaten the mother country with invasion, attack her fortresses, and take occasion from thence to spread his armies over the continent, shall this pretended exception still be urged, when the literal case of guaranty is now become apparent ? On this weak foundation shall a wise people, under such obligations,

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tions, not only refuse to grant their assistance, but not permit their forsaken ally to make a full use of his power? holding back in this manner his arm, when they will not stretch forth their own, and claiming from the very contracts they have broken that privilege which they turn to the destruction of her ally. The absurdity is shocking; such, however, is the present case of England: Unhappy in her friendships! She hath neither that assistance from allies which they are bound by treaty to give her, neither is she allowed to exert even her own force, though abandoned to her own defence.

In this manner the point might be determined on a general view of these treaties; and this alone would be sufficient;—but it may be further proved that the article on which Holland founds her right of protecting the property of the enemy, as far as it relates to the present case, hath been particularly repealed long ago. The treaty in which this article was last inserted was concluded the 1st of December, 1674: Four years after this, in 1678, was past that defensive alliance, in which it was stipulated between Holland and England, “that if either party should be at-

“tacked in Europe, the other should declare

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“war

“ war against the aggressor two months after
 “ he is required :” By this treaty, therefore,
 two months after England is attacked by
 France in Europe, Holland must become the
 enemy of the latter as well as England ; and
 to be the enemy of another means certainly to
 distress his trade and seize his property, not
 to preserve the former and protect the latter.
 If this therefore is the right interpretation of
 the word enemy, this article directly and posi-
 tively declares, that two months after France
 has attacked the European possessions of Eng-
 land, the ships of Holland shall not have a
 right to protect the effects of the French :
 this therefore is derogatory to the 8th article
 of the marine treaty of 1678, and as being
 posterior to it, absolutely repeals it. In all
 laws (and such are treaties in respect to na-
 tions) the last enacted always sets aside the
 former, so far as they disagree. Cicero *
 says, it ought to be considered, “ *Utra Lex*
 “ *posterius sit lata, nam postrema quæque*
 “ *gravissima.*”

But this maxim is not necessary on the pre-
 sent occasion, since the same article is again
 repealed by two subsequent treaties in words

* Cicero de Inventione.

as positive as can be used; for in that treaty,* by which all the old alliances between the maritime powers were renewed immediately after the revolution; and also in that of February 6, 1716, by which they were again renewed upon the accession of the present family to the throne, the treaties of 1674 and 1678 are expressly mentioned, and made of both a part; and it is there declared, that “they shall have the same force and effect, as if they had been inserted in these treaties verbatim; that is to say, so far as they do not differ, or are contrary to one another; yet so as whatever hath been established by any later treaty shall be understood and performed in the sense therein expressed, without any regard had to any former treaty:” Can it then be doubted that the articles above mentioned are “contrary to one another,” as much as peace and war, as much as friendship and enmity? Is not the defensive alliance of 1678, “a later treaty” than the marine regulation of 1674? and ought not therefore, according to the words of the renewal, “the article of the latter to be performed in the sense therein

* Treaty of friendship and alliance between England and Holland, August, 1689.

“ expressed, without any regard being had to “ the former.” Since then, the year 1689, this article, as far as it relates to the present case, hath been twice repealed.—Thus much, therefore, may suffice to shew, that the right of Holland in this respect is extinct.

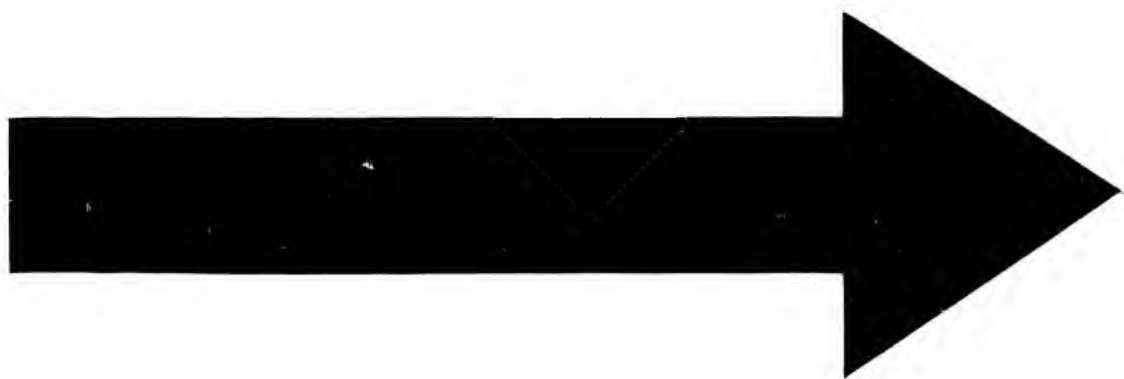
There remains one more claim to be considered; a claim which, if report had not averred that such a one had been formally offered, would by no means deserve an answer. The northern crowns, whose commercial treaties with Great Britain contain not any article which gives them expressly a right to carry the property of the enemy, have endeavoured to deduce this right from a general stipulation, which is to be found in some of their treaties, declaring, that “ they shall be “ treated in like manner as the most favoured nation.” If Great Britain therefore hath granted by treaty to any other nation the right; in time of war, of becoming the carrier of her enemies, they think they are justly entitled to be admitted to the same favour. Under this pretence they claim this privilege, as stipulated in the Dutch treaty of 1674; but it has been proved also that the treaty of 1674, as far as it relates to the present case, is no longer in force; if the inference therefore was
otherwise

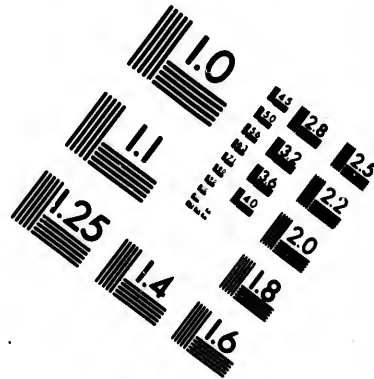
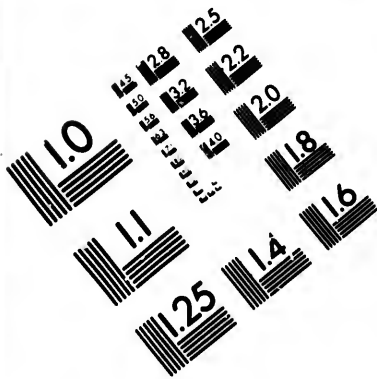
otherwise just; the foundation being thus destroyed, whatever is built upon it must necessarily fall with it. But this stipulation of equal favour, from the very nature of it; can relate to nothing else but such advantages as may be granted to foreign traders by the municipal laws or ordinances of each country; such as equality of customs; exemption from the rigour of ancient laws; which would affect them as aliens; and the privileges of judges-conservators and consuls; these are the proper objects of favour; and because the whole detail of these could not easily be specified in a treaty; for this reason they are thus comprehended in a general article. If the rights conceded by treaties were the objects of this stipulation, to what purpose were any other articles added; since this would contain them all, and would alone include every privilege which past or future treaties could afford them? and can it be supposed, that any nation mentioned in this manner to preclude itself from the power of exchanging, by treaty, with some particular country, any great right of its own in return for an equal advantage? or that this right should, in such case, be universally forfeited to the people of every other nation, who would thus reap the benefit without having been parties to the bargain?

gain? But this point is made clear beyond a doubt, from the words of the treaties themselves, where this general equality is stipulated.

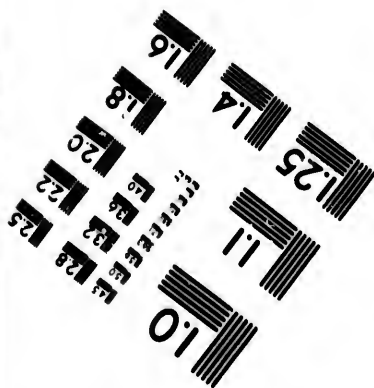
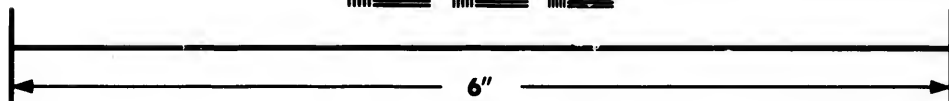
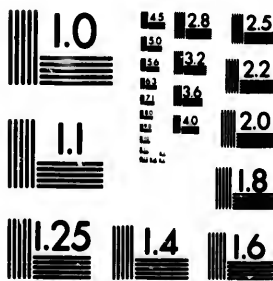
In the treaty of commerce between Great Britain and Sweden, of the 21st of October, 1661, (the principal one at present in force between the two countries) the fourth article, which contains this stipulation, plainly makes it refer to such favours only, as may be enjoyed in matters of traffic within their respective dominions. The treatment which the contracting parties shall there give to the subjects of each other is the principal purport of the article; it specifies many particulars, and among the rest it stipulates, that the people of both countries shall have “liberty to import and export their goods at discretion, the due customs being always paid, and the laws and ordinances of both kingdoms universally observed;” and then, manifestly connecting this with what follows, it adds, “which things being pre-supposed, they shall hold such ample privileges, exemptions, liberties, and immunities, as any foreigner whatsoever doth or shall enjoy;” the general equality therefore here stipulated, plainly relates to those places alone where the cus-

toms of these kingdoms are to be duly paid, and the laws and ordinances of them are in force, and that is only within their respective dominions. The privileges here conceded cannot possibly have any larger extent; and to confine the sense of the article still more strongly to the explanation which hath now been given of it, the words, "in the dominions and kingdoms of each other," are twice repeated, to determine clearly where trade must be carried on, to which this favour is meant only to be granted; if, however, any doubt could yet remain in respect to this interpretation, they who made the treaty have given the strongest proof, that under this article they never intended to imply a right of carrying the property of an enemy, since, by the 12th article of this same treaty, an attempt of that nature is pronounced to be "a heinous crime," and the strongest provisions are made to prevent it. In the treaty of commerce between Great Britain and Russia, of the 2d of December, 1734, this stipulation of equal favour is inserted in several articles; but it appears in every one of them, to relate to nothing else, but to the particular privileges which the subjects of each were to enjoy while they were trading within the dominions of
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the other. In the second article this equality is expressly said to be granted "throughout the dominions of the contracting parties in Europe." In the third it relates only to the favourable reception of the subjects of each other in the ports of their respective countries." In the 14th it grants only an equal freedom to import "such merchandise into each other's dominions as is allowed to the subjects of any other country;" and in the 28th it refers only to the "respect and treatment which is to be given to the subjects of one party who come into the dominions of the other." In the treaty of commerce between Great Britain and Denmark, of the 11th of July, 1670, the latest at present in force between the two countries, the stipulation of equal favour is inserted in the 40th article; it is there said, "If the Hollanders, or any other nation, hath, or shall obtain from his Majesty of Great Britain, any better articles, agreements, exemptions, or privileges, than what are contained in this treaty, the same and like privileges shall be granted to the king of Denmark and his subjects also, in most full and effectual manner." That these privileges relate only to customs and other advantages of the same kind, might be proved from

from the whole tenor of this treaty ; but it will be sufficient to shew that the right of carrying the property of the enemy cannot possibly be intended by it. Holland had obtained this right in 1668, two years before the Danish treaty was concluded ; if therefore the stipulation of equal favour contained in the 40th article could extend to an advantage of that nature, the merchants of Denmark would have been immediately entitled to it from the hour the treaty was signed : the ministers of that kingdom could not be ignorant of this ; and yet in the 20th article they have positively forbid the exertion of any such right. They have even expressed the greatest apprehension, lest any liberty conceded by this treaty should be interpreted to that purpose ; “ lest such freedom of navigation,” says the article, “ or passage of the one ally, and
 “ his subjects and people during the war,
 “ which the other may have by sea or land
 “ with any other country, may be to the
 “ prejudice of the other ally, and that goods
 “ and merchandises belonging to the enemy
 “ may be fraudulently concealed under the
 “ colour of being in amity ; for preventing
 “ fraud, and taking away all suspicion, it is
 “ thought fit the ships, goods, and men, be-
 “ longing to the other ally, in their passage

“and voyage be furnished with letters of
 “passport;” and in the passport the king of
 Denmark hath bound himself to declare that
 the ship and goods with which it is laden,
 “belong to his subjects, or to others having
 “an interest therein, who are the subjects of
 “neutral powers;” and that “they do not
 “appertain to either of the parties now en-
 “gaged in war.” Nothing more, I hope,
 need be said, to refute this weakest pretence
 to a right of carrying freely the property of
 the enemies of Great Britain.

As there is no article, therefore, which
 grants a right of this nature at present in force
 in any of these commercial treaties, it is un-
 necessary to shew that most of the captures
 which England hath made of the vessels of
 neutral nations, ought not properly to be re-
 ferred to it, but may be justified by another
 part of the said treaties, where it is declared,*
 “that all goods are contraband, which are
 “carried to places blockaded or invested.”

The debate here would turn on the real ex-
 istence of the blockade. To evince this, I

* Art. lxi. Treaty of 1674, between Great Britain and
 Holland. The same article is found in every other commer-
 cial treaty.

might

might shew what opinion the Dutch had of a naval blockade in 1630,* when they pretended to have blocked up all the coast of Flanders, and openly avowed that they would take and condemn all neutral ships which had the most distant appearance of being bound to the ports of that country. I might also shew their opinion of the same in 1689, when they declared † publicly to the neutral nations, that they designed to block up all the ports of France. I might observe, that as the possession of the principal avenues to a town constitutes a blockade by land; and that it is not necessary, for this purpose, to have made a complete line of circumvallation; so by keeping great squadrons of ships of war cruising constantly before the ports of an enemy, by destroying in this manner totally his trade, and preventing his fleets of war from ever venturing out, except now and then a ship or two by stealth, a blockade ought certainly to be considered as completely established by sea. I might farther prove the cause from its effects, and shew that the American islands at least have experienced all the consequences of such a situation; where want of communication with the mother country, distress, and

* Convention between England and Holland, 1689.

† Placart of June 26, 1630.

famine, fully declare that they have been invested. But as this topic may not perhaps relate to the case of every capture, and depends on the particular state of a variety of facts, I shall not dwell any longer upon it at present. The question hath here, I hope, sufficiently been argued on principles which are plain and comprehensive, on those equitable regulations which nature hath established among nations, and on those particular contracts with which communities have bound themselves. And as I before endeavoured to prove, that neutral nations had no right by the former of these obligations, to protect the property of the enemy; so now it hath been shewn by what policy the Dutch first obtained this privilege; by what treaties it hath since been taken from them; and by what conduct they have lately forfeited whatever might remain of this right. It hath also, I flatter myself, appeared with how little reason other neutral powers, under colour of any article in their treaties of commerce, have claimed the enjoyment of such a right. Upon the whole, therefore, I will now beg permission to conclude, that the naval power of England hath been conducted, during the present war, with no less justice than spirit; that the faith of our sovereign is as spotless as his courage; and that the honour of the country is unblemished.

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The basis of just complaint being thus removed, those idle clamours which have been founded upon it, by no means merit our attention ; to charge England with ambition, must appear so absurd to all who understand the nature of her government, that at the bar of reason it ought to be treated rather as calumny than accusation. Possessed of every blessing which civil government can produce, she is open to no temptation with which ambition might seduce her ; pursuits of that kind might possibly operate to the destruction of her constitution, and her system of happiness might be subverted by the augmentation of her power. It must always be the interest of England to protect the just rights of commerce, and to support those principles which promote the labours of mankind, since she herself can only be great from the virtuous industry of her people. To obtain the largest extent from the exertion of this, is the point to which all her policy should tend ; and if forsaking these maxims, she should seek to enlarge her power by any acts of ambitious injustice, may she then, for the welfare of the human race, cease to be any longer great and powerful ! Her courts of maritime jurisdiction are more wisely calculated to preserve the freedom of navigation,

than those of any other country ; as they are not subject to the controul of her executive power, the passions of her princes or ministers can never influence the decisions of them ; and foreign traders have in favour of their property all the security which the nature of the thing will admit, the consciences of wise men determining upon matters of right, whom the threats of power cannot affect, and who are set free, as far as possible, from all bias and partiality ; and to the honour of the learned persons who at present preside in those courts, one impartial testimony shall here be produced in their favour. Though treaties have expressly pointed out to all who may there think themselves injured, a regular method of redress before a superior tribunal, the merchants and freighters of Holland have never ventured as yet to bring to a hearing, or even to put into a way of trial any one of the appeals which they have made from the determinations of these judges, giving thereby cause to presume that they made them with no other intention but to delay the execution of the sentences ; and conscious of the invalidity of their rights, they have in this manner plainly confessed the real equity of those decisions which have been passed upon them. That amid the confusions of war, some irregularities

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ties may be committed, is a misfortune too true to be denied, but which the circumstances of the case render impossible to be wholly prevented. They are the consequences of all wars, not alone of the present. To destroy the trade of the enemy, it is necessary to employ privateers, which cannot always be kept under those strict rules to which a more regular force is subject; these maritime hussars may sometimes exceed their commissions, and be guilty of disorders, the authors of which cannot always be punished, because the nature of the fact renders the discovery of them difficult. But can the crimes of these be imputed to ministers, whose ears are always open to complaints, and who labour, as much as possible, to redress them? The privateers of England are already made subject to every restraint, which naval policy hath as yet invented to force them to conform to their duty. If, however, these are found insufficient, and if any more successful means can be discovered to prevent every unjust depredation, by which the evils of war may be diminished, confident I am, that Great Britain will be the first to adopt them; let them be consistent only with the use of her naval power, and conformable to justice, the British legislature will enact such into a law, and
the

the British ministry will attend most steadily to the execution of them.

But after all, the wisest regulations on occasions like this cannot be expected to answer fully the end proposed; the system of humanity is no where perfect, but in respect to nations its weakness is most apparent; the softer ties of natural affection among these have little effect, and no coercive bands of power exist to regulate and controul their passions; it is the virtue of government alone, on which the general prosperity depends, and treaties have no better sanction than what that virtue can give them. These were the principles from which I first commenced my discourse; by these the rulers of communities are instructed to amend, as far as possible, by their prudence, what nature hath left imperfect. Ambition or avarice will augment the evil; moderation may prevent it. Every little inconvenience must be patiently suffered where a superior right makes it necessary. The love of our country should never induce us to act contrary to that love which we ought to bear to mankind, since the interests of both, if they are rightly pursued, will always be found consistent with each other.

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