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RETURN to an Order of The Honourable House of Commons,
dated 15 February 1811;—for

A Copy of the COMMUNICATIONS between the Bank of England and the Lords of the Treasury;—and of a LETTER written by the Secretary of the Treasury to the Attorney and Solicitor General;—and of the OPINIONS of the Attorney and Solicitor General, submitted to the Treasury, in the Year 1772; respecting the execution of the Laws, which prohibit the Exportation of GOLD and SILVER:—Viz.

Copy of a TREASURY MINUTE, dated 1 October 1771.

Copies of the OPINIONS of the Attorney and Solicitor General, dated 8 June 1772.

[N. B.—It does not appear by the Books of the Treasury, that any LETTER, of the nature referred to in the above-mentioned Order, was written by the Secretary of the Treasury to the Attorney and Solicitor General.]

1.

Copy TREASURY MINUTE, dated 1st October 1771.

THE Governor and Deputy Governor of the Bank attend; and are called in.

They represent to My Lords, that they sustain a great loss by the quantity of Gold Coin, and Bullion, at present exported; which has very much increased of late years: That they impute this increase to various causes; but principally to the operations of an Act passed in the 31st year of his late Majesty's Reign, for the better payment of Seamen's Wages, and the increased number of British and Irish subjects travelling abroad, among whom it is the prevailing practice to carry Guineas instead of Bills of Credit; and also to the small quantity of Foreign Coin and Bullion imported of late years.

They also inform My Lords, that they suffer a loss of £. 20,000. annually, at an average, by the Coinage of Gold; being at the rate of $3\frac{1}{2}$ per cent.

Being asked, if they had any Remedy to propose; they answered, that they recommended this business to the serious consideration of the Board.

Write to the Commissioners of the Customs, directing them to transmit an Account of all Bullion exported for twenty years last past, distinguishing each year, by whom and to what places the same was exported.

Write to the principal Officers of the Mint, directing them to transmit an Account of the Quantities of Gold and Silver, that have been coined for twenty years last past, distinguishing each species of Coin in each year; and also by whom the Bullion was brought to the Mint.

2.

OPINIONS of the ATTORNEY and SOLICITOR GENERAL,
RELATIVE TO GOLD AND SILVER COIN.

To the Right honourable the Lords Commissioners of His Majesty's Treasury.

May it please Your Lordships,

IN obedience to your Lordships command, signified to Mr. Solicitor General and myself by Mr. Robinson, in his Letter of the twenty-eighth of March last, informing us, " That your Lordships having been given to understand that more than ordinary quantities of the Coin of this Kingdom have been exported, in consequence

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consequence of the great difference which has for some time subsisted between the price of Bullion at the Market, and the value of the Money by Tale, by which a traffick is carried on, detrimental to all who are obliged to bring Bullion to the Mint for the purpose of Coinage, and in diminution of the Coin of this Kingdom; and that your Lordships having been very earnestly pressed on that account, to give directions for enforcing the execution of the Laws for prohibiting the Exportation of the Coin of this Kingdom to Foreign Parts, our Opinion is desired whether any, and which, of the said Laws for prohibiting the Exportation of the Coin of this Kingdom to Foreign Parts are now in force, and how far we should think it advisable that Orders should be given for enforcing the execution of the same;

I have conferred with Mr. Solicitor General, upon the Statutes which have been made against the Exportation of Coin and Bullion. He differs from me in opinion, for reasons which certainly deserve a great deal of attention, and the more, because his Opinion, if it can be maintained, delivers the older Statutes from the want of policy, which I find myself obliged to impute to them.

I therefore transmit to your Lordships the Opinion, which, after the maturest consideration, I incline to hold, in a case, which is certainly far from clear.

I think, that the following Statutes are still in force: the ninth Edward Third, Statute the second, chapter the first and chapter the tenth, which forfeit the Coin or Bullion, and give one-fourth to the Searcher upon the forfeiture; and punish them severely for collusion, subject to the exception in the thirty-eighth of Edward the Third, Statute the first, chapter the second: The fifth of Richard the Second, Statute the first, chapter the second, which is also very penal on the Searchers neglecting their duty, for I incline to think this Act against transporting Gold and Silver is not repealed by the fourth of James the First, chapter the first, section the twenty-second, although the Act therein mentioned and repealed, concerning Restraint of Passage of His Majesty's Subjects out of the Realm, is doubtless the same Act: The second of Henry the Fourth, chapter the fifth, upon which the usual informations seem to be more particularly grounded: The fourth of Henry the Fourth, chapter the fifteenth, which takes away the proviso in favour of Merchants Strangers contained in the preceding Statute: The second of Henry the Sixth, chapter the sixth, which gives one-fourth to the Informer: The nineteenth of Henry the Seventh, chapter the fifth, against Export Money to Ireland, stands a perpetual Statute; but since there has been no Mint in Ireland, it seems impossible or wholly unfit, to suffer the execution of it; the rest of it, against importing Irish Coin here, seems absolute, as there is no Irish Coin current; and that part which prohibits the Importation of Bullion from Ireland, seems perfectly unfit for the present situation of the two Countries.

These Statutes are further enforced as to Merchants Strangers, by twenty Statutes of Employment (namely, compelling Merchants Strangers to employ the produce of their Cargoes in Goods of this Country, and not carrying out Money by Exchange or otherwise) which passed between the years one thousand three hundred and ninety and one thousand five hundred and fifty-three inclusive, but which are now totally out of use, and inconsistent with the present condition of Trade.

This offence was felony, from one thousand four hundred and seventy-seven to one thousand four hundred and eighty-four, and from one thousand four hundred and eighty-seven to one thousand five hundred and eleven, and from one thousand five hundred and fifty-three to one thousand five hundred and seventy-three.

The six first Statutes seem to be in full force now as to the Coin of this Kingdom, not only because they remain unrepealed, but they have received additional countenance and authority, if that were wanting, from subsequent Acts of Parliament, and actual use, and Acts of State taking notice of them.

The fifteenth of Charles the Second, chapter the seventh, section the twelfth, allows the Exportation of Foreign Coin or Bullion, making entry thereof at the Custom House, upon the express purpose of keeping in and increasing the current Coin of this Kingdom. This Statute is further enforced as to Molten Silver or

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or Bullion, by the seventh and eighth William the Third, chapter the nineteenth, which requires that very particular proof should be made that such Molten Silver or Bullion is foreign, and not molten from the Coin of this Kingdom, or wrought Plate.

The right of seizing Money has been sustained by several judicial decisions; and the practice of it is in ordinary use, nearly as much as the other Laws of Custom.

The Informations, as has been observed, generally proceed upon the second of Henry the Fourth, chapter the fifth; and in the name of the Crown. On the twelfth day of June one thousand seven hundred and twenty-eight, an Order of Council was made, whereby the King, taking notice that the practice of exporting the Gold and Silver Coins of this Kingdom was pernicious, and tended to diminish the wealth thereof, ordered the Treasury to allow a Moiety to the Seizers, for their encouragement.

The mischief complained of is, that more than ordinary quantities of the Coin of this Kingdom have been exported, in consequence of the great difference which has for some time subsisted between the price of Bullion at the Market, and the value of Money by Tale. The only remedy which now exists, applicable to that mischief, is the watchful execution of the Laws above-mentioned. How far that remedy is adequate, how far inconvenient, I have not information enough to decide. But it seems natural to imagine, that so long as the nominal value of Coin is less than its real value in the Market, it will be difficult to prevent its being melted or exported. Unless an extraordinary exertion of these Laws promises some considerable public advantage, it seems better to leave them, like other Laws, to execute themselves.

The Statute of Staples, in the twenty-seventh of Edward the Third, chapter the fourteenth, gives leave to import Bullion, and to take English Coin for it; but that is with a proviso, that no old Sterling shall be exported, nor other Money except the new Coin, or such as Merchants shall bring with them and not use; and the new Money there mentioned seems to be the same as that in the eighteenth of Edward the Third, Statute the second, chapter the fifth, which nobody was bound to take; so that it was not a general allowance to export all Coin, or all Coin to be made in future, even though Bullion were imported in the place of it.

All which is humbly submitted to Your Lordships consideration.

8th June 1772. (Signed) E. Thurlow.

To the Right Honourable the Lords Commissioners of His Majesty's Treasury.

May it please Your Lordships,

THE reasons which induce me to entertain some doubt, upon one part of the Opinion transmitted to your Lordships by Mr. Attorney General, are these:—

Before the ninth of Edward the Third, Offices for Exchange of Coin or Bullion were erected in most of the principal Towns of England, by the Royal Authority, and all private Exchanges were strictly prohibited; from the profit of which Exchange a considerable Revenue is said to have arisen to the Crown. The object of the ninth of Edward the Third seems to have been, to give a legal sanction to this practice; and the seventh chapter of it (which is left out as obsolete, in the common editions of the Statutes) provides that these Offices of Exchange shall be erected in such places as it should please the King. It is certain from the Statutes, and from the Records, that these Exchange Offices subsisted during the several Reigns in which the Statutes of Employment, or those for prohibiting the Exportation of Coin or Bullion, have been passed.

It seems probable that the course of these Exchange Offices, and the profit arising therefrom, had been interrupted during the Civil Wars occasioned by the contested Title of the two Houses of York and Lancaster; and it is remarkable,

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4 markable, that when Henry the Seventh, in the third year of his reign, revived the expired Law of the seventeenth of Edward the Fourth, by which the Exportation of Coin, Plate or Bullion, was made felony, he at the same time provided by the sixth Act of the same Parliament, that none should make Exchanges but by the King's appointment.

It should seem, then, that these ancient Statutes were framed with a view to prohibit the Exportation of Coin, not upon the principle of restraining totally that Commerce as in itself unfit, but merely for the purpose of securing the Revenue arising to the King from the profit upon the Exchange of Money.

The Laws which were then enacted, not only prohibit the Exchange of Coin, but also of Gold or Silver in Bullion or in Vessel, and also oblige every Merchant to export in Commodities the value of the Merchandize he has imported.

Bills of Exchange are as much prohibited by that system of Law which then prevailed, as the Exportation of Coin or Bullion; and it is difficult to conceive how the Statutes prohibiting the Exportation of Coin should continue in force, if the Statutes of Employment are not in force at the same time; for both of them are founded upon the same principle.

That principle is, as I conceive, the securing to the King the profit arising from the Exchange. I consider therefore the Laws prohibiting the Exportation of Coin, as Laws of Revenue, which cease to have any effect when the Revenue to which they relate, and for the security of which they were enacted, no longer exists.

If the Laws enacted from the 9th of Edward the Third to the 7th of Edward the Sixth, were put in force, no Commerce could be carried on in this Kingdom but by water; and if that system were adopted, the Prerogative Exchange Offices must of necessity be revived.

An attempt was made in the Reign of Charles the First to resume that Prerogative, by a grant to the Earl of Holland (which is preserved in the *Fœdera*, vol. 18. p. 896.) of the Office of Exchanges, reciting the old Statutes; but it does not appear that any use was made of a Grant so improper and so dangerous.

It would be too severe a censure upon the policy of ancient times, to suppose that a total prohibition of all Exchange, by means of Gold or Silver, could have been enacted. But if it is supposed (as the truth is) that the trade of Exchange was made an article of Revenue, the Laws prohibiting private Exchanges, and of course the uncensored Exportation of Money, are neither absurd nor impolitic, considered in the relation they bear to the system of Government then established; but they are totally inapplicable to the present state of things, and I should upon that ground hold them to be expired Laws.

Another observation hath occurred to me upon these Laws, that from the 9th of Edward the Third to the 7th of Edward the Sixth, several Acts have passed to the same effect. Now if the prior Acts were deemed to be perpetual, and not temporary in their nature, the repetition of the Law seems to be very unnecessary. But besides this, the 4th of Henry the Fourth, chapter the sixteenth (omitted in most of the printed editions of the Statutes) containing no reference to prior Statutes, prohibits the Exportation of Gold or Silver without licence, and is limited to endure to the next Parliament only.

The second of Henry the Sixth, chapter the sixth, is in point of date the next general prohibitory Statute (excepting always the Statute of Employment); that Act is not limited to any certain period; but by the 17th of Edward the Fourth it is re-enacted, the Offence made Felony, and the duration of that Act is limited to seven years. That Act expired in the year 1484, and it was not till the year 1487 that the Act of Edward the Fourth was by the 3d Henry the Seventh, chap. 8. revived and made perpetual. By the 7th of Edward the Sixth, chap. 6. however, the duration of this Law was limited to twenty years, and it expired in the year 1573. From the course of these Laws, I should incline to conclude, that not only the Penalty but the Prohibition was temporary, for these Laws do not seem to be framed as Laws adding new Penalties to an offence declared by former Laws, but each distinct Law repeats the Prohibition, and proceeds originally as if there had been no Law then existing. And it may be a question upon the construction of Laws in

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5 in general, whether Statutes prohibiting an act in itself not evil nor immoral, under a heavy penalty, must not of necessity absorb the prior Laws simply prohibiting the act, and whether it does not become necessary upon the expiration of that Statute, to revive the Prohibition by an express Act.

Besides these doubts, which have occurred to me upon the Laws in general, I conceive there are objections which might be taken to the particular Statutes, if any prosecution was commenced upon them. It might be argued, that the ninth of Edward the Third was explained by the twenty-seventh of Edward the Third, chapter the fourteenth, which permits the Exportation of the new Money of Gold or Silver, and leaves the Prohibition only as to the old *Sterling*, which it would be truly said meant at that time a particular Coin, viz. the Silver Penny, that no longer exists. The fifth of Richard the second, it might also be argued, is repealed by the fourth of James the First, chapter the twenty-second, for the words of that Act are expressly, "That every Ordinance, Provision, Article, or Clause, in the first-mentioned Statute, shall be utterly repealed." And it is difficult to restrain these words by the recital of the latter Statute. If that Act is repealed, the second of Henry the Fourth, chapter the fifth, is also repealed of course.

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But it is unnecessary to state any such minute doubts to the existence of these Statutes, in support of a doubt, which, if it is not to be justified by those considerations I have already stated, ought not to weigh at all against what I believe hath been the received opinion upon the construction of these Statutes.

I am the less diffident, in stating the grounds of my doubt to your Lordships, upon this part of the case, because I have the good fortune to agree entirely with Mr. Attorney General; in the other part of it, That it is much better to leave these laws (if they can be executed) to execute themselves, than to give any orders for enforcing them.

(Signed) Al. Wedderburn.

8th June 1772.

Whitehall, Treasury Chambers,
11 March 1811.

R^d Wharton.

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the Bank of England and the Lords of the
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Secretary of the Treasury to the Attorney and
Solicitor General;—and, of the Orders of
the Attorney and Solicitor General, submitted to
the Treasury, in the year 1772, respecting the
execution of the Laws, which prohibit the
Exportation of GOLD and SILVER:—viz.

1. Copy of a Treasury Minute, dated 1 October
1771.

2. Copies of the Opinions of the Attorney and
Solicitor General, dated 8 June 1772.

[N. B. It does not appear by the Books of the
Treasury, that any Letters, of the nature
referred to, in the above-mentioned Order,
was written by the Secretary of the Treasury
to the Attorney and Solicitor General.]

Which, Treasury Chambers, } R4 Warton.
11 March 1811.

Ordered, by The House of Commons, to be printed,
15 March 1811.

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