THE

SPEECH

OF

LORD ERSKINE,

IN THE

HOUSE OF LORDS,

(THE 8TH OF MARCH, 1808)

ON MOVING

RESOLUTIONS

AGAINST THE LEGALITY OF THE

ORDERS IN COUNCIL.

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PREFACE.

THE following Speech was wholly beyond the limits of a newspaper, and would not properly admit of an abridgment. The *substance* of observations upon political subjects may be conveyed most usefully, but legal arguments, supported by authorities, require more fullness and precision to preserve their force and effect. The Editor of the Morning Chronicle has, therefore, adopted this mode of publication; and he thinks he may venture to appeal to those who were present, and, through them, to the public, not only for the correctness of the substance, but generally, even of the expression, throughout. He believes there may be omissions, but all that is expressed will be found to be accurate. A subject of more

deep or general importance has been seldom agitated in Parliament, because it involves the principles which have connected the States of Europe for many ages. He, therefore, dedicates the Speech to Lord Grenville, by whom, it is believed, the Resolutions were drawn; who so ably supported them, and who is daily adding to his high reputation by his distinguished ability, spirit, and eloquence, in this difficult crisis of our affairs.

Strand, March, 1808.

SPEECH,

&c. &c.

My Lords,

The Resolutions, which I had the honour on a former day to read in my place to the House, and which I am presently about to propose to your Lordships to adopt, involve a higher and more extensive consideration than even the justice and effect of the late Orders in Council, as they regard the United States of America, momentous as that consideration undoubtedly is. They involve no less a question, (I speak most advisedly when I say it,) they involve no less a question, than the *very existence* of that whole system of conventional public law, which has contributed so much to advance the civilization, and to secure the happiness of the world. They involve no less a question, than

whether the tyranny of revolutionary France shall terminate its destructive career in the temporary sufferings of the nations now subject to its dominion; whether it shall exhaust its force upon the persons and properties of the present generation in the temporary exactions of conquest; or, whether that dominion shall extend itself over the human *mind* in all countries and in all ages; whether it shall repeal and trample in the dust all the sanctions of morals and policy, which the wisdom of ages has ripened into universal law, for universal security and peace.

Great Britain alone can answer this question for the world: she alone can pronounce, whether the injustice of France shall be received as a warrant for *universal* injustice, or whether, standing, as we do, upon this proud eminence, surrounded by that impregnable moat with which the Divine Providence has fortified this island, we can say, as the instrument of that Providence, to the portentous evils which so remarkably characterize this unexampled period, "THUS FAR SHALL YE ADVANCE, AND NO FARTHER."

My Lords, although this momentous subject has been repeatedly, and in various shapes,

presented for your consideration, I am sorry to be obliged to observe, that it has not as yet been received by his Majesty's Ministers in such a manner, as either the House or the public, but, above all, as other nations, had a right to expect from a British Parliament. The breach of the law of nations by Ministers has been put aside by irrelevant recriminations upon supposed breaches of the same law by others; and the facts, from the establishment of which the legal argument could alone be brought to a decision, have been put aside by the previous question.

It has therefore been thought right to prepare the Resolutions, which I am presently to propose to you, and to frame them in such a manner as to embrace the whole subject: they therefore declare the right of neutral nations to the commerce secured to them by the general law of the civilized world, and by the particular laws and statutes of this realm; they deny the legality of the Order of Council of the 11th of November, and the others dependent upon it, as being a gross violation of both, and they maintain these propositions, not in loose and general terms, so as to lead again to the shelter of a desultory debate, but, in language

most technically precise, they point out the law as it exists, and mark all the departures from it which they condemn.

When the matter is therefore brought to this direct issue—*i. e.* whether the late Orders in Council are justified by, or contrary to, the law of nations, and the law of the land, and when, as a Peer of the realm, I arraign them in this great public council as a violation of both, can it possibly be any answer to such charges, that a former Administration of the King's Government was guilty of a similar violation? Can we, sitting here as statesmen representing the whole British people, so abuse their interests and insult their feelings in such distressing and perilous times?

If indeed the breach of the law had been established or admitted, and the question before us were the degree of blame imputable to Ministers for having so mistaken the public interests and the law, it might deserve consideration whether they had been led into such error by the conduct of their predecessors, and the faith reposed in their administration. But when the question is thus brought to a PRECISE LEGAL ISSUE, in which Ministers and their predecessors are not the contending parties: but

where the rights of the whole British empire, and of all nations, are to be settled by Parliament, every man, I should think, must admit how inadmissible, or rather how perfectly frivolous, such an argument must be. If, for instance, the question were, what punishment I, who have the honour of addressing your Lordships, should receive from a court of justice, whose judgment was discretionary, for an offence against the law, of which I had been convicted, every topic would undoubtedly be relevant to shew that my mind was innocent, and that I had offended from ignorance of my duty: but if the question only were, whether the law had or had not been broken, would it be relevant that I had taken the advice of the ablest counsel, who had misled me, or that I had even relied upon a judicial decision, which had afterwards been determined to be erroneous? I must therefore earnestly entreat your Lordships to entertain the question like statesmen, in a case where the interests of your country and of the world are so deeply involved in the decision. If the Resolutions, which I am about to submit to your Lordships, are unfounded or erroneous, I shall most humbly and sincerely defer to the judgment of the

House which rejects them; but if, as formerly, you fly altogether from the question, I shall then say, and the world will say with me, that no answer could be given to them.

I should enter upon the subject, my Lords, with no satisfaction, if I believed the evils of these Orders in Council to be irretrievable. I hope it is not my temper to be malignant; I think, indeed, that if I were accused before your Lordships of any act, which could only be ascribed to such a base and unworthy disposition, you would not very willingly condemn me. What satisfaction could I have in merely making out, that several noble persons had involved their country in difficulties that were irrecoverable? What satisfaction could I have in wounding and alienating the minds of those, whom upon other accounts I esteem, and whose regard I must wish to cultivate in private life? My Lords, I disavow most solemnly any such motive or purpose: I am convinced that it is *not too late* to retrace the false steps that have been taken; and if it can be shewn, by any proceeding directed to such object, that the late Ministers have also violated the law of nations, do not let the one breach of them be justified by the other:

Speaking for all my colleagues who surround me, as well as for myself, I say, if that case can be established, we must retrace our steps together. Let us concur, my Lords, in serving—serving do I say! let us concur in *saving* our country.

My Lords, the two first Resolutions, which I shall now read, I may assume without detaining the House by any argument upon the subject, because my noble and learned Friend upon the woolsack distinctly disclaimed on a former occasion (I was quite sure that he would), all intention of arguing for any power in the Crown, to suspend or dispense with the laws, or of justifying, upon any such principle, the advice of the Privy Council, by which the Orders complained of were issued.

This we had not forgotten, when the two first Resolutions were drawn up; but it was thought necessary, nevertheless, that they should stand upon the paper, and have precedence of the others; because, as your Lordships will presently see, the Resolutions have a dependence upon one another, and we begin with a declaration against the dispensing and suspending powers of the crown, dead and buried as they were at the revolution, because we

affirm that his Majesty's Ministers *have* nevertheless advised the King to assume them, and that the Orders in Council are a positive and dangerous assumption of it.

The first Resolution declares,

"That the power of making laws to bind the people of this realm is exclusively vested in his Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons of the Realm, in Parliament assembled; and that every attempt to make, alter, suspend, or repeal such laws, by order of his Majesty in his Privy Council, or in any other manner, than by his Majesty in Parliament, is unconstitutional and illegal."

The second Resolution declares,

"That the advising his Majesty to issue any Order in Council, for dispensing with, or suspending, any of the laws of this realm, is a high violation of the fundamental laws and constitution thereof.

"That the same cannot in any case be justified, but by some unforeseen and urgent necessity endangering the public safety.

"And that in every such case it is the duty of his Majesty's Ministers to advise his Majesty, after issuing such Order, forthwith to assemble his Parliament, in order both that the necessity of such proceeding may be inquired of and determined; and that due provision may be made for the public safety, by the authority of his Majesty in Parliament."

My Lords, the sound policy of the Constitution, asserted in the last member of this Resolution, was, perhaps, never so strikingly illustrated as upon the present occasion. His

Majesty's Ministers, though placed in a conjuncture which they themselves admit to have been wholly without example; though they were engaging in a proceeding for which, of course, they had neither precedent nor analogy to direct them; though, from the measure they were adopting, not only our commerce was to suffer a sudden and universal revolution, but, from its probable reception by America, we were to risque the alliance of a powerful and numerous people, and thereby complete the combination of the whole world against our country: yet they not only did not call Parliament together for its counsel, on an occasion so new and so difficult, but even prevented it from assembling, by repeated prorogations. Was Parliament thus repeatedly prorogued because the measure was within the King's power, and because they had so considered it in all its bearings that the assistance of Parliament was unnecessary? My Lords, it was a manifest extension of the King's power, as I shall soon demonstrate to your Lordships; and had it even been clearly within it, the subject was not only too complicated for the private councils of the crown, but Ministers had not at all considered even its certain consequences

and effects, nor was the subject indeed within the reach of the most enlightened statesman, without the aids which committees of Parliament could have furnished:—the truth of this observation is best supported by the fact. They issued the first Order, though it was to have its operation upon distant nations, without the notices which, in less than a week afterwards, they acknowledged to have been indispensible; and they suffered it to find its way, in the gazettes, in that unjust and imperfect state, to every port in America. They were then surrounded by the merchants of London (I wish the siege had been continued), and were obliged to issue new Orders, which were styled Supplemental, but which were manifestly repugnant and inconsistent: These were afterwards illustrated by explanations, which, in their turn, required explanation; and when Parliament was, at last, permitted to assemble, after so many public marks of rashness and precipitation, Ministers have been obliged, day after day, to abandon some of the most essential parts of their system, after they had but too probably increased the irritation which they were at that very moment endeavouring, by a public embassy, to compose.

My Lords, if Parliament had been assembled, how different might have been our present situation. Ministers would then have had only to propose their system, without being *committed* to it, and, perhaps, *fatally* committed to other nations. The most eminent merchants would then have furnished independent lights to the committees of Parliament, and the councils of the country would then have been governed by the public results of those communications, instead of depending, as I fear they have, upon the flatteries and deceptions of the interested and the ignorant.

But, my Lords, the worst is still behind. Ministers, instead of asking indemnity for these illegal acts, upon the footing of their necessity and justice, make them the foundation of an act of Parliament, which we may expect soon to be called upon to consent to. For my own part, my Lords, I would rather cast into the fire the patent which entitles me to sit among your Lordships, than give *my* consent to any statute, even though I approved of its provisions, if I saw upon the face of it a distinct assumption of the dispensing power of the Crown, not even assumed to be justified under the *necessity* of the case, but recited on the

face of the act as a *legal* proceeding, requiring only the aid of Parliament to give effect to additional enactments of revenue. If this should grow up into a practice, what have we gained by the revolution? No man, my Lords, can be a greater enthusiast than I am upon every thing connected with that glorious æra, nor more attached to the establishment of his Majesty's illustrious family, which stands for its support upon the principles which placed it on the throne; an attachment which I feel the stronger, from an affection for their persons; (for the illustrious person, among the rest, who sits so very near me). But, my Lords, I had much rather that King William had never set his foot in England, than that the dispensing and suspending powers should lose all their former terrors, and that Ministers should be permitted to trample upon the laws at their pleasure, without even the shadow of public necessity, without even the trouble of considering whether they were breaking them or no; and that it should become a mere matter of course, without even the form of an indemnity, to recite their usurpations upon the face of our statutes, eking out their measures, through the forms of Parliament, just at any point they

may choose, in their moderation, to stop at, in their fearless encroachments on the constitution. My Lords, I would rather have an arbitrary King, with a jealous and a free Parliament, than see such an habitual departure from all the securities which have characterised for ages the government of our country.

My Lords, I will now read the third Resolution, which brings us to the great subject of deliberation.

"That the law of nations is a part of the law of the land, and that neutral nations, not interposing in the war between his Majesty and his enemies, have a legal right to such freedom of commerce and navigation, as is secured to them by the law of nations."

This Resolution I might also assume without argument, because the law and practice of nations, as they regard the commerce of neutrals in ORDINARY wars, have been repeatedly and distinctly admitted by the authors of the Orders in question, who have justified them only by the necessity of the extraordinary conjuncture. But as a kind of distinction appeared to me to have been taken the other night between the *law* of nations and the *practice* of nations, which last I consider to be but the evidence of the former, though probably this distinction exists only in my misapprehen-

sion of what was said, I think it my duty to state not only the rights of neutrals, as they are secured by the law of nations, but also the foundation of the law itself which secures them; because this course of pursuing the subject will enable me to establish a principle which will protect the whole argument we are engaged in, THAT *the law of nations, whatever its provisions shall be found to be, as applicable to the subject before us, cannot, when once settled, be altered or dispensed with by any particular state.* In addressing ourselves to this great question, let it be remembered, first of all, because it will greatly shorten the discussion, that the law of nations, as it applies to the matter before us, grows ENTIRELY OUT OF WAR: that it can have no existence but in consequence of WAR, nor any possible application but to A STATE OF WAR, and, therefore, to say that by a WAR prerogative in the constitution of any particular government, its executive power, being no more than a branch of that government and without legislative authority (if legislation itself could reach it), to say that its executive power becomes absolute over the rights of neutrals, and may, DURING WAR, disregard that conventional law established amongst nations

only as a rule DURING WAR, would be not only not sound reasoning, but DOWNRIGHT VULGAR NONSENSE.

The Law of Nations, as it regards this subject, is shortly and simply this—That to mitigate as much as possible the calamities and sufferings of warfare, and to confine them to powers belligerent, nations have found it convenient mutually to adopt certain principles, which, like the common law of our own country, have become fixed and settled by usage, confirmed by precedents, and illustrated by the writings of learned men. These principles have also been adverted to, and ratified by treaties between civilized nations in all ages, and it seems admitted to me that this public law, (*but for the conjuncture under which the late Orders in Council are sought to be justified,*) establishes that countries not engaged in war, nor interposing in it, shall not be affected by the differences of contending nations; but, to use the very words of the eminent Judge who now presides with so much learning in the Court of Admiralty, "upon the breaking out of a war" I read from the first volume of Dr. Robinson's

Reports, " it is the right of neutrals to carry " on their *accustomed* trade, with an excep- " tion of the particular cases of a trade to " blockaded places, or in contraband articles, " and of their ships being liable to visitation " and search." The learned Judge afterwards explains the meaning of an accustomed trade in the most correct and satisfactory manner, and which will be found hereafter to be a most material explanation. After stating the inconveniences which war brings upon neutrals, under the most impartial administration of the public law, he remarks, that still the inconveniences are more than fully balanced by the enlargement of their commerce; " be- " cause, from the interruption to the trade of " belligerents, it falls in some degree into the " lap of neutrals." He says also, that though a neutral has a right to carry on in time of war his *accustomed* trade, " yet he is not to en- " large it by carrying on a trade which he " holds by no USE OR HABIT IN TIME OF " PEACE." Subject, then, to these exceptions, the commerce of neutral nations, stands upon this high and most modern authority in our own country, in the midst of the war with revolu-

tionary France, untouched by the contentions, or particular interests, or conveniences of belligerent powers.

I am ready, however, to admit that this is only the ORDINARY *condition of neutrals, whilst belligerents observe the law of nations towards one another.* I admit that a different state of things may arise, concerning which, however, the public law is not silent, but observes the same principles of reason and justice. It is better at once to state the very case which produces the whole controversy, rather than imagine others, the application of which may be disputed.

France issued her decree of the twenty-first of November 1806, which (taking it, for the present, in its severest interpretation, untouched by any subsequent constructions), announced a resolution to distress this country in a manner unauthorized by public law; subjecting to capture the ships and cargoes of neutrals carrying British commodities and manufactures, or going to, or coming from Great Britain, with their *accustomed* trade. Such a decree undoubtedly announced a rule which the law of nations forbids, as being, *even as between belligerents, (independently of the rights of neutrals)* an aggravation of the sufferings of war which hu-

manity and wise policy equally forbid, and which is, therefore, unauthorised by the practice of civilized states; such a decree *(if carried into execution)* would invest the belligerent with a right of retaliation; and, indeed, as between the belligerents *only*, I am not at all anxious to dispute whether *the very publication* of such an unjust ordinance would not authorize the belligerent, so offended, to disregard the Law of Nations towards the adversary *as far as it touched him only:* but it would be an utter perversion of the very term retaliation, to carry it a hair's breadth further, until some act was done under the decree, *as against a neutral*, by which the wrong done to, and suffered by, the neutral, became injurious in its effect to the offended belligerent.

It is, indeed, quite astonishing to hear the word RETALIATION twisted and perverted in a manner equally repugnant to grammar and common sense. Retaliation, in the strict, and literal, interpretation of the word, from RE and TALIO, as you have it in all your dictionaries, signifies to return *like for like*. Therefore, but for the particularity of the case, the term retaliation could apply only to the return of like for like *upon the enemy who committed the injurious*

act: By like for like, I do not mean that the act of retaliation, as against the enemy, must be the same as the enemy's, which would be quibbling with the subject; because, *as against him who injures me*, I may return whatever is necessary to repel the injury suffered, and to secure me against its consequences. It was never, therefore, contended, as was lately supposed by a Noble Lord, that if an enemy violated a neutral territory in the prosecution of his hostility, the other belligerent could only follow him as if he were hunting him upon the scent: certainly not.—There the neutral, from wrong or from weakness, is made the direct instrument of attack, and he is bound to give me not merely the same path through his territory, thus violated, but *any path* which will best enable me to avert the danger arising from the former violation.

All that argument, therefore, is wholly beside the question, and tends only to confound it.

So if A strikes me, I may *retaliate* by striking A; and my noble and learned friend, who sits near me, knows that the law does not restrict my blow to the weight of the adversary's, but allows me to justify whatever is necessary to repel it, and to save me harm-

less. But it is a new application of the term retaliation, that if A strikes me, I may retaliate by striking B. Here the phrase cannot apply, either in grammar, common sense, or justice; unless B can some how or other be justly implicated in the offence committed upon me by A: the thing is really so self-evident, that the mind gets entangled and darkened by endeavouring to make it plainer.

If the decree, interdicting neutrals from trading with us, or visiting our ports, *is executed upon a neutral*, it is an interdiction which he has no right to submit to, because the moment it is executed we are injured by the interruption of his commerce with us. If he submits from favor to the unjust belligerent, he directly interposes in the war, and the neutral character is at an end; retaliation then would not only be strictly applicable, but just and legal, and if he submits from weakness, or from any other cause not hostile or fraudulent, we have an unquestionable right, without any invasion of neutrality, to insist, that what he suffers from the enemy he shall consent to suffer from us, otherwise he would keep an open trade with the enemy at our expence, relieving *him* from the pressure of the war, and becoming an in-

strument of its illegal pressure *upon us*. In that case also the term RETALIATION, though not applicable perhaps in *literal* strictness, as it applies to the neutral, is *substantially* and *justly* applicable to him; because it is in fact retaliation upon the enemy, through the sides of the neutral, in a case where the injury to us cannot exist without the participation of the neutral, in *doing* or *suffering*, by either of which our commerce is alike interrupted. But I cannot, my Lords, conceive any thing more preposterous and senseless, than the idea of retaliation upon a neutral on whom the decree has never been executed, because it is only by its *execution* on him, that we can be injured: what possible right then can we have to complain of, or to take any step against a neutral, who, in no shape whatever, has been made an instrument of injustice by the enemy? What right can we possibly have, to interdict his legal trade with the enemy, when, notwithstanding the decree complained of, we have continued in the undisturbed enjoyment of the whole trade of the neutral, just the same as if the decree had never existed? How can we possibly retaliate upon a neutral who has *done nothing and suffered nothing*, although it is only by his *doing*

or *suffering* that we can, by any possibility, be sufferers.

But it has been said here formerly, (I do not mean to be irregular by alluding to the argument of any Lord in particular in a former debate,) Were we to wait three months, till we could learn from America, her dispositions and intentions? Were we to wait three months more if they were doubtful? and, perhaps, three months afterwards, till they were ascertained and acted upon? Certainly not, my Lords; no, nor an hour after France had acted upon the Decree by condemnations in her prize courts, if America, cognizant of such condemnations, had submitted to the decisions, and, with the consent of her Government, continued her commerce with France, as with a friendly nation. I should have considered that as full evidence of acquiescence; but, my Lords, the term acquiescence, as applied to America, like that of retaliation, appears to me to be wholly unintelligible, until *some act* was done by France, under her Decree, above all after the answer given to General Armstrong's demand of explanation; for how can America be said to have acquiesced in the interruption of her commerce, if in no one instance her commerce

had been interrupted? The language of the Decree undoubtedly would comprehend the interruption of her commerce, because the British isles were declared to be in a state of blockade; but the Decree was GENERAL, and America had a treaty with France—the explanation, therefore, to General Armstrong, that *it was not intended to interfere with the relations of the treaty*, might be consistent with the largest interpretation of the Decree. If any of your Lordships (for instance) were to give a public notice, that all who entered your grounds should be considered as wilful trespassers, it could hardly be taken to apply to those who by your permission had keys of your park.

But, I am willing, my Lords, for the present, to leave Mr. Decres's explanation wholly out of the question, and to stand altogether upon the non-execution of the Decree, in order to examine the foundation of those dreadful consequences, which, it seems, must instantly have fallen upon us, if we had waited for its execution, and the acquiescence of America.

The Berlin Decree, of the 21st of November, 1806, had been issued nearly twelve

months before Ministers were driven to the irresistible necessity of counteracting it. Let us examine, therefore, what had been the condition of intolerable sufferings in that long and painful interval. My noble Friend, who sits at the end of the bench behind me,* laid before the House, a short time ago, the melancholy detail of them.

You had, up to the very 11th of November (the papers are on the table), a revenue, not only untouched by the ordinary calamities of war, and the extraordinary machinations of France to destroy it, but full and overflowing in every department, beyond the prosperity of any former time. As to our commerce with America, my Lords, the air was white with her sails, and the sea was pressed down with her shipping, nearly half as numerous as our own, bringing her produce into every port of England, and carrying our commodities and manufactures into every corner of Europe.

Up to the very date of your Orders in Council she continued to take, without the least defalcation, ten millions of your manufactures; and she enabled herself to pay for them by

* Lord Auckland.

selling to other nations what was beyond her own consumption. She carried on this traffic in the face of the French Decree of the 21st of November, when you could not do it for yourselves. She did this, I allow, not as a perilous adventure from friendship to you, but from the grand principle of human action—to serve herself. Providence has so contrived the structure of the world, that, by a wise pursuit of self-interest, every thing is full and stands in its proper place.

You had so far the start of all nations, that you had only to be quiet, and suffer things to take their course: every advantage flowed into your lap. America, as I have said, continued to smuggle your goods into France, for her own interest, and France contrived to buy them for her's. The people huzzaed their Emperor in the Thuilleries every day, but they broke his laws every night. This was our condition before the 11th of November: England had the trade of the whole world, whilst France had only an empty libel upon the law of nations stuck up on the p——g posts in Paris.

This vigorous state of health, which continued up to the 11th of November, his Majesty's

Ministers unfortunately mistook for plethora or dropsy, and they began stabbing themselves instead of consulting their physician. At that period not a complaint was to be heard throughout England, except such as every war must inevitably produce. I believe, indeed, that out of Doctors' Commons the existence of the Decree of the 21st of November was scarcely known or heard of. But how is it now, in consequence of your attempt to counteract what never had been in action? Even already you are beginning to be surrounded by the cries of distress and discontent in every quarter. My Lords, the cause is most obvious. France had not the means of giving effect to her Decree, even if her policy would have permitted her to enforce it. She had no ships to turn American navigation out of its course, till, in an evil hour, Great Britain stepped in to help her. Strange as it may appear, my Lords, you are employing your shipping to stop your own trade upon the seas; you are making prisons of your free ports, to frighten away the only remaining neutral from entering them; and playing the very game of France, by throwing America into her arms against yourselves, when she would soon have been

provoked to fight by your side if her commerce with this country had been interrupted. And this it seems is retaliation!

My Lords, the blunder of this proceeding, putting the law and justice of it wholly out of the question, so strongly reminds me of a curious instance of retaliation, which was lately resorted to in Ireland, that I cannot help mentioning it to your Lordships. Nothing is further from my mind than any national reflection: no man indeed admires more than I do the character of the Irish; they are a noble and a generous people, and most remarkable for their spirit and genius. It is that *vis animæ* perhaps which is supposed now and then, amongst the uneducated vulgar, to interfere with that precision which is the characteristic of colder habits.

An Irish Banker, my Lords, remarkable for his zeal as a magistrate in suppressing insurrections, having become obnoxious to a gang of robbers in his neighbourhood, they formed a combination to ruin him; and the method proposed by these clear-headed people was to burn all his notes wherever they could find them: for this purpose, they beset the houses of many of his customers, and having committed some

thousands of these notes to the flames, assembled to rejoice over the vengeance they had taken upon the Banker. The account of their vengeance was easily to be cast up by every body but themselves. The Banker of course was just the gainer by every note that was burned. I laughed heartily, my Lords, in the summer, when I heard this story; but, upon telling it again since last November, every body looked grave, and scarcely could find out any joke. Your Orders in Council, my Lords, had put it in the shade.

How very different, my Lords, was the conduct of Mr. Pitt, whose example I should have thought would have been looked up to. A similar Decree had been issued by France in 1798; and it is but common justice to that great Minister that I should say, though differing from him as to the policy of the war, that his superior sagacity passed it over altogether as beneath the notice of a British statesman.—Perhaps, my Lords, I ought to extend that justice to his Majesty's Ministers also, since they are generally believed to have taken no very active part in the Orders now under consideration, which are supposed to have originated with a person for whom I have a very

great regard, and whose talents are unquestionable; but whose experience on such a subject may be questioned; even with all the assistance of an ingenious theorist who, though an able lawyer, and a very amiable man, I should not have been disposed to follow in so doubtful and dangerous a course.—To say the truth, my Lords, a proceeding of this nature and extent ought to have been the work of many minds, and of minds constantly engaged in the affairs of practical commerce. I have myself lived amongst merchants, and have been engaged in more commercial causes and affairs than any man (not a merchant) that ever existed, unless I were to except my noble and learned Friend near me *, whose life has been much the same as my own; but St. Luke's would, nevertheless, have been thought a very convenient place of retirement for me, if I had ventured upon such a piece of conveyancing as the Orders we are engaged in.

But, my Lords, I feel that I have been wasting your time in thus combating by argument what I had a right to consider as admitted, since it is only of late, and under the pressure

* Lord Ellenborough.

of the debates, that his Majesty's Ministers have fled from the spirit and even from the letter of their own Orders, and insisted upon their justice even before execution and acquiescence; because the Orders themselves are expressly founded upon the assumption of both.

"Whereas certain Orders, establishing an "unprecedented system of warfare against "this kingdom, and aimed especially at the "destruction of its commerce and resources, "were some time since issued by the Govern-"ment of France," &c. &c. &c.

"And whereas the nations in alliance "with France, and under her controul, were "required to give, and have given, and do "give, effect to such orders:

"And whereas His Majesty's Order of the "7th of January last has not answered the "desired purpose, either of compelling the "enemy to recall those orders, or of inducing "neutral nations to interpose, with effect, to "obtain their revocation, but *on the contrary*, "*the same have been recently enforced with* "*increased rigour:*

"And whereas His Majesty, *under these* "*circumstances*, finds himself compelled to

"take further measures for asserting, and vin-"dicating his just rights, &c. &c. &c."

This Order therefore, after reciting the injurious Decree of France, does not proceed upon its *mere publication* as a justification for retaliation. No. It asserts, on the contrary, that the Decree of France *had been recently enforced with encreased rigour*. (Lord E. was here told across the house that the words were "encreasing rigour") My Lords, the participle present or past can make no possible difference. This assertion bound the authors of the order to three distinct and most important facts. First, that the French Decree had been executed at all, without which the rest of the sentence falls to the ground as impossible.

Secondly, That it had been executed with rigour; and, thirdly, with encreasing rigour, which expresses not merely an act of rigour, but a system of it.

My Lords, this part of the Order cannot possibly be rejected or put aside, because it is the very foundation of it, since it goes on to say that *under these circumstances* His Majesty had found himself compelled to act. What circumstances? Is it possible to reject the main and even the last antecedent, to wit, *the exe-*

cution of the decree with *encreasing rigour?* whereas, I am prepared to shew your Lordships (as it has indeed been repeatedly shewn already) that, at the date of the Order of Council, the French Decree had not been executed *at all;* that the recital, therefore, is false, and that, for any thing that appears to us, Ministers knew it to be false, when they made it the preamble to justify the enacting part of the Order: nay more, my Lords, that they knew also the United States had not acquiesced *even in the publication of the Decree;* but, on the contrary, had made a just and successful remonstrance against its application to America.

My Lords, this most important part of the subject was treated the other night with such irresistible force and eloquence by my friend the noble Earl* who sits near me at the table, that it is with great reluctance I meddle with it at all. My noble friend, not indeed upon his defence, except to rescue his colleagues and himself from the praises bestowed upon them for principles they disavowed, and upon the assumption of facts which they never acted on, has rendered the task not only un-

* Earl Grey.

necessary but painful. A few dates and sentences however will be sufficient to dispose for ever of this part of the subject. The papers on the table have been transposed in the printing, but I have put them together, for my own use, in their natural order, to prevent confusion in referring to them.

The first is the Note of the British Commissioners, Lords Holland and Auckland, to the American Ministers, dated the 31st of December, 1806.

By that paper, *although the Decree of the 21st of November had been published above a month,* they repel with indignation, in the name of his Majesty, the very idea of a *constructive* blockade, which France endeavoured to consider as an act of retaliation on this country. They express themselves thus:—

"And with regard to the only specific charge,
"it is notorious that his Majesty has never
"declared any ports to be in a state of block-
"ade without allotting to that object a force
"sufficient to make entrance into them mani-
"festly dangerous. Such principles are in
"themselves extravagant, and repugnant to
"the law of nations; and the pretensions
"founded upon them, though professedly di-

" rected solely against Great Britain, tend to
" alter the practice of war amongst civilized
" nations, and utterly to subvert the rights and
" independence of neutral powers."

Let us now see whether it ever occurred to these noble Lords, when they were composing this excellent paper, that Great Britain could retaliate on America upon the bare publication of this Decree, or that they considered it to have been executed or acquiesced in by America: on the contrary, they go on to say—

" *The undersigned cannot, therefore, be-*
" *lieve that the enemy will ever seriously at-*
" *tempt to enforce such a system:* IF HE
" SHOULD, they are confident that the good
" sense of the American Government will per-
" ceive the fatal consequences of such *preten-*
" *sions* to its neutral commerce, and that its
" spirit and regard to national honour WILL
" PREVENT ITS ACQUIESCENCE in such palpable
" violations, &c.

" If, however, the enemy should *carry these*
" THREATS INTO EXECUTION, and if neutral na-
" tions should, *contrary to all expectation*, AC-
" QUIESCE *in such usurpations*, His Majesty
" might, probably, be compelled to *retaliate*
" in his just defence, and to adopt towards

" the commerce of neutral nations with his
" enemies, the same measures which those
" nations HAVE PERMITTED TO BE ENFORCED
" against the commerce of his subjects."

Now, my Lords, I appeal to the common sense of any man acquainted with the English language, whether it is possible for words to express more positively and unequivocally retaliation, IN OUR SENSE OF IT. So far from considering the Decree as *executed* or *acquiesced under*, the noble Commissioners say they did not believe it would *ever be executed*, but that *if it was*, they were confident it would *not be acquiesced in by America:* but if, contrary to expectation, she should permit it to be ENFORCED against their commerce with *Great Britain, then* His Majesty might, probably, be obliged to do that which we are all agreed would, *in that case*, have been just and legal.

My Lords, though my two noble Friends held the official pen in the composition of this friendly notice to America, yet your Lordships cannot suppose it could have accompanied the treaty without the full approbation of His Majesty's late Ministers, and especially of my noble Friend at the table, whose particular department was so immediately connected with

it: and yet my noble Friend is supposed, within a short week afterwards, to have forgotten every part of this paper, and to have acted on a principle directly repugnant to it, by issuing the Order of the 7th of January, 1807. But why do I say my noble Friend, since the issuing of that Order was also the act of the Cabinet, who had only a week before approved of the Note of the 31st of December?

My Lords, the Order of the 7th of January is so far from being repugnant to the Note of the 31st of December, that its preface, as it regards the principle of blockade, is the same in *totidem verbis:* for, after reprobating the illegal blockade by France, and asserting a right of retaliation on France by an actual blockade, *carefully expressing the most technically legal definition of it;* a blockade which, it is admitted, on all hands, neutrals were bound to submit to: it states the unwillingness in His Majesty to resort to that interruption of accustomed neutral commerce, and then goes on to prohibit only the *coasting* trade in the manner so repeatedly stated and commented on.

Now, my Lords, here was no new principle of blockade professed, but the new principle

asserted by France was, on the contrary, reprobated; and, if the enacting part went beyond the just principle of the law of nations meant to be adhered to, that could only be a wrong act, as being inconsistent with our own avowed principles, and to be adjusted between us and America, when complained of, but by no means the assertion of a principle totally new. It was in application to this part of the subject, my Lords, that I introduced Sir William Scott's definition of *accustomed* trade. It is, perhaps, true, that an American ship might have gone, in time of peace, from a port in Holland to a port of France and Spain and Italy, or, *vice versa*, from the others to Holland: but was America *in the use and habit of such a beneficial commerce?* On the contrary, is it not notorious that the *coasting* intercourses between those countries were generally carried on by their own shipping, and America, therefore, in time of peace, was not *in the* USE *and habit* of such a commerce. This, however, I only mention by the bye, because if the Order was wrong in that respect, it was only in practice going beyond the old principle, which was still professed to be the rule, and not the adoption of a principle perfectly new: it was open

to the complaint of America, and would have been considered by the late Ministers with candour and justice. But dates, my Lords, become now more decisively material. This Order of Council bore date the 7th of January, 1806, and my noble Friend's letter to our Minister in America, *transmitting this very Order*, and directing him to communicate it to America, was written only the day after its date, being the 8th of January. Now let us see whether the noble Earl, when he transmitted the Order to America, could possibly suppose that we were proceeding upon a new principle of retaliation in consequence of the Decree of France, *independently of its execution or the acquiescence of America.* After recommending the Note to your Minister's particular attention, he says, "You will state "to the American Government that His Ma- "jesty relies with confidence on their good "sense and firmness in RESISTING pretensions "WHICH, IF SUFFERED *to take effect*, must "prove so destructive to the commerce of all "neutral nations." Is it possible to collect from this that he thought the *execution* of the Decree and the *acquiescence* of America immaterial? Nay, even in the following sen-

tence, so much commented upon, in which the noble Earl states he had learned that the Decree had in some instances been carried into execution by the privateers of France, it is quite manifest, by the conclusion of the very same sentence, that our retaliation could only be justified by the *submission* of America, because it concludes as follows: "It cannot "indeed be expected that the King should "suffer the commerce of his enemies to be "carried on through neutrals *whilst they* SUB- "MIT to the prohibition which France has de- "creed against the commerce of His Majesty's "subjects." The SUBMISSION, therefore, following a *supposed execution*, is the avowed principle upon which a retaliation on America was alone anticipated: could any thing indeed be more absurd than a contrary construction of this letter, when my noble Friend had been himself a party to all the other papers, the terms of which are so perfectly unequivocal? Is the mind of my noble Friend, the subject of so much just panegyric, to be taken, on a sudden, to be incapable of collecting or retaining its ideas even for a week together upon a subject so important?

If these different papers would even bear two constructions, which I contend they cannot, would it not still be fit to adopt that construction which would render them consistent with each other? On the debate respecting the Isle of Man, I admitted the argument of my noble and learned Friend on the woolsack to be unanswerable, when he argued, that where the language of any man, much more of a magistrate, will admit of *two* constructions, *that* construction ought in fairness to be adopted, and was constantly adopted in all courts of justice, which went to reconcile the parts together, and to reconcile them with the duty of the writer, rather than to involve him, on the other hand, in absurdity and injustice.

But it has been said, that Mr. Maddison complained of the Order of the 7th of January as inconsistent with the law of nations. My Lords, that complaint is the most serious part of the whole transaction. The letter of your Minister in America, which transmitted it to England, bears date, at Washington, the 30th of March, 1807: of course it never reached the late Ministers, to whom it was addressed, but came to the hands of their suc-

cessors. In such a case, my Lords, common candour and justice, independently of the interests of the country, ought surely to have suggested the propriety of an immediate communication with the late Ministers on the subject of that Order? Ought they not to have been made acquainted with the objection taken by Mr. Maddison, and been consulted upon the facts and the principles on which they had proceeded? But, instead of that course, no part of the proceeding was ever heard of till the papers were lately printed for the use of your Lordships; and, in the mean time, his Majesty's present Ministers, without any communication, directly or indirectly, with us their predecessors, issued the Orders of Council now under consideration; and although it has been their constant habit to disparage our councils as weak and incapable; they, to serve their own purposes, set us up on a sudden as the brightest examples, justifying themselves under our authority, imputing to us principles we never dreamed of, and the knowledge of facts which never had existence. My Lords, I have therefore, I think, established that the Order of the 11th of November, standing

upon the *execution* of the Decree, and the *acquiescence* of America, is wholly unjustified by either: she never, indeed, denied the principle of retaliation, if it were *executed* and *acquiesced* in: So far from it, that Mr. Maddison, in his very first letter to your Minister at Washington says, "the respect which the "United States owe to their neutral rights will "always be sufficient pledges that no culpable "acquiescence, on her part, will render them "accessary to the proceedings of one Belli-"gerent nation, through the rights of neutrals, "against the commerce of its adversary." The demand of explanation by General Armstrong is in full unison with this declaration; and the practice confirmed the explanation insomuch, that Messrs. Monroe and Pinkney, in the summer of last year, considered the note of the 31st of December to have lost its application: and so late as the 18th of October, those excellent persons, who have uniformly exhibited the utmost good faith, and the most anxious desire to preserve friendship between the countries, because they knew their most essential interests to be intertwisted, communicated to the Secretary of State the con-

struction given by France to her Decree, and that the practice had been in conformity to that construction.

My Lords, I was indeed astonished to hear that no reply had been made to this communication, and that Mr. Monroe had been suffered to leave England.

Lord Grenville. And Mr. Rose.

I am obliged to my noble friend for reminding me. And Mr. Rose also, the minister of peace to America. They were suffered to sail together, in total ignorance of the Orders of Council, though published so near the time of their sailing, that it must have depended upon the accidental veins of winds or of calms, which prevail on the ocean, whether the proposal of peace, or the fresh provocation to quarrel, should reach America first, or whether they might not meet in a point together. This part of the case is therefore closed. I pass by altogether, my Lords, the news from Holland, which, even if it had contained any proof of the execution of the Decree, could not possibly have reached England when the Orders of Council were determined on, because they bore date the 3d of November, only

a week before the publication of those long and complicated details, which must have been weeks in settling: indeed, I repeatedly heard the project itself mentioned, as a thing certain, by more than one of its advocates, even in the early part of the summer.

My Lords, it being thus matter of demonstration, from facts uncontradicted, and incapable of contradiction, that the French Decree was not executed on America, and that she never acquiesced, *as it regarded her*, even under its principle or publication; we are brought back again to the law of nations: we must be bound by its ordinary principles, and governed by their universal application. The circumstances upon which the new conjuncture has been assumed having been removed, there can be no other standard, by which the justice of our conduct to other nations can be measured.

I shall now therefore, my Lords, bring before you and very shortly (for the subject lies in the narrowest compass) the rights of neutrals, as they have been settled by the highest authorities, and especially by those of our own country in the best times; and, as the subject is now narrowed to the right of imposing this *constructive* blockade, I will shew you by the best and most modern decision, pronounced

even in the midst of the war with revolutionary France, that it is inadmissible and illegal.

In the case of the Juffrow Maria; Schroeder, master, reported by Doctor Robinson in his first volume, page 154, which was the case of a vessel taken for coming from Havre as a blockaded port, Sir William Scott gave judgment in these words: "*It is perfectly clear "that a blockade had taken place some "months before, and that the notification was "communicated to the claimants of Govern- "ment, not only that a blockade would be "imposed,* BUT OF A MOST RIGOROUS KIND. "*A blockade may be more or less rigorous, either "for the single purpose of watching the mili- "tary operations of the enemy, and preventing "the egress of their fleet, as at Cadiz; or on "a more extended scale, to cut off all access of "neutrals to that interdicted place,* WHICH IS "STRICTLY AND PROPERLY A BLOCKADE: "FOR THE OTHER IS IN TRUTH NO BLOCK- "ADE AT ALL, AS FAR AS NEUTRALS ARE "CONCERNED: *it is an undoubted right of "belligerents to impose such a blockade, "though a severe right, and as such not to be "extended by construction. It may operate "as a grievance upon neutrals, but it is one*

" *to which, by the established law of nations,*
" *they are bound to submit. Being, however,*
" *a right of a severe nature, it is not to be*
" *aggravated by mere construction, and I*
" *cannot shut my eyes to a fact that presses*
" *upon the court; that the blockade has not*
" *been duly carried into effect.* WHAT IS A
" BLOCKADE BUT TO PREVENT ACCESS BY
" ACTUAL FORCE. *If the ships stationed on*
" *the spot, to keep up the blockade, will not*
" *use their force for that purpose, it is impos-*
" *sible for* A COURT OF JUSTICE *to say there*
" *is a blockade* ACTUALLY *existing at the time*
" SO AS TO BIND THIS NEUTRAL VESSEL.
" *A contrary principle would spread beyond*
" *the individual case. The property of inno-*
" *cent persons would be ensnared, and the*
" *honour of our own country is involved in the*
" *decision.*"

The language of Sir William Scott, upon this occasion, is remarkable. He says, " it is " impossible for a COURT OF JUSTICE to say " that a blockade was actually existing." Yet why impossible, my Lords, if the Judge were obliged to receive implicitly the arbitrary mandates of the Privy Council?

The proposition, however, that the prize

courts are bound to proceed according to the law of nations, undisturbed by any ordinances repugnant to them, is much too important to be rested here: I will therefore proceed to establish it by the highest judicial authorities of our own country, sanctioned by the most solemn declarations from His Majesty himself in council, in his transactions with other states. In pursuing this course, I shall begin with the decisions of the common law judges, who are frequently brought to the consideration of this subject, in the cases of policies of insurance.

Your Lordships no doubt know that when a ship is warranted neutral, it is not enough that she should have been built in the neutral state, or should be the property of, or navigated by, her subjects, but that she must also be navigated according to the law of nations, so as to emancipate her from just capture, and thereby secure to the underwriter the protection of the neutral flag; otherwise, the warranty being broken, he is discharged from the risk. This principle has brought many cases before the courts, when particular governments have taken upon them to make ordinances and regulations contrary to the law of nations, and without the consent of other states. If this

could be *legally* done by any particular state, our courts here would be bound to respect such ordinances as engrafted on the law of nations; but the most solemn decisions run uniformly to the contrary. If a Court of Admiralty, indeed, condemns in general terms, pronouncing against the neutrality, the question cannot arise, because full faith must be given to the acts of courts of competent jurisdiction; but if (as very frequently has been the case) they condemn for the breach of an ordinance or regulation made by a particular state, not supported by the general law of nations, the courts uniformly pronounce such ordinances to be absolutely void.

My Lords, the cases are many in number, and I might cite them from memory, having been concerned as counsel in all of them, for more than the last twenty years, but I will content myself with a few which are directly in point, and when the most eminent judges have presided in our courts.

In the case of Mayne against Walter, where a ship, warranted Portuguese, was condemned in France, because she had an English supercargo on board, contrary to a French ordonnance, it was held that the sentence did not

falsify the warranty. Lord Mansfield saying, that "it was an arbitrary and oppressive regu-
"lation, contrary to the law of nations;" and in a subsequent case, though the question was shut out by the generality of the sentence, Lord Mansfield said, "The law of nations is
"founded in eternal principles of justice;
"but Belligerent powers frequently make re-
"gulations for themselves, which, being no
"part of, or, perhaps, repugnant to, *the law of*
"*nations*, do not bind *other* States."

But the subsequent cases of Pollard and Bell, and Bird and Appleton, are so absolutely decisive, that they may finish your Lordships trouble upon this part of the subject.

In the first of these cases, a ship, being warranted Danish, was captured by the French, and condemned as prize, because the Captain was an enemy; so expressed on the face of the sentence. The court were unanimously of opinion, that it did not falsify the warranty. Lord Kenyon said, "this is one of
"the numerous questions that have arisen in
"consequence of the extraordinary sentences
"of condemnation passed by the Courts of
"Admiralty in France during this war, which
"have proceeded in a system of plunder; but

" still, until the legislature interferes, we, " sitting here in a court of law, must give " credit to the sentences of courts of compe- " tent jurisdiction. If, therefore, in this " instance, the French courts had condemned " on the grounds that she was not Danish " property, we should have been concluded, " and must, reluctantly, have decided: but " I concur with Lord Mansfield in opinion, " THAT IT IS NOT COMPETENT TO ANY INDI- " VIDUAL STATE TO ADD TO THE LAW OF NA- " TIONS BY ITS OWN ARBITRARY ORDINANCES, " WITHOUT THE CONCURRENCE OF OTHER " STATES;" and he concludes thus—" On the " whole, therefore, I am of opinion, that, " though we should have been concluded by " the sentence, if the ship, contrary to justice, " had been condemned *as not being Danish*, " yet, as the court abroad has endeavoured to " give other supports to its judgment which do " not warrant it, and have stated, as the " foundation of the sentence of condemnation, " *one of their own ordinances, which is not* " *binding on other nations*, this sentence does " not prove that the ship in question was not a " neutral ship."

The language of that truly eminent judge,

Mr. Justice Lawrence, is no less remarkable; because, in agreeing with Lord Kenyon, he refers to the state paper in the Collectiana Juridica, signed by Sir George Lee, Doctor Paul, the King's Advocate, and Sir Dudley Ryder and Lord Mansfield, then Attorney and Solicitor General, which I shall presently have occasion to refer to, and which is absolutely conclusive upon the doctrine I am maintaining.

In the other case of Bird and Appleton, which is the last I shall refer to, and which followed in a few terms after the other, Lord Kenyon declared, that he adhered to the opinion he had before delivered, and maintained, as an indisputable proposition, " *that* " *Courts of Admiralty are to proceed according* " *to the jus gentium, or on the treaties between* " *particular states; that even such treaties do* " *not alter the jus gentium, with respect to the* " *rest of the world;* AND THAT ONE STATE " HAS NO AUTHORITY, BY ORDINANCES OF " ITS OWN, TO VARY THE GENERAL LAW " OF NATIONS AS TO OTHER STATES."

Now, my Lords, unless there was a fixed, settled, and known law of nations, which Judges, as learned men, could refer to, and by which they were bound to regulate their

decisions, how is it possible that these judgments could have been pronounced? and would they not apply equally to arbitrary condemnations of your own Court of Admiralty, if they came, in the same manner, before them? I have the highest authority, as well as the reason of the thing, to maintain that they certainly would; because Lord Hale, speaking of the Court of Admiralty, says, "The jurisdiction "of this Court is not founded or bottomed "upon the authority of the civil law, but hath "both its power and jurisdiction BY THE LAW "AND CUSTOM OF THE REALM, and the common "law Judges have the exposition of such sta-"tutes as concern the extent of the jurisdic-"tion of these courts, whether ecclesiastical or "MARITIME." The law of nations, therefore, as administered in our Prize Courts, is part of the law *of the land*.

My Lords, the passage in the Answer to the Prussian Memorial, which I said I would refer to, is an unanswerable confirmation of the doctrine that the law of nations cannot be altered by a particular state. Those eminent Judges, in the name of His Majesty, answer the Prussian objection thus: "By Courts of "Admiralty, *according to the law of nations*,

"all captures at sea have been immemoriably "judged of in every country of Europe."— And again: "Had it been intended to intro-"duce any variation from the law of nations, "it could only be done by a treaty in writing. "The parties interested, AND THE COURT OF "THE ADMIRALTY, COULD NOT OTHERWISE TAKE "NOTICE OF IT." But this is not the doctrine alone of the common law Judges and of eminent Lawyers and Civilians giving their opinions to the Crown; it stands upon the most undoubted authority of the British Court of Admiralty itself, as coming from the mouth of the present truly eminent and learned Judge who presides in it.

Sir William Scott, in the case of the Swedish convoy, as reported by Dr. Robinson*, expressed himself thus: "*In "forming my judgment, I trust it has not "escaped my recollection for one moment "what it is that the duty of my situation "calls for from me—NAMELY, to consider "myself as stationed here not to deliver oc-"casional and shifting opinions to serve pre-"sent purposes of particular national interest,*

* Robinson's Reports, p. 349.

" *but to administer with indifference that jus-*
" *tice which the law of nations holds out with-*
" *out distinction to independent states, some*
" *happening to be neutral and some belligerent.*
" *The seat of judicial authority is indeed* LO-
" *CALLY HERE in the belligerent country, ac-*
" *cording to the known law and practice of all*
" *nations; but the* LAW ITSELF *has no locality,*
" *it is the duty of the person who sits here to*
" *determine this question exactly as he would*
" *determine the same question if sitting at*
" *Stockholm.*" Now is it possible that any Judge, but, above all, such a Judge as Sir W. Scott, could hold this language, only because in that *particular case* no Order of Council had been sent to dictate a judgment in favour of England. If that was his meaning, could any thing be so grossly false as the whole admirable doctrine by which he upheld and ever will uphold the justice and dignity of his Court—what signified his station, or the duties of it, if the King's Council could peremptorily dictate to him? How could such a man predicate to all nations a proposition which was a gross fraud upon all of them? *Was* it the same thing " *whether he was sitting in London*
" *or at Stockholm,*" when he was within an

English mile of Whitehall, where an English Council could positively dictate to him, and by which, after having decided one case according to the law of nations, a hundred others standing before the Court *in consimili casu* might be decided by a new rule imperative upon his decision, however repugnant to the law upon which he had before acted, and by which he declared he was to be governed?

My Lords, having established, by the authority of our greatest Judges, dead and living, that a new and arbitrary rule cannot be given to the Court of Admiralty and Prizes, and likewise by the most eminent Judges of the Admiralty Court, dead and living, I will add but one more decision, which I consider to be a most important one, because it is the authority of a statesman.

In matters indeed that regulate the intercourse between nations, perhaps their opinions ought to outweigh any others, as they are most frequently assisted in forming them by the most eminent persons of their times. But what must render the authority of the work I mean to cite from peculiarly authoritative is, that it was written in defence of the maritime rights of this country against the armed neutrality

which several nations had set on foot, contending against the right of search of neutral ships for the property of enemies, on the principle that free bottoms made free goods. My Lords, upon what authority did this able author support the rights of his country, which are the main pillars of its strength? Upon what arguments did he unanswerably maintain that free bottoms did not and could not make free goods?—Upon no other, my Lords, and none else could be necessary, than that it had been so settled by the uniform practice of nations grown up into the positive law of Europe, and that no state, nor any combination of states, could alter it for their own interests against Great Britain, without her consent. But remove the principle for which I am now arguing, and what becomes of this boasted privilege? For if WE take upon ourselves to alter the public law to suit OUR OWN convenience, without the consent of OTHER nations, what is to prevent OTHER nations, standing upon our own example, from returning back the new principle upon us, and from maintaining that free bottoms shall make free goods? The able and convincing argument of the author was, therefore, only triumphant upon the principle

I am maintaining, and it was not the triumph of a day. He tells us, in his Preface, that he republished his work after an interval of forty-three years, without altering a sentence of it. I cannot give to this excellent performance the favourite phrase of a legacy to Ministers, because the author is still living. I borrowed the book from my noble Friend and countryman who sits near me at the table*, whose title to it I take for granted was by purchase; but another noble person will come to its doctrines and reputation (though I hope not soon) by the higher title of descent, and will the rather preserve this volume, as it will soon be a curious fragment upon the former law of the civilized world. I read, my Lords, from the work of the aged and learned Earl of Liverpool—there can be no irregularity in naming him, as it is not as a Peer, or as connected with the debate, but as an eminent author on the subject which engages us—The noble Author, speaking of the neutrals who were setting up the principles of the armed neutrality, says—" *they pay also no attention to respected*

* The Earl of Lauderdale.

" *authorities of all ancient writers on the same*
" *subject, such as Grotius, Puffendorff, Byn-*
" *kershock, Vattel, and many others, because*
" *they find that the decisions of those writers are*
" *uniformly unfavourable to their pretensions:*
" *they pay as little attention to the principles*
" *which have immemorially governed all courts*
" *of maritime jurisdiction through a succession*
" *of ages, and which have been handed down*
" *in a series of records, or authentic docu-*
" *ments published during the course of many*
" *centuries; in short they appear determined*
" *to establish a new code of maritime juris-*
" *prudence, better adapted to their own views,*
" *and present interests.*" And in the body of the work, near its conclusion, your Lordships will find this admirable passage—" *Upon*
" *the whole, therefore, I will now beg permis-*
" *sion 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 our*
" *country is unblemished. The basis of just*
" *complaint, therefore, being thus removed,*
" *those idle clamours, which have been founded*

" *upon it, by no means merit our attention.*
" *To charge England with ambition must ap-*
" *pear so absurd, to all who understand the*
" *nature of her government, that at the bar*
" *of reason it ought rather to be treated as a*
" *calumny than accusation: possessed of every*
" *blessing which civil government can produce,*
" *she is open to no temptation with which am-*
" *bition might seduce her. Pursuits of that*
" *kind might possibly operate to the destruc-*
" *tion of her constitution, and her system of*
" *happiness might be subverted by the aug-*
" *mentation 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 labour of man-*
" *kind, since she herself can only be great*
" *from the virtuous industry of her people.*
" *To obtain the largest extent for the exertion*
" *of her industry, and for the operation of her*
" *commercial capital, is the point to which all*
" *her policy should tend; and if ever, for-*
" *saking 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*
" *or powerful!* HER COURTS OF MARITIME

" *JURISDICTION ARE MORE WISELY CALCU-*
" *LATED 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.*"

My Lords, you cannot but have observed that the noble author holds so high the honour of Great Britain, that he even wishes, that her greatness may not survive her justice; may he never see their cotemporary declension. The noble Earl, so eminent in commercial learning, selected for his title a place raised from an insignificant village, even within all our memories, to an immense flourishing city; whose environs, like our own, are bespangled for miles with the cheerful and costly habitations of men, almost all arising from the trade of America, which these Orders are calculated to extinguish; for the Slave trade did not amount to a tenth of her commerce. I hope he will not, through their operation, see this great city fast returning to a village again. Speaking of this noble Earl, as Mr. Burke did formerly of the venerable Earl of Bathurst,

who remembered America only a small speck in the mass of national interest, yet growing, even in her trade with England, to equal in commerce the whole habitable world, I might say, " fortunate indeed if he shall live to see " nothing which shall vary the prospect, and " cloud the setting of his day."

My Lords, it may be now asked, whether I mean to contend upon all these authorities, that the Judge of the Admiralty ought not to carry the Orders of Council into execution. It may probably be said, that my argument goes to that full extent; since if it be not competent for his Majesty to dictate to his prize courts a rule repugnant to the law of nations, the rule given by the Orders ought, according to my doctrine, to be resisted by these courts.

My answer, my Lords, to this seeming dilemma is by far the most important part of the whole subject, and it was for that reason I insisted, at such length, upon the injustice of introducing facts, into the preamble of the Order, which had no existence; because I maintain, that *without such preamble* the Judge of the Admiralty could not, consistently with all the authorities, and most especially with his own, have given effect to the excep-

tionable parts. But *with the preamble*, the truth of which he is bound by, I have not contended that the Order is not a law to his Court.

I admit, my Lords, in the fullest extent, that it is the King's office and duty in the State to communicate with the Courts of the Admiralty and Prizes, and to issue orders, from time to time, for their government. The King alone can promulgate who are enemies and who are not; or what nations he chooses to consider his enemies, even before any declaration of hostilities. Without such acts of State the Courts of Admiralty and Prizes could do nothing. I admit that it would be for the King, in the very case before us, to promulgate to the Court of Admiralty the hostile Decree of France; and if the fact were so, to promulgate also that it had been executed upon America, and her non-resistance to its execution. I admit also, that if his Majesty, from unjust or mistaken councils, is advised to promulgate such execution and non-resistance, that state of things is not traversable in the Court of Admiralty, but must be implicitly received as the fact. And, finally, I admit that the rule given by the King, upon the facts

which he promulgates, must be received and acted upon by the court, unless, in the judgment and conscience of the Judge, it be plainly and manifestly repugnant to the law of nations. But I do maintain and positively assert, that, in the very case before us, the Order of the 1st of November, without its preamble, would have been manifestly repugnant to the law of nations; and that the Judges of the Courts of Admiralty, and the Courts of Prizes, ought to have refused to act upon it. If I am wrong in this, let us hasten to obliterate, from our solemn judgments and our declarations of state to other nations, propositions which are manifestly false and fraudulent. My Lords, there are many other occasions which produce perpetual orders and directions from his Majesty to his Prize Courts. His Majesty, having promulgated who are his enemies, is bound to watch over the safety of the state; he therefore promulgates blockades, according to his direction of the national force; and he also may make new declarations of contraband, when articles come into use as implements of war, which were before innocent: This is not, as was imagined, the exercise of discretion over contraband: the law of nations prohibits

contraband, and it is the *Usus Bellici*, which, shifting from time to time, makes the law to shift with them. So the king may relax from the utmost rights of war, and from its extreme severities: On that principle we have long relaxed, till lately, from the rule of 56; and captors are implicitly bound by these relaxations. The Court of Admiralty can take all such facts from his Majesty alone, and *the rule also in every possible case not manifestly repugnant to the law of nations*; but, independently of the statutes which I now hasten to, if an order were *manifestly* repugnant to it, the courts would be bound to presume, that his Majesty had been deceived, as courts of law frequently decide his Majesty has been deceived in his grants, and that he did not mean to violate the most sacred of all trusts, the confidence which nations repose in one another.

I know, however, that it will be still said, that, although an arbitrary and unjust order, directing a manifest departure from the established law of nations, might be a breach of that trust which States repose in one another, yet that the abuse of any jurisdiction does not limit or affect its extent; that it is for the

crown, and not for the legislature, to communicate with Prize Courts; and that my argument proves too much in another respect, since, if the law of nations could not be altered by the King, so neither, upon my own principles, could it be altered by Parliament itself. This observation is said to have been used, in another place, by a person, whose talents and learning no man respects more than I do, but I confess I should not have thought that this arrow could come from such a quiver; because no doubt Parliament can no more alter the law of nations, consistently with right and justice, than the King: but it would be trifling with the subject not immediately to answer, that against the injustice of Parliament there can be no redress for a British subject: the supreme government must be vested somewhere, and in Parliament it is vested: this is the true answer, and it leads directly to the only remaining consideration, viz. Whether, supposing the jurisdiction contended for to have been once a branch of the prerogative, it has not been taken away by the ancient statutes of the realm.

This subject, my Lords, is highly interesting, and the result will be found most ho-

nourable to our country, because it will be seen that whilst other nations were only emerging from barbarism, and before they had settled under that politic and moral dominion which long usage has since established in Europe; yet that England, *even then*—England, which has ever been the morning star, (may God avert her ever appearing as the star of the evening to mark the setting of civilized nations!) England, which seems to have been planted on the skirts of the world to shew the light to every part of it, and planted upon a tower to be seen like other lights from a distance, and to be secure from violence, England embodied into her own laws the rights and privileges of other nations, well earning the enlightened praise which the President Montesquieu has bestowed upon her.

Our wise and prudent ancestors saw, even in the very infancy of commerce, the principles upon which alone it could prosper; and, knowing that it can no more live under the sceptre of power than the natural world can exist without the free circulation of the atmosphere which surrounds it, they guarded it even against the prerogatives wisely entrusted

to her Sovereigns, and placed it in the states of the kingdom representing the whole people, whose interests depended upon its security.

Let it not be thought, my Lords, that by thus contrasting the King's power with the authority of Parliament, I seek to abridge the just prerogatives of the Crown, or, by an unworthy jealousy, to degrade the King's high dignity and character in the state: I seek, on the contrary, to exalt them. It is by mistakingly bringing forward the King as an adverse party, and by ascribing to him the motives which govern individual men, that his sovereignty is tarnished. To those who misunderstand our Constitution it appears to be a startling proposition that *the King can do no wrong*, but to those who do understand it, the maxim is plain and simple; for HE can certainly do NO wrong who in fact can do NOTHING: the Constitution knows nothing of the King, AS AN INDIVIDUAL, so as to estimate his individual actions: he is known only as the head of all the national councils; his office is not merely executive or passively legislative; no, he presides every where: the laws are made by the King in his Parliament, and they are the King's laws when made. They are administered by

the King in all his Courts, which are then his Council; for Lord Coke says, in his Third Institute, that the King's Council is "*secun-*" "*dum subjectam materiam;*" and, therefore, when it was said, in a statute of Richard the Second, that offenders were to be brought before the King *and his Council*, to answer for offences against the Act, it was held by all the Judges that the subject matter being legal, the Courts of Law were intended as his Council. For other matters, his Majesty has, in like manner, a variety of Councils: the Privy Council, for high matters of state, and inferior Councils upon subjects ecclesiastical, military, or naval. In all of them the King is for ever present, supreme, and predominant, and he can have no guide but the constitution, nor any personal interest by what Councils he shall be assisted. Neither, my Lords, do I forget or desire to affect in any manner the war prerogative of the King: it is created by the perils and exigencies of war, for the public safety, and by its perils and exigencies it is therefore limited.

The King may lay on a general embargo, and may do various other acts growing out of sudden emergencies; but in all these cases,

the emergency is the avowed cause, and the act done is as temporary as the occasion. The King cannot change, by his prerogative of war, either the law of nations or the law of the land, by GENERAL AND UNLIMITED REGULATIONS, even putting the statutes out of the question, which I am about to bring before you.

In the year 1709 Queen Anne's Ministers would not advise Her Majesty to suspend the laws under which corn was exportable, though famine was in a manner staring us in the face: she assembled her Parliament, and told them that she had done all she could in the mean time, by issuing proclamations against forestalling. The example was followed by Lord Hardwick, in 1756, and has been considered to be the rule ever since. I therefore admit the King's war prerogative, in the utmost extent to which it has ever been considered to be legal or constitutional since the æra of the Revolution.

The statutes, my Lords, which I shall now bring before you begin with Magna Charta. I shall state them with the exception of two, which I have added, as they have been brought together in a most excellent Treatise upon the

Orders in Council, written by a Gentleman who is frequently an ornament of your bar.—

[Lord Lauderdale, at the table, said something to Lord Erskine.]

I speak only from report; I know nothing more.

My Lords, the rights of Merchant strangers, in amity with the Crown, to a free and open trade with England is expressly settled by the 30th chapter of Magna Charta. The words are—" Omnes mercatores nisi publice " antea prohibiti fuerint habeant salvum et " securum conductum exire de Anglia et " venire in Angliam et morari et ire per An- " gliam tam per terram quam per aquam ad " emend' et vendend' sine omnibus tollis " malis per antiquas et rectas consuetudines " PRETERQUAM IN TEMPORE GUERRE."

I understand that these last words have been attempted to be construed to confine the privileges of the statute to a time of *universal* peace; but all the antecedent words, as well as those which immediately follow, are utterly repugnant to such a construction: the antecedent words declare that they shall have *safe*

conduct, which is only applicable when from the kingdom being at war with some nations and at peace with others, the safe conduct becomes necessary for strangers whose countries are at peace; and the words immediately following are absolutely decisive: because, instead of going on after the words *preterquam in tempore guerre*, to provide another rule for a state of war as opposed to a general state of peace, the words are—" *et SI SINT de terra* " *contra nos guerina;*" i. e. if the Merchant strangers to whom privileges are before given, if their nations are at peace, shall happen to be at war, then *another* rule is directed; which manifestly shews that the statute provided different rules for merchant strangers in amity, and for those whose nations were at war when the kingdom was at peace with some countries and at war with others. But the 14th of Edward the Third, stat. 2d. chap. 2. puts this matter wholly at rest; for the words of that act are, that all merchant strangers, *except those which be of our enmity, may, without let, come into England with their merchandize.* Now the words *except those which be of our enmity* are utterly inconsistent with a general

state of peace; because, they are employed to confine the privilege to *those* not at war, which would be wholly inapplicable, except when the kingdom was at peace with some nations and at war with others. There are other statutes, (four or five in number) in the time of Edward the Third, but as they are expressed in the very same terms, it is unnecessary to cite them for this part of the case, which goes only to establish that Magna Charta and all the other statutes not only have their effect when the country is at war with some nations and at peace with others, but can have no possible application to any other state of things. With regard to the meaning of the words, "unless before pub-"licly prohibited," I need not trouble your Lordships with any arguments, because it is expressly laid down by Lord Coke, in his commentary on Magna Charta, that the public prohibition can only be the prohibition of Parliament.

The next point, therefore, is, what are the privileges so given to merchant strangers in amity, in a time of war with other countries, which Parliament alone can take away?

My Lords, the words are so express that I do not know how to raise an argument on their construction, or how to make them plainer than by reading them.

By Magna Charta they are to have safe conduct to come into England, to stay, and to return with their merchandize.

By the 14th of Edward the Third, they are, without let, to come into England with their merchandize, and safely tarry and return. The 18th of the same King enacts, "that "the sea be open to all manner of merchants "to pass with their merchandize where it shall "please them:" And by the 28th of Edward the Third, chap, 13th, section 3d, it is enacted, "that no manner of ship, which is "fraught towards England OR ELSEWHERE, *be* "*compelled to come to any port of England,* "nor here to abide against the will of the "masters and mariners of the same, *or of the* "*merchants whose goods they be.*" And then, after giving them a free market upon the accustomed duties, it goes on—"*So that the* "*masters, mariners, and merchants, after* "*they have sold that which pleaseth them of* "*the said goods, and paid thereof the custom,* "*may freely depart, and go with their ships,*

" *and all the remnant of their goods, whither*
" *it shall please them, without custom thereof*
" *to be paid; and that none, of what condi-*
" *tion that he be, shall disturb any ship charged*
" *with merchandize, to come to any port of*
" *England, but to the port where the masters,*
" *mariners, and merchants, will first, of their*
" *free will, arrive; nor, after they have arrived,*
" *shall meddle with the sale of the same mer-*
" *chandizes, nor disturb the merchants, nor*
" *their servants, that they may not them-*
" *selves, by their own hands, according as to*
" *them best may seem for their profit, sell and*
" *deliver their merchandizes, at what time,*
" *and to whom it shall best them please; and*
" *if any set disturbance, he shall incur a*
" *grievous forfeiture to the King, according*
" *to the quantity of the trespass.*"

This last act is not printed amongst those I alluded to, and it appears to have been confirmed in the reign of Richard the Second, in these remarkable words, "*Notwithstanding any* " *ordinances to the contrary;*" upon which I can put no other construction, than that there had been ordinances repugnant to these statutes, which are thereby declared to be illegal. There are also several other statutes to

the same effect, both antecedent and subsequent, with which I need not fatigue your Lordships' attention, already, I am afraid, but too much exhausted.

My Lords, I cannot conceive how any possible construction can be put upon these statutes, more especially on the 28th of Edward III. confirmed by that of Richard II. except that the free trade of merchant strangers in amity cannot be abridged, or controuled, or altered, without the authority of Parliament.

Indeed our history will furnish a strong confirmation to whoever will take the trouble to refer to it, that all the acts were passed to secure the infant commerce of the country from the interruptions which it must otherwise have suffered from the arbitrary ordinances of its Princes, in the perpetual wars they were engaged in.

But it may be said, that my argument upon these statutes proves too much. It may be asked, whether I mean to contend that when it is enacted by the 28th of Edward the Third, " that no manner of ship fraught towards " England or ELSEWHERE, be compelled to " come to any port of England, or to abide " there against the will of the masters." It

may be asked, (I say,) whether I mean to contend that the King cannot, in time of war, compel merchant strangers to abide here by a general embargo? My Lords, I have already fully admitted the King's power in that respect, with its just limitations, viz. upon temporary exigencies of state, but not by general or unlimited restraints, which must be enacted by Parliament: this is expressly declared to be the law by Lord Hale, in his Treatise De Portibus Maris. I may be asked further, whether, when the statute enacts that no manner of ship fraught to England, or ELSEWHERE, shall be compelled to come into England, I mean to contend, that the King cannot direct the navy to seize vessels of merchant strangers, though in amity, entering blockaded ports, or carrying on any other illegal traffic? To such question I should answer, certainly no: I mean no such thing; because merchant strangers in amity are bound to observe the public laws of civilized states; because, when the statutes speak of their trade, and afford their protection to it, they mean, of course, to protect *that trade only*, which is sanctioned by the general law and customs of nations; and because it could be no compulsion, properly

speaking, upon a merchant stranger, to enforce upon him that rule which he is bound, by the municipal law and justice of his own country, to observe. From this admission, my Lords, it may perhaps be argued that I am brought back to the mere question of the law of nations; since, if it be admitted that the King, notwithstanding the statutes, may nevertheless extend his authority over merchant strangers to the full extent which the law of nations warrants; and if it be also true that he cannot alter the law of nations, merchant strangers would then be completely protected by that rule, and the statutes would be altogether useless. My Lords, the answer to this objection is a very plain one:—*Without the statutes* the King could not violate the law of nations, so as to affect merchant strangers, except under evil and impeachable council; yet still the rights of such merchants would be legally affected; but, if their rights can be brought under the protection of the statutes, the Orders breaking in upon their trade would, in that case, be utterly null and void, and would be no rule to the courts.

My Lords, I have but one thing more to add on this part of the case, and that is to press upon

your Lordships the palpable absurdity of permitting the exercise of the war prerogative to be an exception to the operation of the statutes, supposing my construction of them should appear to your Lordships to be in other respects just; because, to argue for an universal dispensing prerogative in the King, or rather a non-application of the statutes to a time of war, by reason of the King's prerogative in war, the same absurdity would follow as to argue that, during war, the King can alter the law of nations; because the protection given to merchant strangers, by the statutes, having no kind of application but when we are at peace with some nations and at war with others, (since in a state of *universal peace* no protection is wanted,) the exercise of such a war prerogative would not be an exception, but the total annihilation of the rule. If these statutes then, my Lords, apply to protect merchant strangers in amity, in time of war with other nations, and if the King's war prerogative cannot dispense with such protection, nothing remains but to examine whether the provisions of these Orders of Council be repugnant to the statutes.

My Lords, their repugnancy to them is self-evident. I have been, indeed, astonished to

hear it repeatedly asserted, that the Orders of Council *do not compel any American vessel to come into England*, and that all regulations, therefore, imposed upon them here, are only indulgencies introduced if they come here spontaneously. Let us try the truth of this proposition, as it applies to American vessels sailing before notice of the Orders. My Lords, the express letter of the King's instructions to his officers, reciting the Order of Council to the same effect, directs them to warn vessels bound to the interdicted ports, not merely to discontinue their voyages, but to go to England, or Gibraltar, or Malta! What matters it, then, though the confiscation does not follow upon disobedience of such warning; for how could any master of a vessel possibly know that such consequence was not to follow? How could any such master, when warned by officers of rank and distinction, venture to risk the property of his owners by refusing to comply with their directions? But, passing to the permanent part of the Orders, after the times in the notices have expired, can it possibly be said that they do not directly compel vessels to come to England? Is it not adding insult to injury to say to America that her shipping is not com-

pelled to come into our ports, since they may return back again? Let me suppose that his Majesty had been advised, whilst I was a practicer at the bar, to issue a proclamation that no barrister should go into Westminster Hall without passing through a particular gate, at which a toll was to be levied on him: should I have been told gravely that I was by no means compelled by such a proclamation to pass through it? Should I have been told that I might go back again to my chambers with my briefs, and sleep there in my empty bag, if I liked it? Would it be an answer to a market gardener in the neighbourhood of London, if compelled to pass a similar gate erected in every passage to Covent Garden, that he was by no means compelled to bring his greens to market, as he might stay at home with his family and starve?

On the subject of tolls, however, let me do justice. Let me not forget the saving proviso which I hear has been introduced into the Bill, viz. that those who do not chuse to pay it are at liberty to burn their goods, on payment of expenses. How gracious! The injury is wholly done to you by France, and yet you consider the destruction of the commodity as an indulgence to the trade of America. A trespass is com-

mitted by another man's horse, upon which you immediately impound mine, that had never trespassed: but God forbid that you should be so unjust as to levy the penalty; no: I am at liberty to shoot him in the pound, upon paying the pound keeper's expences.

My Lords, my task is now finished, having (however imperfectly I may have executed it) established all my propositions by their own intrinsic truth. I have purposely avoided touching upon the impolicy of the Orders, unless where I was forced to shew that no possible evil could have attended the delay of waiting for the execution of the Decree upon America. The momentous and complicated question of their impolicy is in the able hands of my friend, the Noble Earl at the table*, who has already given notice of his motion.

I cannot, however, my Lords, take leave of the subject without endeavouring to awaken the feelings of the House to its vast importance, in a manner which neither my own language or authority could sufficiently accomplish. The words of a Reverend Lord, long an ornament to the bench opposite; whom I honoured whilst

* Earl of Lauderdale.

living, and whose memory I shall for ever cherish, rush into my mind at this moment, though they have not passed through it for very many years. Unaccustomed to speak in public, the Reverend Lord committed to writing what he intended to have delivered in this House upon the awful and interesting subject of America, whilst we were rashly hastening to our final separation. The whole composition would have done honor to the best ages of Greece or Rome, and the conclusion of it is but too much in point to our present deliberations.

" My Lords," said the Reverend Prelate, " I " look upon North America to be the only great " nursery of freemen left upon the face of the " earth. We have seen the liberties of Poland " swept away, in one year, by treachery and " usurpation. The free states of Germany are " but so many dying sparks, going out one after " another, and which must all be soon extin- " guished under the destructive greatness of " their neighbours." My Lords, they have been all since destroyed by one destructive neighbourhood. " Holland is little more than a great " trading company, with luxurious manners, " and an exhausted revenue: with little " strength, and with less spirit."

My Lords, she has now neither strength nor spirit: her government is a despotism under the dominion of France. " Switzerland alone " is free and happy within the narrow enclo- " sures of her rocks and vallies." My Lords, she is now neither free nor happy. All these changes, since the death of my Reverend Friend, makes the picture now more impressive: the rest of it remains unaltered. " As " for the state of this country, my Lords, I " can only refer myself to your own private " thoughts: I am inclined to think and hope " the best of public liberty. Were I to de- " scribe her, according to my own ideas at " this moment, I should say that she has a " sickly countenance, but I trust she has a " strong constitution." And now, my Lords, let me entreat you to suffer the conclusion to sink deep into your minds: Would to God that you may feel it as I do!

" But, whatever may be our future fate, the greatest glory that attends this country, a greater than any nation under heaven ever enjoyed or even contemplated, is to have formed and nursed up to such a state of security and happiness those communities which we are now so eager to oppress, and even to extin-

guish. We ought to cherish them as the immortal monuments of our public justice and wisdom; as the heirs of our better days; of our old arts and manners, and of our expiring national virtues. For what work of art, or power, or public utility, ever equalled the glory of having peopled a vast continent without guilt or bloodshed? To have given them the best arts of life and government, and to have suffered them, under the shelter of our authority, to acquire in peace the skill to use them? In comparison of this, the policy of governing by influence, and even the pride of war and victory, are dishonest tricks, and poor, contemptible, pageantry." My Lords, I should hope that these sentiments would have more particular weight with the Reverend Lords opposite, as proceeding from so distinguished a member of their own order: I should hope that they would think it no offence to that uniform system of support, which I cannot doubt that their conveniences have dictated in the present difficult times to be due to the administration of the Government, if, upon this occasion, they were to give their voice and support to principles which are the sole fruit of the religion they teach; the offspring of the Gospel

which they propagate. Let us leave to our enemies the guilt of discord and bloodshed, and support our country by the virtues of benevolence and peace.

But, my Lords, I have already troubled you too long, much indeed too long; and I am thankful for your patience and goodness. As all the Resolutions, my Lords, are dependent upon each other, I shall not move the first by itself, but move the whole of them as if they were one Resolution, comprehending them in one motion.

[Lord Erskine then moved the Resolutions as printed in the Appendix, which were not negatived by the House, the previous question only being put and carried.]

THE END.

APPENDIX.

RESOLUTIONS.

1st, *That the power of making laws to bind the people of this Realm, is exclusively vested in his Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons of the Realm, in Parliament assembled: and that every attempt to make, alter, suspend, or repeal such laws, by order of his Majesty in his Privy Council, or in any other manner than by his Majesty in Parliament, is unconstitutional and illegal.*

2d, *That the advising his Majesty to issue any Order in Council, for dispensing with, or suspending any of the laws of this realm, is a high violation of the fundamental laws and constitution thereof.*

That the same cannot in any case be justified, but by some unforeseen and urgent necessity endangering the public safety.

And that in every such case it is the duty of his Majesty's Ministers to advise his Majesty, after

issuing such order, forthwith to assemble his Parliament, in order both that the necessity of such proceeding may be inquired of and determined; and that due provision may be made for the public safety, by the authority of his Majesty in Parliament.

3d, *That the Law of Nations is a part of the law of the land, and that neutral nations, not interposing in the war between his Majesty and his enemies, have a legal right to such freedom of commerce and navigation, as is secured to them by the Law of Nations.*

4th, *That the late Orders of his Majesty in Council, are contrary to the Law of Nations, inasmuch as they purport to interrupt the commerce of friendly and unoffending nations, carrying on their accustomed trade in innocent articles, between their own country and the ports of his Majesty's enemies, not actually blockaded; and even between their own country and those of his Majesty's allies. And also, inasmuch as they purport to compel such trade in future, to come, in the first instance, under pain of confiscation, to the ports of his Majesty's dominions, or of his allies, and there to submit to such regulations, restrictions and duties as shall be imposed upon them.*

5th, *That by the Law of Nations, all independent governments have an undoubted right, both in war and peace, to regulate in their own territories, and according to their own convenience, except where specially restrained by treaty, the admission or exclusion of the ships or merchandize of other states. That by the municipal law of this and other European countries,*

it hath been usual to require, that vessels trading to or from the ports thereof, shall carry such certificates or other documents, shewing in what country the vessel hath been built, fitted or owned, by what sailors she is navigated, and in what country the articles composing the cargo have been grown, produced or manufactured, as may be judged necessary to entitle them to entry.

And, that the ships of friendly nations carrying such papers in time of war, do not thereby violate any rule of amity with other countries, or legally incur any penalty whatever, unless such should be found to be fraudulent.

6th, *That so much of his Majesty's Order in Council, of the 11th of November last, as directs, that "any vessels carrying any certificates or documents, declaring, that the articles of the cargo are not of the produce or manufacture of his Majesty's dominions, or to that effect, or carrying any other document referring to such certificate or document, shall, together with the goods laden therein, belonging to the persons by whom, or on whose behalf, any such document was put on board, be adjudged lawful prize to the captor;" is a gross and flagrant violation of the Law of Nations, of the statutes made for the freedom of navigation and commerce, and of the rights and liberties of the people of this Realm; inasmuch as it purports to expose the property both of foreign merchants, and even of his Majesty's Subjects, in the ports of this Realm, as well as on the high seas, to unjust detention*

and forfeiture in cases where no offence whatever hath been committed against any known principle, or rule of the Law of Nations, or against any Law, Statute, or Usage of the Realm.

7th, *That the free access to the ports of this Realm, and the liberty of trading to and from the same, has been secured to merchant strangers, not being of a hostile nation, by Magna Charta and divers other ancient statutes, in which it is expressly provided, "that no manner of ship, which is fraught towards England or elsewhere, be compelled to come to any port of England, nor there to abide, against the will of the masters and mariners of the same, or of the merchants whose the goods be."*

And that the said statutes were intended, not only to protect the innocent commerce of friendly nations, but also to secure to the people of this Realm, the benefits of a free and open market for the sale of the produce and manufactures thereof; and for the carrying on of such trade as might conduce to the profit and advantage of the Realm.

8th, *That the above-mentioned Orders of his Majesty in Council are in open breach and violation of the said statutes, inasmuch as they direct that ships fraught to other places than this kingdom, and even to ports belonging to his Majesty's allies, may be compelled to come to the ports of this Realm, or of its dependencies, and there to abide under such restrictions or regulations as his Majesty may be advised to im-*

pose upon them; and also inasmuch as they direct that the goods laden in such vessels shall not be cleared out again from such ports, without having been, in some cases, previously entered and landed; nor, in other cases, without having obtained from his Majesty's Officers licences to depart, which licences such Officers are not, by any known law of this Realm, authorised to grant.

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