LETTER

ADDRESSED TO A

Member of the House of Commons,

RESPECTING

THE ORDERS IN COUNCIL

AND

THE LICENCE TRADE.

Price 2s. 6d.

A

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ADDRESSED TO A

Member of the House of Commons,

ON THE SUBJECT OF THE

NOTICE GIVEN BY MR. BROUGHAM, FOR A MOTION

RESPECTING

THE ORDERS IN COUNCIL

AND

THE LICENCE TRADE.

In Amicorum caput cuditur hæc Faba.
Bynkershoek, Quæstiones Juris Publici, l. i. c. iv.

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LETTER,

&c. &c.

MY DEAR SIR:

AMIDST the general gloom and despondency, and that, which, in this capital, is scarcely less frightful than gloom and despondency, amidst the general torpor and inertness that pervades the whole mercantile class of the community: notice has been given, in the House of Commons, of a motion respecting the Orders in Council, and the Licence Trade.

From this notice a favorable augury has been drawn.—Most sincerely indeed

do I rejoice that these topics are to be submitted to the deliberative wisdom of Parliament; most sincerely do I rejoice that the person, who has given notice of the motion, is, in every respect, fully competent to discharge the important task he has undertaken

The lapse of time which has intervened, since the enactment of the Orders in Council—the awful series of failures and bankruptcies, which, within that interval, have followed one upon another, in a long, progressive, and increasing ratio—cannot have taught those, who were originally unfavorable to the measure, to vary their opinions respecting them.—On the contrary, it must now be obvious to every one, who has directed any attention to the consideration of the subject, that their complete failure, as a scheme of political sagacity and civil wisdom, has been evidenced, to demonstration, by the embarrassments of our trade—by the annihilation of neutral commerce—by the enforcement they have given to the very edicts of the enemy, they were intended to coun-

teract; and, finally, by the encouragement they have eventually afforded to the shipping and mariners of those States, whose common object it is to depress and degrade the maritime ascendancy of Great Britain.

The consequences, indeed, that have flowed from them, are beyond even what the most gloomy of those prophets ventured to predict, who could foresee nothing but evil likely to result from measures which had their foundation in an anomalous and unnatural combination of things—and which were diametrically at variance with that practice and those usages which, for several centuries, at least, had regulated the intercourse of independent States.

Under these circumstances I must confess that, for one, I cherish a sanguine expectation that, when the subject shall be brought before Parliament, the prejudices (which are but too apt to intermix themselves with all topics) will be laid aside—that the House will fully entertain, and candidly discuss the merits of this

important question; from the nature of it there is just reason to hope that the voice of the country will be heard—sure I am that the voice of the country is loud for the repeal of these Orders—sure I am that if the representatives of the people speak, as I think they will, the language and sentiments of the Nation, the result of the motion must be the accomplishment of the object it has in view.

Unwise and impolitic, however, as these measures were, in their original structure and design—fatal as they have been in their progress—and unfortunate as they are in their actual operation—the primary object of this letter is not to point out to you either their folly, their impolicy, or their ill-success; the aim of it has a higher scope; —I am desirous, in the first instance, of impressing on you, and those who, like you, have not made Public Law the immediate object of their study, that the Orders in Council should be rescinded, not merely on account of their failure, but principally, and, in the first instance, be-

cause they are essentially, and, in their very nature, illegal, immoral, and unjust—because they are a gross innovation in that code of laws which has so long, by the common consent and acknowledged practice of mankind, expounded and enforced the reciprocal rights and obligations of Neutral and Belligerent States—and, because they have, eventually, contributed, more than any measure ever did, to the dissemination of wickedness and immorality over a considerable portion of the civilized globe.

Under the full conviction that these facts are as stated, I am naturally anxious that the same Parliament which, inadvertently perhaps, countenanced the adoption of the measure; should, after mature consideration, be convinced of the justice and necessity of repealing it. The moment is propitious for such an expectation; a fair opportunity is now offered to us of retracing our steps. Parliament may now, in its wisdom, if it should think fit, pronounce them to be, as in truth they are, contrary to the fundamental principles of natural law.

On this part of the subject I have no hesitation in stating, that to understand correctly the question about to be submitted to your consideration, you will not, as you seem to imagine, be called upon to possess any profound knowledge of the Law of Nations; or, indeed, to be in any way conversant with the works of the text writers who have adorned and illustrated that science.—Eminently as the works of the great publicists to which I have just alluded (however antiquated the notion may appear) may be calculated to inform the practical statesman with sound and just ideas of morality and law, in the most extended and comprehensive acceptation of the term; it must be admitted, on the other hand, that as the doctrines they inculcate are founded on the deductions of reason and common sense, it would be the height of pedantry and absurdity, to contend that statesmen could be formed on no other models, or could derive their knowledge from no other sources.—The Law of Nations, is, in fact, little more than the law of nature itself;—

it is that law which is obvious to the natural reason, and congenial to the natural constitution of man—not, indeed, applied to him individually, and considered simply as man—but to man in his collective capacity—in his aggregate of nations and commonwealths.—In the latter, as well as in the former state, he is liable to injury—and capable of receiving benefit from others. "It is therefore," as it has been most admirably expressed*, "the interest, as well as the duty of nations to reverence, to practice, and enforce those rules of justice which control and restrain injury—which regulate and augment benefit—which, even in their present imperfect observance—preserve civilized states in a tolerable condition of security from wrong; and which, if they could be generally obeyed, would establish, and permanently maintain the well-being of the universal commonwealth of the human race."

* See Mackintosh's Discourse on the Study and Law of Nations.

The morality, therefore, of states and of individuals rests on the same base.—Hence, in political as well as in civil society, the characteristic criteria by which all actions must be examined are plain and simple—and necessarily familiar to the apprehension of those minds which have been habitually trained (by what course of study is immaterial) to the practice and contemplation of sincerity, of justice, and humanity;—and amongst those criteria none are more obvious and intelligible, than those by which the legality or illegality—the morality or immorality of the Orders in Council must be tried;—these at least require no effort of abstract reasoning—no deductions of abstruse and difficult science—no peculiar chain of argument for their application and development.

To proceed to this examination, we have only to bear in mind that there is one sole, and the same rule of justice, for all mankind.

The first question to be considered is,

whether the Orders in Council are lawful, or unlawful?

The second, whether, supposing them to be in their nature illegal, they are capable of justification?

On the first point there can be no doubt.—The Orders in Council proclaim a blockade by notification; and it is a fundamental principle of the Law of Nations, that a blockade by notification alone, is irregular, and null;—in other words, that no Belligerent has a right to prohibit a neutral State from carrying on her accustomed trade with those ports of his adversary, which are not actually invested by his military marine;—on this part of the question, however, it is needless to occupy your attention for any length—because all idea of the intrinsic legality of the measure, if ever it was maintained by the advocates for the Orders in Council, has long ago been abandoned. Indeed, the ablest defenders of them admit, "that they "are a great and signal departure from the

"ordinary administration of Justice.*" They are now universally felt and acknowledged to be, abstractedly speaking, illegal, and unjust—and are only attempted to be justified, as far as I can understand the arguments that have been advanced in their favor, on two grounds—namely, those of Necessity, and Retaliation.

Let us examine these excuses separately.

Necessity is a powerful plea, and one which must find admission into every system of human jurisprudence, as a presumptive exception to all law. It may be urged with irresistible effect not merely to mitigate, but to justify, and even to illustrate actions, abstractedly speaking, criminal, illegal and immoral;—it may convert injustice into justice, evil into good—and even heinous offences into deeds of splendid and heroic renown. But what is the sort of necessity

* Vide Sir W. Scott's judgment in the case of the Fox, in the last number of the Admiralty Reports.

universally required to justify an illegal act? Why, an absolute and uncontrolable necessity—a necessity exercised solely for the purposes of self-defence and self-preservation—and exercised not one moment beyond what the exigencies of the circumstances that have called it forth into action, absolutely require;—on this principle, self-defence has been termed the primary law of our nature. In our English code, it may be pleaded in excuse of breaches of the peace, or of homicide itself.* Thus, also, by the general law of Europe, nations may plead self-defence in justification of measures, that, but for this plea, would be flagrant violations of the rights and privileges of innocent† and unoffending States. There is, how-

* "But then care must be taken, that the resistance does not exceed the bounds of mere defence and prevention, for then the defender would, himself, become the aggressor."—*Blackstone's Commentaries, Vol. III.*

† Thus Grotius, in cases of necessity, admits that a Belli-

ever, this difference in cases arising under the municipal and the public law—in the former, a case of justifiable necessity is capable of proof—and if any doubt should arise, as to the sufficiency of the plea, the point may be readily and satisfactorily determined by an appeal to a competent tribunal; but who is to decide a question of this nature between contending nations? there is no common arbiter to whom reference can be had; surely then a nation should distrust herself in every case of this description—she ought accurately examine herself as to the real motives that influence her conduct—she ought never forget, for a moment, she is sole judge in her own cause.

Unfortunately too, States in their political capacity, are as liable as private

a Belligerent may apply to his own use the property of a Neutral, but only on condition that the articles if innocent shall be restored to the rightful owner. Nam si Tuori me non possum nisi quæ mittuntur interciplam, *necessitas jus dabit* sed sub onere restitutionis nisi causa alia accedat.

Grotius, de Jure Belli et Pacis, lib. 3.

individuals, to be warpt by prejudice—to be clouded by error, and to be precipitated by angry and acrimonious feelings, into violent and vindictive measures.—The ambition of some nations,—the antipathies of others,—are proverbial; in a word, as they are all governed by men, they are all liable to be influenced by the passions and prejudices incident to man—consequently are but ill-calculated to institute a judicial review and investigation of their own conduct; and little qualified, when their own interests are concerned, to decide impartially upon the important question of necessity, or no necessity.—This is the great imperfection of the Law of Nations—an imperfection, however, inseparable from the unalterable constitution of things, and so obvious and self-evident that the learning and labours of eminent jurists of all times, have been exerted to counteract the effects of it.—Rules have been laid down for this purpose with much precision and accuracy—the best feelings of the human mind have been appealed to, for the enforcement of those rules; and, in every page

of Public Law, we are again and again cautioned not to confound reasons of state and policy—reasons of convenience and advantage—with that paramount and uncontrolable necessity, which alone justifies the breach of that Law, which it is equally the interest of all Nations to maintain and uphold inviolate.

It has been said,* that less evil results to society at large, from aggressions committed under the pretext of necessity, than from those which are done in open and unblushing defiance of the practices and usages of mankind; because it has been thought, that such pretences were at least an homage paid to justice; and that, by not openly trampling under foot, all that is most sacred, men tacitly acknowledge, that a flagrant injustice deserves the indignation of all.

This doctrine may hold good in some instances, as to private society; but as applied to the transactions of States, I

* Vattel, liv. ii. c.

cannot but think, the history of Europe, for the three last centuries, justifies the assertion, that the general interests of justice have suffered more under the semblance and pretext of Necessity,* than under those of open and licentious aggression.

Undisguised ambition and avowed revenge, have at least the effect of awakening every one to a sense of the injustice of the action, and of calling forth the censure and obloquy of mankind.—By them, no rule of law is sapped and undermined in the estimation of society, and

* Our immortal Milton has made even Satan seek to justify himself by Necessity; when, in the prosecution of his revenge, he assailed a third party, who had done him no injury.

"And should I, at your harmless innocence
"Melt, as I do—yet public reason just,
"Honour and empire, with revenge, enlarged
"By conquering this new world, compels me now
"To do what else, though damn'd, I should abhor."
So spake the Fiend, and with Necessity,
The tyrant's plea, excused his dev'lish end.

Milton's Paradise Lost, b. iv.

though the invasion of right may obtain a temporary success, men gladly seize the first opportunity of reverting to the practice of acknowledged reason and law—but, when actions are cloaked by the plausible veil of Necessity, they are readily adopted and imitated by others, who, under similar contingencies, are inveigled and seduced by the allurements of similar temptations; more especially, if the nation making use of such pretexts, should have been heretofore renowned for wisdom, for moderation, and rectitude of conduct, and distinguished beyond others for a long adherence to the antient rules and practice of civilized States; and, in this point of view, the administration of Maritime Law receives more real injury, and is more liable to be permanently diverted from its natural course, by such ordinances—as some of those published by the Dutch, in the middle of the seventeenth century,* and by

* At the beginning of the war, which was suspended by the treaty of Ryswick, Holland entered into

such as Great Britain promulgated on the 11th of November 1807—than from any of the unjust and outrageous edicts of a Philip II.—a Louis XIV.—a Robespierre—or a Buonaparte.

into a Convention with England *to block up all the ports and havens of France*, and to take any vessel, to whatever King or State it might belong, that should be found sailing into or out of the ports of France—the right of the two Nations to enter into a Convention of this nature was very much questioned—strong remonstrances were made by the Northern Powers—and the two Maritime States gave up the point.—This Convention differed from our Orders in Council, inasmuch, as by the terms of it, the vessels of Holland and England were to *block* the ports of France.—Nevertheless, an author, whose opinions are entitled to great weight, without absolutely deciding whether the Convention could be justified or not, uses the following remarkable expressions: "England was induced to join with Holland in this Convention exceeding thereby those bounds of equity and moderation, which she had almost always practised on this point before, and which she will, I hope, most faithfully observe for the future."—See the late Lord Liverpool's excellent *Treatise on the Conduct of Great Britain toward Neutral Nations*, page 116. (Published in 1758.)

But, to return to the more immediate object of our discussion; if my positions are correct, the clear and necessary inference from them must be, that the Orders in Council cannot be held to approach, even in the most remote degree, to that necessity which is required, in justification of a positive deviation from the established practice of nations—to bring the case up to that, it must be shewn that the safety and security of the British Empire rendered the enactment of them absolutely necessary.

What was the immediate object of the Orders? to cut off all commercial intercourse between France, and the other nations of the civilized world?—scarcely, however, were they promulgated, when, to their ostensible object, was super-added another, utterly irreconcileable with the idea of blockade, namely, that of forcing British manufactures and British colonial produce into the ports of the Continent. —To accomplish two objects, so diametrically opposite to each other, recourse was, necessarily, had, to measures of as opposite a tendency—thus, while, with one hand, we hermetically sealed the ports of France and Holland, against neutral commerce—with the other, we opened the same ports, by means of Licences, to the shipping and mariners of our enemies—while we closed one door upon America, we opened another, and a wider, to Denmark, Prussia, Holland, and, even France herself. The plea of necessity then, became, instantly, over-ruled; for the necessity must have grounded itself on one of two things—either on the notion of cutting off all supplies from France—or, on the idea of forcing a vent for our manufactures—if it was on the former, we put an end to it by licensing ships, of all descriptions, to enter the interdicted ports—if it was on the latter, the attempt to force merchandize into a country, contradicts, *ipso facto*, all idea of blockade.

Again, allowing that the necessity, contended for, was supposed to have existed, at the moment of the enactment of those Orders, and that there was a clear

conviction, however mistaken it might be, on this head, still it must speedily have been obvious, from the failure of the immediate objects of the blockade, that the necessity had ceased—and, this being the case, there could be no pretence for the continuance of a measure, which, being, in itself, contrary to the law of nations, ceased to be just from the moment it ceased to be necessary.

On no ground, therefore, is there any justification for the Orders in Council upon this plea; since, as has been before observed, no less a motive than a conviction that the existence and security of the country absolutely required it, could have authorised us, in the first instance, in adopting a measure, illegal and immoral, in all the essential ingredients of its character and operation—and, secondly, nothing short of the continuance of that conviction could have justified us in persisting in the enforcement of such a measure, throughout the uninterrupted space of three years.

To proceed, however, to the other ground of justification set up,—namely, that of retaliation.

And here, again, we must apply to self-defence and self-preservation, as middle terms, if we wish rightly to understand, and accurately to define, the right of retaliation—neither the laws of God or man admit of retaliation, in the common acceptation of the word, *i. e.* the doing an injury to another, because he has done an injury to you. War, itself, the last resort of princes and states, *ratio ultima regum*, is only justifiable on the ground that it is the natural right of all mankind to secure their persons and property against violent and unjust aggression; and war once commenced, this right of safety is, necessarily, extended to justify the contending parties, in exerting all *lawful* means towards the attainment of that, which is the only legitimate object of all hostility, namely, the restoration of mutual security and peace—and here, if it were at all material to decide the question, whether the publication

of such an unjust ordinance, as that of Berlin unquestionably is, would authorise Great Britain, in her turn, to disregard the law of nations, towards France, as far as it touched that state alone?—there would be no difficulty in admitting that, under such circumstances, (however powerfully humanity and wise policy concur in forbidding all aggravation of the calamities of war), such a retaliation would be justifiable, because it could only affect the enemy personally, and might be the means of imposing a speedier termination to his barbarous and illegal mode of warfare; such a case, however, has not arisen—and, though, unhappily, is not so improbable as it has been at any other era of the history of civilized Europe—still, we trust it is improbable, and, surely, it is one to be most earnestly deprecated. The very existence of a code of public law, which is framed for the purpose of meliorating social intercourse during peace, and for prescribing limits to hostility during war, presupposes more than two parties who are to be amenable to its jurisdiction, and bound by its decisions. From the existence of such

a code, we must infer, *à priori*, a society of nations in which the natural rights of each are so far abridged and curtailed as may be necessary for the advantage and security of the whole commonwealth of states—a society in which neutrals, as well as belligerents, have their reciprocal rights and obligations; and, if, to the one, is conceded the right of prosecuting hostility, to the other must be allowed, the undoubted privilege of carrying on an innocent* trade with each of the contending parties. Nor can the injustice of a belligerent towards us, be held to justify an injury inflicted by us on a neutral. To illustrate this by an example—if France were to put to death British prisoners, we should have a right (if we acted upon the sincere conviction that, by so doing, we should put a speedier termination to so abominable a practice) of retorting this brutal conduct upon those French prisoners, whom the chance of war might put into our posses-

* The word *innocent* is always used by writers on Public Law, in contradistinction to *contraband*.

son—but if France were to put to death all the Americans, within her grasp, who who had ever traded with England; can it be, for a moment, contended—can such an idea enter into any person's imagination, that we should have any excuse, even the slightest shadow of a pretext, for putting to death American subjects, because they were carrying on a commercial intercourse with France?—We recoil with horror, from the bare mention of such a proposition. It will be said, this is putting an extreme case; but, is it to be denied, that the seizure and confiscation of vessels and merchandize, the undoubted property of subjects of a friendly state, trading in exact conformity with the established law and practice of nations, is not, likewise, an extreme case? Examine them both and you will find the same principles apply to each—so long as our retaliation is personal to our enemy, it may, for the reasons stated above, be justifiable; but the moment it extends to the person or property of one, who is no party to the injury we have received, it becomes utterly incapable of jus-

tification; unless in a case, where it is clearly and unequivocally resorted to, for the purposes of self-defence and self-preservation.

Look through the whole code of belligerent rights; you will find the same doctrine pervade all of them; they are, in point of fact, entirely regulated by this principle.

Thus, for instance, we have a right to seize the property of our enemy, if we find it within the limits of his or of our own territories; but we have no right to seize it on neutral soils, nor in the ports or harbours of neutral states; nor (so great is the courtesy of nations on this head) within three miles of a neutral coast.—Again, we have a right to seize our enemy's property on the sea, which is the high *road* of the universe; but if the vehicle, in which it is conveyed, or the property, with which it may be intermixed, belong to a neutral, both the one and the other must be restored to the rightful owner.

We have a right also to search any vessels we meet with on the ocean, and if there is any suspicious circumstance connected with their character, their course, or their destination, we have the further right of bringing them into our ports, for the sake of taking from them any hostile property they may have on board; but, if it should, eventually, turn out that they have been seized on false surmises and unfounded suspicions, the belligerent is liable to be called upon to indemnify the neutral for such tortious interruption, and detention.

A belligerent may prohibit all access to a port actually invested by his military marine, and, as the introduction of a very small portion of supplies, into a port so circumstanced, might have the effect of counteracting the whole object of the blockade, he has the right, (and it is the harshest inscribed in the whole code of public law) but still he has the undoubted right, in furtherance of his just object, to confiscate any vessel that may attempt to enter the port;

but if the force the belligerent has applied to this purpose should be proved, in a court of prize, to be inadequate to its object, and not competent to the due investment of the place, the neutral re-enters immediately, into all his rights, and may carry on his accustomed trade with the place, even though the edict, which announced the blockade, remain uncancelled and unrevoked.—The same doctrine is applicable to goods, termed contraband of war; *i. e.* naval and military stores, or any sort of goods peculiarly calculated to give our enemy increased means of annoying us, in the prosecution of his warfare; we may, therefore, prevent the importation of commodities of this species into his ports and harbours; but all other merchandize the neutral has a right to convey to our enemy, when and where it may best suit the purposes of his convenience.

Observe — throughout these several rights of war, and I have purposely selected those which are familiar to our daily experience, and are invariably acted upon

with the certainty and precision of positive law,—how anxiously the Law of Nations provides that the whole community of civilized States, should suffer as little as possible from a contest, in which two of her members may unhappily be involved,—with what scrupulous delicacy she weighs the measure of retaliation, which a Belligerent may exercise against his enemy, consistently with the natural right of those States who stand aloof from actual hostilities.

Accordingly, I do not think a single passage can be produced from any text writer on the science of Public Law, which will lend the slightest countenance or support, to the unqualified spirit of retaliation, which is inculcated, enjoined and enforced by our Orders in Council;—whenever this topic is either incidentally alluded to, or directly discussed, in the works of those great writers, they all distinctly lay it down, that infraction of the Law of Nations on the part of our enemy, will not justify us in retorting upon him, by an act of similar

aggression;—because the evil resulting from it, must fall severely upon those who are no parties to the injury we have received, and against whom our retaliatory measures are not immediately directed, or as the whole doctrine is summed up, in the comprehensive language of one, whose authority is unquestionable: "*Retorsio, "non est nisi adversus eum qui, ipse damni "quid dedit ac decinde palitur, non vero "adversus communem amicum.*"* "In-"stead of immorality for immorality, in-"stead," to borrow the expression of an eminent Civilian † of our own day, "of "conjuring up wicked spirits to combat "against wicked spirits, we ought to draw "down from heaven the principles of "virtue, justice, and true fortitude, to cor-"rect the wickedness of our antagonist."

* Bynkershoek, Q. J. P. cap. 4.

Grotius is decisive on the same point—"nam talio justè et propriè dicta in eandem personam quæ deliquit exercenda est."—*De Jure B. et P. lib.* 3. *chap.* 13.

† See Dr. Laurence's Speech on the Orders in Council.—*Cobbett's Debates, Vol.* 11. *p.* 1067.

With respect to the practice of Nations, the Orders in Council, like all other reprehensible measures, are certainly not wholly without a precedent. In the middle of the seventeenth century, Holland, in the plenitude of her naval power, promulgated several Ordinances by which she attempted to interpolate this doctrine of retaliation into the Maritime Code of Europe; but all her attempts for this purpose were ineffectual, and by a singular fatality the principle on which it was founded, has met with its complete refutation, from a writer of the very country which first endeavored to introduce it.

The practice of Great Britain, however, is in direct contradiction to the retaliatory doctrine of our Orders in Council. Several centuries have now elapsed since we have been advancing, partly by gradual, partly by rapid steps towards a naval pre-eminence, without a parallel in the history of the world. Throughout the whole of this career, our course has been narrowly watched and harassed by our powerful

neighbours, no exertions, no ingenuity, and, occasionally, no injustice, has been wanting, on their part, to thwart and interrupt our progress. In the century before the last, at one time, the vigilant jealousy of Holland, at another the arrogant insolence of Louis XIV. fulminated against our commerce, edicts as outrageous and unprincipled as those we are now attempting to retaliate.

In the middle of the last century, the principle was asserted and promulgated, by the French government, that the intermixture of any British produce or manufacture with a cargo should make the whole cargo amongst which it was found liable to confiscation.—In reply to these, and other decrees of a similar tendency, which might be enumerated, I can find no instance in which England has ever claimed the right of retorting by acts of similar aggression.

But to descend to events which are within the immediate recollection of many of us, and more closely analogous to the

existing circumstances of the world;—look to the relative conduct of England and France throughout the last war;—the history of that period is peculiarly calculated to illustrate the point at issue;—during the whole of it, the different governments which succeeded one another in France, however varied in their form and constitution, were alike unrestrained by the influence of any moral or religious principle; and alike regardless of the established habits and usages of mankind;—accordingly, they enacted and enforced edict after edict, in the grossest possible violation of the fundamental principles of Public Law.—What was the conduct of Great Britain throughout the whole of that eventful struggle?—did she retort upon France, injustice for injustice—lawless edict for lawless edict?—did she plead the example of her antagonist to justify her in trampling upon the acknowledged rights and privileges of neutral nations?—No:—unwarpt by the injuries and aggressions of her enemies, she maintained an even and undeviating course, enforcing by her ordinances, and upholding by her example,

that equitable system of maritime jurisprudence which had so long been acknowledged and revered throughout civilized Europe. In return for the plunder exercised by France on neutral property, she extended, as far as in her lay, protection and security to the commerce of Neutral States;—in return for the shifting and fluctuating decisions of the tribunals of her enemy, she retorted the uniform and impartial decision of her Courts of Prize;—in fine, she contrasted * the evils of French injustice with

* Surely, it is a cause of just exultation to Englishmen, that, at a period when Decrees, yielding nothing in injustice to that of Berlin, were in full force, the very eminent Judge who presides over the Court of Admiralty in this country, was enabled to say: "I do not consider myself as sta-
"tioned in this Court to deliver occasional and shift-
"ing opinions, to serve present purposes of par-
"ticular national interest;—but to administer, with
"indifference, that justice which the Law of Nations
"holds out, without distinction, to independent States
"—some happening to be neutral and some belli-
"gerent—the seat of judicial authority is indeed
"locally here, in the belligerent country, according
"to

the advantages arising from the equal administration of British Law. In this, as in every other respect, she served as a rallying point for the rest of Europe.—*In hâc rerum ruinâ stetit una integra atque immobilis virtus populi Romani hæc, omnia strata humi erexit, ac sustulit.**

Unfortunately, during the war in

"to the known Law and practice of Nations, but the "Law itself has no locality."—*Vide Admiralty Reports*, vol. i. page 350.

And again, on another occasion, alluding pointedly to the unjust Ordinances of France, "There are, "indeed, new governments that have omitted no "opportunity of expressing themselves adversely to "all rules on which the old system has been founded; "and it may be doubtful how far they are disposed to "conform in practice to those ancient principles, but "they shall have an example at least to shew them "that the ancient governments still adhere, with the "most delicate attention, to all the principles on "which the public affairs of Europe have hitherto "been managed; they shall see that it is their in-"terest to respect that system, whatever views they "may have had in affecting to treat it with indignity "and contempt."—*Admiralty Reports*, vol. iii. page 146.

* Liv: lib. 26. chap. 41.

which we are actually engaged, Great Britain has departed from her ancient policy. The present ruler of France, crippled as to his military marine, in a manner unprecedented in the annals of that country—baffled in all the attacks he had directed against our commercial aggrandisement, determined, in the recesses of his crafty and enterprising mind, to accomplish by stratagem, that which he had in vain attempted to effect by open force—aware that it was by the intervention of neutral ships, that the staple manufactures of this country, in spite of his prohibitions, were diffused throughout the inmost districts of Continental Europe; he formed no less a project than that of alluring us to annihilate neutral commerce, and thereby to become his instrument in waging the most destructive system of warfare that could be devised against our own manufactures. In pursuance of this plan, he proclaimed a blockade of the British Isles, at a moment when his ships dared not shew th mselves on the ocean. England at first c ntented herself with retorting this empty menace,

by a decree against the Coasting * Trade of France; and for some time carefully avoided the snare that had been spread for her, till at length, in an evil hour, the same England, that had been unwarpt from her true course by the ordinances of Robespierre and the Directory, determined to retaliate the decrees of Buonaparte;—she committed acts of injustice because he had set her the example;—"she conjured up wicked spirits to combat his wicked spirits," and into that very Code of Maritime Law, which it had been heretofore her policy, her wisdom, and her pride to have administered according to the long-established usages of the civilized world, she interpolated the dangerous doctrine of Retaliation.

Perhaps it may be incumbent upon me, before I quit this part of the subject to observe, that there was still another ground of justification set up for the Orders in Council; though never, I think, very

* The Order of Jan. 7, 1807.

pertinaciously insisted upon;—namely, that America (who at the time of the enactment of the Orders was, strictly speaking, the only neutral), by the assistance she had afforded to France, had rendered herself liable to the just retaliation of Great Britain;—and undoubtedly, if America had lent aid and furnished supplies for the purpose of our annoyance, to our enemy, we should have had an indisputable right of war against America;—but how was the case of adherence and assistance to France made out? it was frittered away into acquiescence; and then, even that ground became untenable, for it could not be shewn that she had acquiesced in a single sentence under the obnoxious Decrees;—our government, indeed, was officially informed by the American government, that no instance of the confiscation of American property, under the Berlin Decree, had occurred. But assuming, for the sake of argument, that the fact was otherwise, was it a case in which it was wise, or prudent, or even competent to us, to call upon America to act up to the

utmost extent of her rights? We * ourselves, have frequently exercised that privilege, which every State, under the Law of Nations enjoys, of not compromising her just rights, if she does not on all occasions, deem it necessary to enforce them;—surely then, it was the most impolitic idea that ever entered into the mind of man, at such a moment to call upon America to act up to the full extent of her rights. Such a proceeding must inevitably have forced her into a war with France; and next to a war between England and America (which I deprecate as the greatest of calamities), I know of nothing which could have occurred at that period, more destructive to the real interest of our commerce, than that America should have

* In the year 1780, when the doctrines of the Armed Neutrality were asserted by the Northern Powers, we did not deem it prudent to revenge this outrage of our Maritime Rights, by a declaration of war; but an acquiescence at that period, was not held to bar us from maintaining and enforcing those rights, when, in 1801, the Northern Powers re-asserted the doctrine of the Armed Neutrality.

become involved in hostilities with France,—since it was by the commercial intercourse America carried on with the continent of Europe, that she was enabled to pay for the valuable commodities she was then in the habit of daily exporting from Great Britain;—nor had our conduct towards that State been such as to induce her to expect that we should call upon her to adopt a line of conduct so repugnant to the natural interests of both parties.—Throughout the whole of the last, and during the early part of the present war, all questions arising out of the operation of the French Decrees, had been left to be decided by the regular administration of Maritime Law,—there had been no interference on the part of the Executive Government at home, to dictate any particular line of proceeding to the Court of Admiralty. That Court, therefore, applying its established principles of practice to the exigency of the circumstances in which it was placed, had restored the ships and merchandize of America, and other neutral States, recovered from the hands of

French cruizers, to their lawful owners, on the payment of the same salvage * that a British vessel would have been liable to, if rescued from the possession of the enemy.

* The nature and practical effect of the French Decrees during the last war, are clearly developed in the following extract from Sir W. Scott's judgment in the case of the War Onskan:—"It being notorious "to all Europe in the present war, that there has "been a constant struggle maintained between the "governing powers of France, for the time being, "and its Maritime Tribunals, which should most "outrage the rights of Neutral Property; the one "by its decrees, or the other by its decisions; the "liberation of Neutral Property out of French pos-"session, has been deemed, not only in the judgment "of our Courts, but in that of Neutrals themselves, "a most substantial benefit conferred upon them, in "a delivery from danger against which no clearness "and innocence of conduct, could afford any pro-"tection; and a salvage for such service has not "only been decreed but thankfully paid, ever since "these wild hostilities have been declared and prac-"tised by France, against all acknowledged prin-"ciples of the Law of Nations and of Natural Jus-"tice."—*Admiralty Reports*, vol. iii. page 311.

In looking to the effects of the Orders in Council—you will perceive that one of the most immediate of them has been a trade with the enemy, carried on to an almost unlimited extent, under the sanction and protection of British Licences. When the Orders in Council had driven from the sea, all those neutral vessels which had been in the habit of circulating the produce of British industry throughout Europe;—it became obvious that only one part of the object they had in contemplation, had been achieved—they had succeeded indeed in closing the French ports to neutral navigation,—but on the other hand, no vent had been discovered for our manufactures;—to obviate this failure, we clandestinely invited our enemies to carry on that traffic, from which we had publicly excluded our friends;—we opened with those enemies a commercial intercourse, irreconcileable with the ordinary usages of mankind—replete with every species of anomaly, and repugnant to every principle of wisdom, of policy, and of law.

In direct contradiction to the system of strict and rigorous blockade, which we had blended and interwoven with the very frame and texture of our Orders in Council, we admitted the ships and mariners of France and her tributary States to trade with the very ports from which we had interdicted the Americans. — So general, indeed, have been the terms of these indulgencies,—and so lavish the issue of them,—that by their operation, we have revived, restored and invigorated the drooping mercantile marine of Denmark and France; —we have taken the shipping and mariners of those States into our pay—trained them to our habits—familiarised them with our coasts—and, to complete the whole, have thrown great part of our export and import trade into the hands of merchants resident at Amsterdam,* Petersburgh, and

* As the Licences protect property to whomsoever belonging, the speculation is as open to French and Dutch, as it is to British merchants, and they avail themselves of it to a vast extent; indeed, in consequence of the immense losses sustained by the confiscation

other great commercial towns of the Continent;—innovation has paved the way for innovation:—rules of ancient and established practice, being wholly inapplicable to the present monstrous and anomalous state of commerce, have become obsolete; —accordingly, the attention of our Courts of Prize Councils is not now, as it was prior to the 7th of November 1811, chiefly occupied in the decision of questions arising out of the Law of Nations.—Since the prevalence of the new system, its practice is almost exclusively directed to the interpretation of Licences, and those points immediately connected with the application of these instruments, such as their phraseology and construction, and the nature of the commodities which may, or may not, be admissible under them to entry at the Custom-House. So

fiscation of British property in the Baltic, the summer before the last, our Merchants have been very much deterred from engaging in this trade, and it has fallen much into the hands of houses at Amsterdam, Rotterdam, &c.

completely, indeed, has this revolution of established usage (if I may be allowed the expression) extended to our Courts of Prize,—that it is now as much the habit of those tribunals to restore the property of our enemies, as it was, antecedent to the Orders, its invariable practice to confiscate;—while, on the other hand, the condemnation of neutral property is as much a matter of course, as the restitution of it was a few years ago.

The main objection, however, to the Licence Trade, is the extreme immorality of which it is the parent;—how can the effects be otherwise than immoral, when the trade itself has its rise in a breach of one of the most sacred obligations imposed by the laws of society upon man—when it is nurtured by fraud,—protected by venality—and consummated by perjury?—Perjury, indeed, is of its very essence—the clearest conviction of gross perjury as to certain points is no longer held to discredit the evidence of a witness, in a Court of prize, because if he were not to for-

swear himself on sundry occasions, he could not become subservient to the purposes of British commerce.—As the contagion of falshood is of all others the one most rapidly disseminated, so it is of all others the most difficult to eradicate,—it is the vice that grows easiest into a habit *—the vice which contributes more than any other to the degradation and debasement of the human intellect. If the sad effects resulting from the sanction and encouragement we have given to the propagation of this vice are already most severely felt throughout Europe,—what must we expect

* An advertisement lately appeared in the newspapers, offering a reward of £100 for the apprehension of a merchant of eminence, and supposed respectability, late of Portland Place; against whom a bill of indictment had been found by the Grand Jury, at the Old Bailey Sessions, for having falsely fabricated and forged a letter, purporting to have been written to him from Amsterdam, for the purpose of inducing the under-writers to pay a total loss on a olicy of insurance effected by him, and which the under-writers paid accordingly.—This person was extensively engaged in the trade under Licences with the ports of the Continent.

from the rising generation!—What can we, indeed, anticipate from those who, in the counting-houses of the merchants, engaged in the Licence trade, are daily initiated into the readiest modes of deceiving lawful authority—who, from the earliest development of their understanding, are taught to consider evasion, fraud, and perjury, as the essential characteristics of those mercantile speculations, to the superintendance of which the whole energies of their minds are necessarily directed and applied!

The annihilation of our trade with America, is an evil also, directly resulting from the Orders in Council; a trade of all others, the most advantageous to Great Britain, and the most congenial to the habits and propensities of her people. At the period of issuing the Orders, our importations, from America, were valued at four millions, and our exportations to that country amounted to twelve millions annually; nor was it merely that America furnished such ample demands for our manufactures,

it was more than this; from the nature of that consumption, her demands were daily increasing, in direct proportion to the augmentation of her population and wealth; but the limits, within which I am confined, will not allow me to dwell on this part of the subject, nor, indeed, is it material that I should. Unfortunately, there are few of those, by whom you are surrounded, who will not be able to bear ample testimony to the practical evils resulting from the Orders in Council; indeed, the actual stagnation of commerce in Liverpool, Birmingham, Manchester, and other once-flourishing cities of the empire, speaks more eloquently to the truth of this assertion, than it is in the power of any language to express. Nor was it to those opulent and commercial cities alone that the American trade was confined; it pervaded whole districts, it stimulated the industrious exertions of several classes of the community; and, by its infinite extent and variety, furnished occupation to manufacturers scattered over the whole face of Great Britain.

In reply to this statement of the distresses of our manufacturers, and the prostrate state of our commerce, you may possibly be told, that the export and import duties have not materially decreased within the last year; whether the fact be so or not I have no means of knowing; but, if they have not, the only conclusion to be deduced from it is, that our export and import duties are not a just criterion of the actual state of our commercial prosperity. Custom-house duties may have been maintained and augmented by factitious or accidental circumstances; for example, in the course of the summer preceding the last, Licences were granted to vessels to carry on the trade between Denmark and Norway on the simple condition that they should touch at Leith and pay tonnage duties. Since the commencement of the Licence Trade, immense losses have occurred from the confiscation of British merchandize, under the protection of these instruments, in the enemies ports; at one period between six and seven hundred vessels, laden with the property of our merchants, were seized in

the Baltic; these, of course, had all paid the export duties;—besides, such are the commercial habits and propensities of our merchants on the one hand, and such the stagnation of trade on the other, that many have been sanguine enough to indulge in adventures, which have turned out most unfortunate in their result; of this nature was the speculation which was carried on not long ago to so vast an extent to South America.—Thus it is possible that the very calamities and distresses of the country may have been subservient to the augmentation of the Custom-House duties—they are, therefore at best but uncertain criteria of the internal prosperity and welfare of the mercantile class of the community—if we wish to ascertain this we must look to the actual state of our great commercial towns, and of our extensive manufacturing districts—to the records of those courts of law in which questions arising out of policies of insurances and bankrupt petitions, are decided, and to the Gazettes, in which failures are enumerated; submit the point at issue to the examination of these

tests and you will find that there never was a year more strongly characterized by the distresses and embarrassments of the commercial world, than the year 1811.

If this statement of the effects produced by the Orders in Council is correct — what possible object can be answered by persisting in them?—If the subject is dispassionately considered, the only point, at present accomplished by it, is the exclusion of one nation, and that the only real Neutral, from the ports of the Continent of Europe—is this a liberal, a wise, a just system of policy?—is it even advantageous?—is the confiscation of any number, however great, of American ships and cargoes, any counterpoise to the evils that have already resulted from the measure, and are daily augmenting by our pertinacious adherence to it—any counterpoise to the sufferings and distresses that are spread so widely throughout the empire—to the immorality it has been the means of disseminating throughout Europe—to the perplexity and embarrassment

to which it must necessarily subject the just exercise of our Maritime Rights?—We have tried the experiment, not indeed after the manner of old philosophers—on vile and worthless matter,—but on one of the most beautiful fabrics that Wisdom and Justice ever concurred to erect, for the general comfort and happiness of mankind.—That experiment has failed,—the edifice has been shaken to its very base; let us, 'ere it is too late, use our utmost efforts and exertions to save it from total ruin.

Of the injustice and illegality of the Orders in Council, in my opinion, no doubt can be entertained. I trust, however, that I shall not be understood by any expressions that may have escaped me in the course of this letter (which has been hastily sent to the press) to attribute to the framers and supporters of them any but the best and purest motives. Doubtless they have acted under the full and perfect conviction, that the regulations they have countenanced and enforced, are consist-

ent with equity and justice; but I will, nevertheless, confidently hope, that if sufficient proof shall be adduced of their failure and inefficacy, that even they will see no ground for continuing to adhere to so pernicious and dangerous a system.

Happy will it be for the country, if, from this, or any other conviction, we shall be enabled to return to the ancient and established practice of nations.—Happy will it be for the country, if our experience shall have taught us, that however flagrant may be the aggression, the outrages, and even the injustice of our enemies, it must still ever be the true policy of a Maritime State, to maintain and uphold the equal and unvarying administration of Maritime Law.

I have the honor to be, &c.

JOSEPH PHILLIMORE.

Doctors' Commons,
Feb. 26, 1812.

FINIS.

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