REFLECTIONS

ON THE

NATURE AND EXTENT

OF THE

LICENCE TRADE.

Ἐπὶ μὰν Βαίνει τι καὶ
Λαθας ἀτέκμαρΐα νεφος
Και παρελκει ὡραγάΐων ὁρ-
θαν οδον γ' ἔξω φρενῶν.

PIND. OLYMP. Z. L. 82.

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ADVERTISEMENT.

The Author has to apologise to his Readers, that a work, which was generally advertised for immediate publication, so long ago as in October last, should only now be submitted to their perusal. The fact, however, is, that soon after it was sent to the press, the thoughts of all ranks of people where so wholly absorbed, by the severe calamity with which the nation was visited, in the person of its Sovereign, that it would have been in vain to have attempted to have diverted their attention to any other subject. On this ground, the publication was suspended. The time, however, is now arrived, when other considerations must

have their place; and amongst those considerations (if the interest the Author has taken in the subject has not led him to attach too much importance to it), the one in question is most prominent. Many circumstances, indeed, have occurred, in the awful interval that has elapsed since October, to confirm him in his opinion of the extreme and urgent necessity of correcting the evils, that are detailed in the following pages.

January 21, 1811.

REFLECTIONS,

&c. &c.

The growth and progress of the Licence Trade has been at once so rapid and so imperceptible, that few persons have had either leisure or opportunity, to direct their attention to the consideration of the effects, which a trade, so novel in its principle, is calculated to produce, as well in a mercantile, as in a military point of view, on the maritime resources of this country. Few, indeed, are aware of the prodigious extent to which it is carried. From the nature of the traffick, the details of it are not generally known; and where they are divulged, the knowledge of them is confined within a very limited sphere.

Hence it has arisen, that many of those, who take an eager interest in our naval prosperity, (and what thinking person is there amongst us who does not take such an interest?) are wholly ignorant of the great change that has been silently operating in the system of our navigation laws; and have yet to learn, that our commercial intercourse with the rest of Europe is now carried on, almost exclusively, by means of foreign ships, built partly in the ports of those states, who profess a doubtful or colourable neutrality, but principally on the stocks of our open and avowed enemies; and, in all instances, navigated by mariners, who are, either directly or remotely, subjected to that potentate, who is animated by the most powerful incentives that can stimulate human exertion, to surpass and degrade the maritime prowess, and maritime superiority, of Great Britain.

Incredible as this statement at first sight may appear, a very slight investigation of the subject will shew it to be correct. If authority, however, were wanting, to substantiate the authenticity of it, reference

might be had, as well to the documents laid on the table of the House of Lords, during the last session of Parliament, as to the records of the proceedings that have recently taken place in the High Court of Admiralty. From the former it will appear, that upwards of fifteen thousand licences were issued, in the course of last year, by the Privy Council; and that forty-eight thousand foreign seamen were, during the same period, employed in the service of Great Britain: whereas, on the other hand, it may be shewn, from several recent decisions in the Court of Admiralty, that the learned judge who presides there has, again and again, had occasion to remark, "that it is a notorious fact, "that the whole trade of the world is "carried on under* licences." Nor is it less notorious to those, who are con-

* The author is not aware, that any of the licence cases have yet been reported: but he has had an opportunity of consulting the manuscript notes of a practitioner in the Admiralty Court, from which he has been enabled to state these and other particulars, which will occur in the sequel of this work.

versant with the questions agitated in that court, that the vessels protected by these licences are, with very few exceptions, manned and navigated by the enemies of the State.

To this state of things, so different from any which has before obtained in any age or country, so diametrically opposite to that system, on the basis of which all our commercial regulations have hitherto been founded, the writer of these pages is anxious to solicit the attention of his countrymen. Before, however, he proceeds to remark on those which, in his judgment at least, are the leading and characteristic evils of the present system, perhaps it may not be immaterial, to advert briefly to the nature and origin of licences: and, he trusts, he shall be excused, if, in the course of the observations he has to offer, he should dwell, more than at first sight may appear necessary, on elementary principles; for it is to the elementary principles, as well of law as of reason, that the trade so generally carried on, under these instruments, is most repugnant.

No principle, he apprehends, can be more clearly established, than that when war takes place between two nations, all commercial intercourse between them must immediately cease.* Hostilities once commenced, any attempt at trading, on the part of the subjects of either State, becomes, *ipso facto*, a breach of the allegiance due to their respective sovereigns,

* "Nam cum alicui bellum indicitur, simul indicitur "ejus populi hominibus."—*Grotius, lib.* 3. *c.* 4. *s.* 8.

"Ex naturâ belli commercia inter hostes cessare non "est dubitandum."—*Bynhershock, In. J. P. lib.* 1. *c.* 3.

And again the author last cited:—"Sed omnino "cessant commercia, unde et in belli indictionibus, "plerumque mutuis commerciis interdicitur."

"Quand le conducteur de l'état, le souverain, "déclare la guerre, on entend que la nation entière "déclare la guerre à une autre nation; car le sou-"verain représente la nation, et agit au nom de la "société entière; et les nations n'ont affaire les unes "aux autres qu'en corps dans leur qualité de nation. "Ces deux nations sont donc ennemies, et tous les "sujets de l'une sont ennemis de tous les sujets de "l'autre. L'usage est ici conforme aux principes." —*Vattel, liv.* 3. *c.* 4.

And again:—"Tant qu'un homme demeure citoyen "de son pays, il est ennemi de ceux avec qui sa "nation est en guerre."

and, as such, is interdicted by the general maritime law of Europe; by that law, which does not spring from the institutions of this or that particular State, but which, having its source in natural reason and natural justice, is alike binding on the whole community of the civilized world. So indisputable is this proposition; so necessarily, as it were, does it grow out of the very nature of war itself, that all the great writers, who have treated on the law and practice of nations, assume it as a point which is incontrovertible.

If this be the language of the public code of Europe, it is not less so of the municipal laws of this realm. Lord Coke* lays it down, that, "an alien enemy cannot "maintain either a real or personal action, "till both nations be at peace." And in more ancient times, we have the authority of Bracton for stating, that even the King†

* 129. 6.—Coke upon Littleton.

† "Siquis alienigena qui faciet ad fidem Regis "Franciæ, et actionem instituit versus aliquem qui "fuerit ad fidem Regis Angliæ, tali non respondeatur "saltem donec terræ fuerint communes, *nec etiam sive* "*rex ei concesserit placitare.*"

himself could not enable an alien enemy to entertain a suit in any court of justice within this kingdom.

This, then, being the ordinary relation in which the subjects of hostile States stand to each other, any traffick between them can only be the result of some extraordinary privilege; or, in other words, can only be carried on under the sanction, and protection of an indulgence, emanating from that source, in which the sovereign power of the State, that is, the prerogative of peace and war, resides. No authority, subordinate to this, would be competent to the grant of such an immunity. And it is in this sense, that licences have always been regarded, as an high act of sovereignty. In former wars they have been rarely granted: only, indeed, for special purposes; to relieve, for exam-

"Any body may seize to his own use such goods "as belong to an alien enemy; for such enemies not "being looked upon as members of our society, are "not entitled, during their state of enmity, to the "benefit or protection of the laws."—*Blackstone's Com. vol. 2. p.*404.

ple, an individual from the pressure of some severe and unmerited calamity; or, for the importation of some articles of primary importance in the staple manufactures of the country. But even under these, and circumstances similar to these, they have been given only occasionally, and with great jealousy and caution: and moreover, whenever the Maritime Courts have been called upon, in the exercise of their judicial functions, for the interpretation of these instruments, they have always considered them as indulgencies, *strictissimi juris*, and never, unless the terms of the licence have been precise and positive to that effect, have held them to do that, which, in the eye of a court of justice, is most repugnant to natural law, *viz.* to protect the property of the enemies of the State.

Such were the restraints, and such the modifications, under which the wisdom of former times tolerated, rather than encouraged, the use of licences. It was reserved for the innovating spirit of our day, to speculate on the effect that might be

produced, by the removal of all restraint for the grant of them.—So completely, indeed, has the new theory been carried into practical execution, that, in the short space of three years, all the wholesome and sound principles, by which the issue of these instruments had been limited, restrained, and controuled, have been entirely departed from.—Licences are not now sparingly and cautiously, but profusely and indiscriminately granted,—to an extent, indeed, that absorbs and overwhelms our whole European trade.—They do not, as heretofore, confine their shelter and protection to the subjects and * merchandize of this State, but are lavished, for the encouragement of the trade, and the protection of the persons and property of our most inveterate foes.

Whether we look, therefore, to the quan-

* The author apprehends, that, prior to the year 1807, there was scarcely an instance of a licence granted by the British Government to protect the property of an enemy. They were usually granted to protect the property of the English merchant, trading with the enemy.

tity of these instruments in circulation, or to the quality of the persons protected by them, no greater innovation can be imagined, than that which the use of them has introduced into the commercial world. The revolution they have effected is complete. That which was before an exception to a general rule, comes now to operate with all the force and effect of a general rule itself.

The obvious objections to the new system are:—First, that it is unnatural,* that is, irreconcilable with the ordinary usages and habits of mankind; and this circumstance, alone, furnishes a strong *primâ facie* presumption, that the system is neither wise nor politic.

Secondly, it affords no reciprocity of advantage to the subjects and vessels of our own State, because, although the sovereign may unquestionably give his subjects

* "Never was there a jar or discord between genuine "sentiment and sound policy. Never, no never, did "Nature say one thing, and Wisdom say another."—*Burke's Works, vol. viii, page 295.*

Ex quo intelligitur quod verum, simplex, sincerumque sit, id esse naturæ hominis aptissimum.

permission to trade with his enemies, or, *vice versâ*, may give his enemies permission to trade with his subjects, the permission extends not beyond this. Here it stops: and the right exercised to its fullest extent is still an imperfect right; since, in return for it, he cannot compel the sovereign of the hostile State to permit the trade of British subjects within his dominions; or as little can he oblige him not to punish his own subjects, who, in defiance of their bounden duty and allegiance, carry on a commercial intercourse with the enemies of their country. We have no claim, either in justice or courtesy, on the hostile sovereign, to relax the positive and fundamental rules of war, because, for the purposes of convenience or advantage, or through caprice and mistaken policy, we, on our parts, have receded from the just application and ordinary enforcement of these rules.

These objections grow out of the very nature of the trade itself.—As such, they are inseparable from the exercise of it, and are, of themselves, of force and weight

sufficient to have interposed serious obstacles to the general and unlimited adoption of such a measure.

The objections to the trade, however, do not rest here.—There are others of a higher cast,—and such as, to a British Statesman at least, speak in the language of decided authority, both as to the impolicy and inexpediency of it.

These may be ranged under the four following heads.

First, that it abrogates all that branch of our Navigation Laws, which relates to the regulation of our European trade.

Secondly, that it tends, more than any practice that ever obtained in the commercial world, to the dissemination of immorality and ill-faith.

Thirdly, that it is liable to gross and frequent abuse.

Fourthly, that it operates unjustly on the commerce of Neutral States.

In order to establish the first point, it will be merely necessary to shew (what has been before alluded to in the course of these observations) that the present system

is in direct opposition to that, which, for an uninterrupted series of years, has been the sole and uniform object of our navigation laws.

Now, a very short reference to the history of these laws will demonstrate, that their favorite and undeviating object has been, to confine our European trade, as far as was consistent with the extent of it, to the shipping and mariners of this country.

Traces of this fundamental policy (for such it may not improperly be termed) occur very early in the history of our legislation;* and it would neither be a difficult, nor an uninteresting task, to point out how gradually the principles of these laws developed and unfolded themselves, before they were digested into one permanent and regular code. It will be sufficient, however, for our present purpose, to observe, that it was in the year

* Vide Statutes, 42 Edward III; 5 Richard II, cap. 3; 1 Henry VII, cap. 8; 23 Henry VIII, cap. 7.

1651 that the system was first promulgated* which, under various modifications and improvements, has continued in force till the present day. The origin of the Statute has been ascribed by some to the pique of an individual †; by others, to the ge-

* Vide Scobell's Acts, anno 1651, cap. 22.

† Oliver St. John, who together with Walter Strickland, was sent by the Parliament, in March 1651, to negotiate an union with the Dutch Republic; and it is to the failure of this embassy, that the origin of the Navigation Act is ascribed by several of the cotemporary historians.

"This disappointment sat so heavy on the haughty "spirit of Lord Chief Justice St. John, that he re-"ported these transactions with the highest aggrava-"tions against the States, and thereby was a principal "instrument to prevail with the Council of State to "move the Parliament to pass an act, prohibiting "foreign ships from bringing any merchandize into "England, except such as were the growth or manu-"facture of that country to which the said ships did "belong. This law, though just in itself, and very "advantageous to the English nation, was so highly "resented by the Dutch, who had for a long time "driven the trade of Europe by the great number of "their ships, that it soon proved to be the ball of "contention between the two nations." (*Ludlow's Memoirs*, Vol. II. page 431.)

neral jealousy entertained by the nation against the Dutch. Be this as it may, the object* it had in view was, to wrest from that opulent and commercial Republic the carrying trade of Europe; and the mode by which it was proposed to accomplish that object was, to hold out peculiar privileges and immunities to the mariners and shipping of Great Britain, and to prohi-

"To that, after some months' stay, during which "time they (*i. e.* the embassadors) received many "affronts from some English, and from others, they "returned with great presents from the States, but "without any effect from the treaty, or entering into "any terms of alliance, and *with the extreme indigna-"tion of St. John*, which he manifested as soon as he "returned to the Parliament, who disdaining likewise "to find themselves undervalued (that is not valued "above all the world besides), presently entered upon "counsels, how they might discountenance and con-"troul the trade of Holland and increase their own." — *Clarendon's History of Rebellion*, Vol. iii, page

* If any doubt could be entertained as to the object, the twenty-third section of the Statute of Fraud would serve as an excellent glossary, which, alluding to the Act of Navigation, mentions the goods *therein prohibited to be brought from Holland*, and the parts and ports thereabouts, 13 and 14 Car. II, cap. II.

bit, under severe penalties, the communication of these immunities to the shipping and mariners of foreign States. Thus much, at least, is certain, that the government of that day, (which with all its vices and imperfections, was not blind, in many respects, to the true interests of the British Empire) foresaw, that the system was well calculated to stimulate Great Britain to avail herself of all the advantages of her insular situation; and, accordingly, not only zealously enforced the provisions of the ordinance (for so it was termed), but confirmed and maintained them, at the expence of their blood and treasure.—Such, indeed, was the intrinsic excellence of the regulations themselves, that they survived the unconstitutional government to which they owed their birth; and immediately on the Restoration we find them adopted by the wise and virtuous statesmen, who, for a short time, were the advisers of Charles the Second. Nor is it a slight criterion of their real merit, that they now hold their place in our Statute Book, surrounded by those acts, to which we owe the re-esta-

blishment of the laws and liberties of our country.

The principal provisions of this celebrated statute, now called, by way of eminence, the Navigation Act, as far, at least, as they related to the intercourse between this country and the rest of Europe, were, "* that no sort of masts, timber, "or boards; no foreign salt, pitch, tar, "rosin, hemp or flax, raisins, figs, prunes, "olive-oils; no sorts of corn, grain, su-"gar, potashes, wines, vinegar, spirits "called aqua vitæ, or brandy wine, should "be imported into England, Ireland, and "Wales, in any ship or ships, vessel or "vessels whatsoever, but such as did, "truly and without fraud, belong to the "people † thereof, or some other of them,

* 12 Car. II. cap. 18, sec. 8.

† Two years afterwards (*viz.* A. D. 1662) great complaints having been made of the number of the *licences* granted, to exempt the ships and mariners of Lubeck from the operation of this Act, a Privy Council was held, at which Lord Clarendon presided, to take the matter into consideration; and the result was, that the licences were immediately revoked, and

"as the true owners and proprietors "thereof, and whereof the master, and "three-fourths of the mariners, at least, "were English."

Exceptions, however, were made, in favor of the vessels of certain States that imported the produce of their own countries; but, about two years afterwards, foreign ships,* British owned, were subject to the payment of aliens' duties.

It would be an unnecessary occupation

a Proclamation to the following effect issued: "That "whereas, notwithstanding the Navigation Act passed "two years ago, several *letters* or *warrants* had, "*through misinformation*, been obtained from the "king, by which the Lubeckers' *ships*, *merchants*, "and *mariners*, were *licenced* to come into England, "&c. free from the penalties of the said act, upon "pretence of former custom; the Council Board, well "weighing the ill consequences by trenching on that "act, and the *dangers*, &c. which by *such toleration* "*will accrue* to the *owners of English shipping*, and "to their merchants and mariners, it was ordered by "his Majesty in Council, that all such *letters*, *licences*, "and *warrants*, be recalled and declared void." (*Anderson's History of Commerce*, vol. 2. page 473.; and *Reeves' History of Shipping*, page 201.)

* 13 and 14 Car. II, cap. 1, sec. 6.

of the reader's time, to detail the progress of the system, from the passing of this act through all its subsequent modifications,—modifications occasioned by the peculiar circumstances of the times in which they were produced.—This general observation is applicable to all of them, that however the great statesmen, who, at different periods, have governed this country, may have differed, as they frequently have, from each other, on many leading and essential points of political economy;—in this one point they have all concurred;—in this one, the policy of all parties has been uniform and unvarying, *viz.* to confine the immunities of our trade, as far as was compatible with the extent of it, to the shipping and mariners of Great Britain.

If we look back to the state of our navigation and trade in 1660, we shall not be surprized, that many years elapsed before the ship-building of this country was sufficiently advanced, to authorise the legislature to confine these privileges exclusively to British vessels. Under the auspices, however, of his present Majesty, it ap-

peared that the period was at length arrived, when the seal might be set to this favored object of national policy, and the whole system of our navigation laws seemed ultimately crowned, consummated, and brought to perfection, by an Act passed in 1786.*

The statute of Charles the Second confined our European trade to *British owned* ships; that of George the Third, to ships built within the King's dominions; because, as it is expressed in the preamble of the latter statute, "the legislature was desirous that the advantages hitherto given to ships *owned* and *navigated* by his Majesty's subjects, should henceforth be confined to ships *built* and *fitted out* in his Majesty's dominions."†

To what purpose has so minute a reference been made to the times and circumstances under which these statutes originated; but to shew, that in 1651, in 1660,

* 26 George III. cap. 60.

† "Prosit nostris è montibus ortas."—VIRGIL.

and in 1786, the object of the Government was the same? and though, in the intervals that elapsed between these several periods, particularly in the long one which intervened between the two last, the progress of the system to maturity was, at times, even materially interrupted and delayed; still, that the system itself was never lost sight of or abandoned, till it was advanced, in 1786, to its ultimate accomplishment; and further, if the statement given, on one hand, of the nature and extent of the Licence Trade, and on the other, of the general scope and aim of the navigation laws, be alike correct, the only legitimate conclusion to be deduced from a knowledge and comparison of these facts, is, that the two systems are incompatible, and cannot stand together, and therefore that if in this, as in all other questions of conflicting laws, the latter annuls the former, it must follow, of course, that all our navigation laws, in one of their most important parts, are, at this moment, virtually annulled and abrogated; for so long as our European trade is carried on by foreign

ships, navigated by foreign seamen, so long all those regulations, which prohibit the employment of foreign vessels and foreign mariners, must remain a dead letter in our Statute Book.

To this it will probably be answered, that it has been usual, in the time of war, to recede from the rigorous enforcement of these statutes. This assertion, however, is only true to a certain extent, and under certain restrictions. In all wars, relaxations may have been made, proportionate, however, to the exigencies of the State, and to the balance of our naval preponderance: but still they have been mere relaxations. The system itself, even under the pressure of the most calamitous and unsuccessful hostilities, has never been lost sight of. Never, till the present period of our history, have we gone the length of totally abandoning it; nay more, of acting in direct opposition to its vital and essential principles.

Thus, for instance, in the time of war, that part of the Navigation Act has generally (perhaps always) been relaxed, which

requires three-fourths of the mariners on board every merchant ship to be British subjects.* The proportion has been inverted, and three-fourths have been allowed to be foreigners.† The reason for this alteration is obvious: more mariners in the time of war are required for the service of the Royal Navy, and so long as the captain of the merchant vessel (which is invariably stipulated for) remains British, and one-fourth of the sailors, there is little evil to be apprehended, because it is more probable that foreign seamen should be (as the case generally happens) adopted and incorporated into our service, than that British mariners should be led astray into the employment of the enemy.

With respect to the vessels themselves, the Baltic trade was entirely given up in 1664: but, besides that, our naval preponderance was more equally balanced then, than at any other era of our history; who

* Vide 8 Anne, cap. 39; 13 Geo. II. cap. 2; 28 Geo. II. cap. 16; 19 Geo. III. cap. 23; 43 Geo. III. cap. 64.

† Ibid.

would refer to those disastrous and disgraceful times, to select examples for the imitation of succeeding statesmen?

In the war that was terminated by the peace of Aix-la-Chapelle, and in that which is usually termed the Seven Years' War, foreigners were admitted to be *part-owners* in *British vessels;* and in the American war, still larger relaxations were made: but in no one of these wars (it cannot be too often repeated) were the principles of the Navigation system lost sight of;—in no one of them were the provisions of it, ever, as in the present instance, wholly swept away.—It is material, also, in discussing this part of the subject, to observe, that in no antecedent war had we ever attained the maritime superiority we now enjoy; and in no antecedent war was it so decidedly necessary for our existence as a nation, that we should maintain and uphold that superiority.

Besides, in whose favor are these great sacrifices?—in whose behalf is this great departure from the fundamental principles of our national policy?—Are they to con-

ciliate some powerful neutral, or to aid and inspirit some active and vigorous ally? On the contrary, are not the ships and mariners, for whose sake we break down the barriers, which the wisdom of our ancestors has opposed to the influx and increase of foreign navigation, the property and the subjects either of colourable neutrals, or, more frequently indeed, of our avowed enemies, the inveterate foes of our commerce and our name?—In the course of the last year,* fifteen thousand licences;—in the course of the present, perhaps, double that number, have been circulated throughout the continent, to enable vessels and mariners of all countries to import the produce of Europe into Great Britain.

Hic altâ Sicyone, ast hic Amydone relictâ,
Hic Andro, ille Samo, hic Trallibus, aut Alabandis,
Esquilias, dictumque petunt à vimine collem.†

Norwegians and Oldenbughers, the inhabitants of Papenberg, Kniphausen, and

* The reader is requested to bear in mind, that this work was intended for the press in October last. Without this caution there might appear to be an error in the dates.

† Juv. Sat. 3. l. 69.

Varel, the subjects of Denmark and Holland, under the protection of British licences, navigate along our coasts, and securely enter the rivers and harbours of our country.—And at what time are these special immunities—these extraordinary privileges—indulged to them?—why, at the very moment, when every person, possessed of the smallest degree of penetration, must see and know, that it ought to be the primary object of all our exertions, to prevent our indefatigable and enterprising antagonist from acquiring any nursery for his seamen. What better nursery, it may be asked, could he covet or select, than that which we spontaneously offer to him?—where could his mariners be better instructed in the elementary principles of their art;—where could they be better trained to a practical knowledge of their profession,—where better initiated into the highest mysteries, than in the vicinity of our coasts, and under the protection of our batteries?—And who are the persons thus trained, thus inured to maritime service, under the fostering care of this country?—Not only the natives of Norway and Jutland,—and the

Danish islands in the Baltick—but those who inhabit the shores of the Zuyder Zee and the Texel—the natives of Groningen, of Friesland, and of Overyssel (provinces now, alas! forming an integral part of the French empire). Men whose habits, whose education, in a word, whose every propensity, impels them to deeds of maritime prowess and maritime exploit.

Let us not fondly delude ourselves with the idea, that because these mariners are the unwilling subjects of the French emperor, that therefore they will refuse to fight under his banners. However true the first part of this proposition may be, the inference attempted to be deduced from it, does not necessarily follow. Oppressed, as these brave people are, by a tyranny, which they detest and abhor,—if once brought into action against the seamen of Great Britain—their feelings of national pride—their spirit of ancient and inveterate rivalry—their skill—their confidence in the element on which they are acting, would all powerfully conspire to animate them to exertions, worthy of the better days

of their respective empires. — Our hardest struggles for naval pre-eminence have been with the Dutch. In every war which they have waged against us, their mariners have eminently distinguished themselves; and, in the very last action they maintained against an English fleet, they shewed themselves neither inferior in valor or discipline, to their ancestors in 1652. And with respect to the subjects of Denmark, it may confidently be asserted, that considering the relative situation of the two kingdoms, no people ever waged a more acrimonious or adventurous warfare, than that which the Danes have carried on, for the three last years, against Great Britain.

II. To proceed, however, to the consideration of the second objection to the system, *viz.* the encouragement it holds out to the dissemination of immorality and bad faith. — It is scarcely necessary to remark, that this point alone, if established, will be conclusive, both as to the folly and impolicy of the trade; since, fortunately for mankind, it is fixed in the

immutable constitution of things, that the policy which has its foundation in immorality, can neither be sound nor advantageous; and, consequently, that no supposed exigencies of State, still less will the visionary theories of speculative men, justify any measure, which leads to the encouragement of positive wickedness, and paves the way, as the trade under licences does, to fraud, evasion, and habitual perjury.

In order to illustrate this, it may be material to state the process which instruments of this species undergo, before they can be carried into practical effect.

They are first obtained from the Privy Council, by merchants in this country, who forward them to their correspondents, as the case may happen, in Holland, Russia, Denmark, or France. The person in the enemy's country, to whom they are consigned, either makes an article of traffick * of them, and sells them to other

* Instances have occurred, of British Licences having been sold in the ports of Norway for five

merchants, or he himself freights the vessel which is to be privileged by them. In either contingency, each ship, which they are destined to protect, is furnished with a double set of papers, so complete in every point, as to deceive, in their respective details, the cruizers of either Belligerent:—one set of these documents professes a destination to England; the other, to some port at enmity with Great Britain. Both sets are verified upon the oath of the Captain*; who, in the event of his meeting

hundred guilders. They have been purchased on change at Amsterdam for seven hundred rix-dollars. At Bourdeaux the price has varied, according to the capricious decrees of the French Emperor.

* Masters of foreign vessels, who are detained for adjudication in the prize Courts of a Belligerent, are always expected to verify their documents. In the case of the Juno, Beard, this doctrine was laid down in the following terms: "The rule is, as I have "always understood it in the Court of Admiralty, "that papers by themselves prove nothing; they are "a mere dead letter, if they are not supported by "the oath of persons in a situation to give them "validity."—*Rev. Robinson's Admiralty Reports, vol. iii. page 122.*

a French or Danish cruizer, cancels or conceals his British papers, and pretends that his destination is to a hostile port; but, on the other hand, if he is detained by a British cruizer, he deposes that he is sailing to a port of this country. The papers, in either instance, are so skilfully framed, as to establish a clear belief of the fact he asserts; for nothing short of such a belief would tend to the liberation of the vessel.

This then being the actual state of the trade, if we consider that there are, at this moment, many thousand vessels navigating the various seas of Europe with these double sets of documents, we cannot be surprised, either at the complicated machinery of deceit, or at the disgusting details of falsehood and perjury, which the examination of these cases discloses.—A person unacquainted with the history of the traffic which is now carried on, under the cover of British Licences, could scarcely form to himself an idea of the labyrinths of mystery and fraud, by which the mercantile transactions of the present day are enveloped and obscured.

A very few years ago, when the evidence of the foreign master of a vessel was submitted to the examination of a Court of Prize, if his testimony was given with openness and simplicity, this circumstance, alone, furnished a fair augury of the real merits of the case: a full disclosure of the nature and history of the voyage, was considered as the best *primâ facie* criterion of a fair and honorable transaction.

The Licence Trade has completely done away the validity of these tests. The same courts of the law of nations, which heretofore so much upheld and respected them, are now obliged reluctantly to admit, that concealment and fraud are necessary, nay, absolutely indispensable in the conduct of mercantile adventures; that there must be double sets of papers; and, lastly, that the Licence Trade cannot exist without "simulation and dissimu-"lation."*

* In the case of the Eolus, Aspaper, decided August 8th 1810, the court, in giving its judgment, said, "It is a matter perfectly notorious, that we are

So especially does this trade (a trade unknown to the public law of Europe, the creature of the municipal regulations of Great Britain) contribute to the general propagation of that species of deceit, which was held by an ancient moralist, who had well studied all the obligations, both of public and private life, to be the crown and consummation of all injustice. "*Totius* "*autem injustitiæ nulla capitalior est,* "*quam eorum qui cum maximé fallunt id* "*agant ut viri boni esse videantur.*" *

III. These reflections are so closely and intimately connected with the abuses to which a trade of this sort is liable, that they naturally, as it were, conduct our enquiries to the consideration of this part of the subject.

Allowing that the British merchant, who solicits the grant, in the first instance,

"carrying on the *trade of the whole world under simu-* "*lated and disguised papers.* The commerce of the "world unavoidably assumes a disguise: these dis-"guises we ourselves are under the necessity of em-"ploying, with simulation and dissimulation."

* Cicero de Officiis, lib. 1.

is incapable of being actuated by any base or unworthy motives, still there is ample scope for the exercise of fraud, in the progress of the varied and intricate course, by which licences must travel, before they arrive at their ultimate accomplishment.

The mystery in which they are originally involved, and the concealment under which they are circulated, are the sure harbingers of perversion and misapplication; and experience has justified the worst apprehensions, which an abstract consideration of the subject would lead us to entertain of the enormous extent of the evil.

The abuse may originate, either from the enemy merchant, to whom they are transmitted by their correspondents in this country, or from the captain of the vessel, to whom they are finally confided: in either instance, it may be of the grossest nature. No legal authority can operate in the country of the enemy* to enforce the

* The obstacles to a commercial intercourse between hostile states are thus enumerated by an eminent jurist:

due execution of the instrument; and no principle of honor, or sense of shame, can be expected to supply the place of legal authority: for the mere acceptance of the instrument implies, that the party accepting it must have emancipated himself from the restraint and control of every moral principle.

No practice, therefore, in point of fact, is either more natural or more frequent, than to apply British licences to cover the property, and to protect the navigation of our enemies. And how, it may be asked, and with what conscience, can this breach of an implied compact on the part of an enemy, be reprobated by those, who have allured and seduced this very enemy to the violation of a positive duty? Is it not the

" Neque enim commercia sine contractibus, neque " contractus sine actionibus, neque actiones sine " judiciis, neque judicia sine personis quæ jure litigant " explicari possunt—quis merces vendet, et ad hostem " devehet sine spe recuperandi pretii? et quæ spes " recuperandi si adversus emptorem eundem que hostem " judicio experiri non liceat? "

ordinary result of all measures, founded on injustice, to recoil upon the inventor? and to turn out, what has been well termed by one of the wisest men of our times, "to "be no policy at all."* We invite foreign merchants and foreign mariners to engage in an illicit commerce,—to perjure themselves,—and to deceive their own government; —and is it not the natural consequence of such a proceeding, that these foreign merchants and mariners should practice against us the fraud in which we have initiated them; and, instead of deceiving the government of their own country, deceive that of their declared enemy?

All the acuteness and ingenuity of our bitterest foe could not have devised, under the existing circumstances of Europe, a more effectual expedient for the protection of hostile trade, than the general circulation of British licences. Under the assis-

* "Justice is itself the great standing policy of "civil society, and any eminent departure from it, "under any circumstances, lies under the suspicion of "being no policy at all."—(*Burke's Works*, Vol. iii.)

tance and cover of these indulgences, the commercial intercourse between Norway and the various islands of the Baltic, between the same Islands and Russia, as well as the whole line of coast that extends from Wismar to Dantzick, between Holland and the several states and dependencies which compose the Kingdom of Denmark, is securely carried on and maintained. Under their sanction, even the cities of the Loire and the Garonne, blockaded as they are by the edicts of this country, are enabled, to a certain extent at least, to renew their mercantile speculations with the rest of Europe.

To a vessel doubling the southern promontory of Norway,* it is as easy to assert a destination to Scotland as to Norway. The northern point of Jutland † must be passed by every vessel coming out of the Baltick, whether her ultimate destination be the British Isles, Norway, Holland, or

* The Naze.

† The Sckaw.

France. To a ship steering along the coast of Jutland, the Thames is as obvious a point as the Texel. Bourdeaux and St. Sebastian's, or, in short, any of the French and Spanish ports in the Bay of Biscay, offer ready pretexts for the most equivocal designs; and if vessels are met with a little elongated from their proper course, it is always easy to allege the force of currents, —the intricate navigation of shoals and sand banks,—baffling winds,—in short, any of those thousand uncontrolable obstacles to which mariners, in the course of their progress through the ocean are inevitably exposed, and to which Courts of Prize, in deciding points of ambiguous destination, are bound to give attention and respect. On the other hand, the local knowledge of these men, their intimate acquaintance with the dangerous and difficult navigation of their own coasts, afford them every facility of putting their fraudulent designs into execution. Their great difficulty is, to get a pretext for appearing on the ocean: that once obtained, all the subsequent machinery of the transaction is prompt

and easy. But even this is made more so, because when mariners are allowed the use of false documents, and permitted to aver, upon oath, that which is untrue, it is extremely difficult, to apply to their minds any test, of force sufficient to elicit from them the real object of their mercantile adventures.

The following extracts, which have been made from the principal conditions of several licences, may perhaps serve to convey to the mind of the reader, an adequate idea both of the nature, and general tenor, of these indulgences, and likewise of the indefinite profusion with which they are granted.

. . . . . .

" On behalf* of *sundry* merchants, for " a vessel bearing any flag, to sail in bal- " last from any port north of the Scheldt, " to any port in Norway, Sweden, the " Baltick, or White Sea: there to load a

* The reader, who is curious to see a specimen of these at full length, will find copies of two of the most common sort in the Appendix.

" cargo of such goods as are by law per-
" mitted to be imported, and to proceed
" with the same to any port of the United
" Kingdom, and to depart to any port not
" blockaded; *notwithstanding all the do-*
" *cuments which accompany the ship and*
" *cargo may represent the same to be*
" *destined to any neutral or hostile port,*
" *or to whomsoever such property may ap-*
" *pear to belong.*"

" For a vessel bearing any flag, except
" the French, to go in ballast from any
" port in Holland, to any port in Norway
" or Sweden, *without* the Baltick, there
" to lade a cargo, and to proceed with it
" to any port of the United Kingdom, to
" whomsoever the *property may appear to*
" *belong, and notwithstanding all the do-*
" *cuments on board may represent the*
" *same to be destined to a neutral or hos-*
" *tile port.*"

" To protect a vessel under any flag, ex-
" cept the French, to proceed with a cargo
" of goods permitted by law (except Ger-

" man linens, oil, stock-fish, and brandy)*
" from any port *within* the Baltick, to any
" port of the United Kingdom, and to
" depart with her crew and vessel, laden
" with Colonial produce and British manu-
" factures; *to whomsoever the property*
" *may appear to belong*, &c."

" To protect a vessel laden with corn,
" to whomsoever the same may appear to
" belong, from any port from Brest to
" Bayonne inclusive."

" To permit a vessel to load a cargo at
" any port north of the Scheldt, and to
" proceed with the same to any port north
" of Dover."

" For a vessel under any flag, except
" the French, to bring certain articles enu-

* In order to counteract these exceptions, the Danish government issued an ordinance, in August last, to prohibit the sailing of any vessel from any port in Norway, which did not take a certain quantity of corn brandy on board.

" merated, from any port east of the island
" of Juist to any port north of Dover."

" For a vessel under any flag, except the
" French, to take a cargo from any port
" north of the Scheldt to Archangel, to
" whomsoever the property may appear to
" belong, &c."

" For a vessel under any flag to sail from
" a port of Norfolk to any port of Norway,
" and thence to import any cargo, except
" stock-fish."

" For a vessel under any flag, except the
" French, to sail in ballast from any port
" between the Eyder and the Texel, both
" inclusive, to any port in Spain, between
" Cette, Ortegal, and Bayonne."

" For a vessel to sail in ballast from any
" port north of the Scheldt to any port in
" Denmark, there to load a cargo of corn
" and to proceed with it *to Leith to pay*
" *tonnage duties,* and then to proceed with
" the *said cargo* to any port in Norway."

" To permit Messrs. A. B. and others to
" export in a vessel under any flag, except
" the French, a cargo of foreign sugar,
" coffee, and British plantation goods, from
" any port in this kingdom to Heligoland,
" or Norden, passing westward to the island
" of Juist, or eastward between the island
" of Juist and Borcun; and that the said
" vessel, after having so passed the island
" of Juist and Borcun, shall not, in any
" case, be found further westward than
" Borcun, or eastward of Juist, as far as
" the river Eyder inclusive, notwithstand-
" ing all the documents may represent the
" same as destined to a hostile or neutral
" port, and to whomsoever the said property
" may appear to belong."

. . . . . .

From a mere perusal of the terms of these instruments, the species of abuse to which they are liable is obvious.—No one, for example, can be astonished, that vessels provided with licences to protect a voyage for Jutland, to Norway, or Denmark, on condition of their stopping at Leith to pay the tonnage duties, should attempt

the trajet without performing that part of the compact which stipulated for the stopping at Leith. It can create as little surprize, that where licences have permitted an importation of certain enumerated articles from Norway or Archangel to this kingdom, the vessels protected for this purpose (generally Dutch-built vessels navigated by Dutch mariners), should have been detected in the act of importing precisely the same commodities into Holland:—it has even happened, that two successive importations to Amsterdam have been attempted under the cover of the same British licence. Examples, too, are not wanting, of vessels having licences to import commodities from France, being employed in the coasting trade of that kingdom;—and during the course of the last summer, whole fleets, which were privileged to bring cargoes from Russia and Denmark to this country, were actually employed in importing naval stores, and other Baltic produce, into those parts of Prussia and Swedish Pomerania, which are in the occupation of the French troops. In a word, it may fairly be computed, that of the last

two hundred vessels detained for the adjudication of the High Court of Admiralty in this country, at least three-fourths have been proceeded against, on the sole ground of their carrying on the commerce of the enemy, under the protection of British licences.

IV. Let us next examine what are the bearings of this new fangled trade on the public law of Europe, and in what manner it operates, as it has been asserted to do, unjustly on the commerce of the neutral world.

As the acceptance of British licences is optional, it might seem, to a superficial observer, as if the general circulation of them could not be held to affect, still less to violate, the rights of those states which stand aloof from the widely-extended hostilities in which we are at present engaged; but when it is contemplated, as it must in fairness be, with reference to the relative situations of Europe and America; with reference, also, to the severe restraints, and unprecedented restrictions, which the violence and injustice of the French Government have induced Great Britain to impose

upon the commerce of the whole world;—it will, in this point of view, become most important to recall to our recollection, that there exists, at this moment, in full force, a blockade, peculiar, indeed, in its nature, but strict and rigorous in its operation, and unparalleled in its extent; inasmuch as it includes the whole range of coast that is interposed between the Pyrenean mountains on the South, and the River Ems on the North. The denunciation of this interdict is universal in its terms;—all access to any point whatever, within the above-mentioned limits, is prohibited to every vessel, upon penalty * of the confiscation of

* "That all ports and places, as far north as the "river Ems inclusively, under the government styling "itself the Kingdom of Holland; and all ports and "places under the government of France, together "with the colonies, plantations, and settlements, in "possession of those governments respectively; and "all ports and places in the northern parts of Italy, "from the ports of Orbilello and Pesaro inclusively, "shall continue and be subject to the same restrictions, "*in point* of trade and navigation, *without any ex-*"*ception*, as *if the same were actually blockaded by* "*His Majesty's naval forces in the most strict and* "*rigorous manner*." *Vide Order in Council of 26th April* 1809.

the ship and the cargo with which she may be laden.

On what principle then of that law, which heretofore, amidst the din of the fiercest hostilities, has been upheld and revered by all Belligerent States, can immunities be tolerated, which privilege a partial and qualified, but still a very general approach to this interdicted coast? or on what ground can it be contended, that licences, which open the trade of prohibited ports to vessels of almost every description that sail from the North of Europe, do not operate with manifest injustice against the subjects and vessels of those States, or, to speak more correctly, of that State, which from local or other circumstances, cannot avail itself of the protection of these indulgences? Unquestionably, if the interdict be enforced at all, it should be equally and impartially enforced;—it is as essential to its nature, that it should be uniform and universal in its operation, as it is that it should entirely intercept all commercial intercourse with the blockaded place.

The writer is aware of the dangerous

nature of the ground to which he is approaching.—He is aware, that to make any allusion, however remote, to any of the points at issue between this country and America, is to touch on a string which, unfortunately, both on this and the other side of the Atlantic, vibrates to many an angry and acrimonious feeling, as well as to many an inveterate and misguided prejudice. But he feels, that he should be wanting to the task that he has undertaken, if in enumerating the evils that arise from the nature and extent of the Licence Trade: he should shrink from a topic which so naturally grows out of the subject, merely because, on one of the many controverted questions between the two nations, it operates to the disadvantage of Great Britain. On the contrary, if the nature and extent of this trade affords America a just ground of complaint,—if it bears so inherent an enmity to the principles of blockade, as to be inconsistent with the just exercise of that Belligerent Right,—it must be considered as furnishing a most convincing argument in favor of the point he is labouring to establish; and entering, as he does, upon the considera-

tion of it, unwarpt by any bias or prejudice, he trusts he shall treat it with that tone of temperate discussion, which is due to the importance of a subject, involving so vital a principle of the Law of Nations.

On the question of blockade, however, he is anxious not to be misunderstood.--Far, indeed, is it from his intention to derogate from the just exercise of any Belligerent Right; and amongst those rights there is none more clear and incontrovertible as to principle, or more just and necessary as to its application, than that which gives rise to the Law of Blockade, as it has been ascertained, defined, and administered, by the Maritime Tribunals * of this country.—The greater the research that shall be made into the principles of Natural Law,—the more the details of the diplomatic and conventional history of Europe shall be studied

* Perhaps there is no principle of public law more satisfactorily developed than the Law of Blockade, as it is to be found in the luminous decisions of the present Judge of the High Court of Admiralty.

and explored,—the more he is fully persuaded will it appear, that this right has its origin in the purest sources of maritime jurisprudence, — that it is sanctioned by the practice of the best times,—and, above all, that it is so essentially connected with the vital interests of Great Britain ;—that the renunciation of it, under any circumstances, must be regarded as the renunciation of one of the firmest charters of our naval pre-eminence, and as the surrender of one of the surest bulwarks of our national independence.

Clear, however, and indisputable as this right is,—just and necessary as is the exercise of it,—it cannot be denied, but that it is one of the most severe and harsh in its operation of any that is inscribed in the whole code of public law. It is under this impression, that tribunals of the law of nations, before they have enforced the provisions of a blockade, have uniformly required it to be established, by clear and unequivocal evidence : 1st, that the party proceeded against has had due notice of the existence of the blockade ; and, 2dly,

that the squadron allotted for the purposes of its execution was fully competent to cut off *all** communication with the interdicted port.

These points have been deemed so indispensably requisite to the existence of a legal blockade, that the failure of either of them has been held to amount to an entire defeasance of the measure ; and this even in cases where the notification of it has issued immediately from the fountain* of supreme authority.

* " What is the object of blockade ? Not merely " to prevent an importation of supplies, but to pre- " vent export as well as import, and to cut off *all com-* " *munication* of commerce with the blockaded place," —(*Admiralty Reports*, vol i., page 87.)

" A blockade is just as much violated by a vessel " passing outwards as inwards. A blockade is a sort " of circumvallation round a place, by which all fo- " reign connexion and correspondence is, as far as " human force can effect it, to be entirely cut off : it is " intended to suspend the *entire* commerce of that " place."—(*Admiralty Reports*, vol. page 152.)

* In February 1810, the blockade of Elsineur was notified in the Gazette, and in the course of the present year several vessels were proceeded against for a breach

The blockade in question is, on the face of it, deficient in one of these characteristic criteria. It has, indeed, been promulgated, with all due solemnity, to the neutral world; but no ships of war are specifically stationed off the coast, for the purpose of enforcing the execution of it. It is avowedly, then, a virtual blockade,—a measure novel* in its principle, and pressing with an unusual degree of rigour on neutral commerce. Without, therefore, entering here into the discussion of the justice or the injustice, the policy or the inexpediency of the measure, it may safely be assumed, that it ought to be at least as

of this blockade: but it having been satisfactorily proved to the Court of Admiralty, that the British squadron stationed off Elsineur was not competent to the circumvallation of the port, the blockade was held to have had no legal existence, and the vessels proceeded against were restored to the claimants.

In February 1792, in the cases of several vessels proceeded against for a breach of a blockade, instituted by Sir John Jervis in the West Indies, the Lords of Appeal determined, that a proclamation could not, in itself, constitute a legal blockade,—that no blockade could exist without actual investment.

equally maintained as any other blockade; that if there were any difference in this respect, it should preponderate in favor of those who are involved in the trammels of a penal law, unprecedented in its nature;—*i. e.* if ordinary blockades are uniform and universal in their operation, *à fortiori*, this extraordinary blockade ought to be the same.

In point of fact, however, the ports of France and Holland, blockaded as they are to America, are, in a great measure, open to the trade of Europe.—The same authority which has instituted the interdict, grants permission, indiscriminately, to vessels under the Dutch, the Danish, or, in short, any European flag (except the French), to enter the interdicted ports, and to export from them merchandize, *to whomsoever the same may appear to belong.** It may be said, indeed, that similar permissions, if demanded, would be granted to American vessels: but would there be the same facility in obtaining these instruments, or in applying them to commercial

* Words occurring in all licences.

purposes, to merchants resident on the other side of the Atlantic, that there is to those who inhabit those coasts immediately opposite to Great Britain? Besides, is it not perfectly well known, that the French Emperor, who has his own purposes to answer in tolerating the use of British licences, and who sees in them a secure nursery for his military marine, will not allow the Americans to engage in a traffic, from which he can derive no advantage. As the practice exists at present, numerous European vessels are privileged to enter the ports lying between Bayonne and the river Ems; whereas, if an American vessel, navigated by mariners of her own country, laden with the native produce of the United States, and going for the sole account and risk of American merchants, does but approach, or even *intend* to approach the threshold of this interdicted soil, she becomes, together with her cargo, *ipso facto* liable to confiscation. No instance can be adduced, in which American owners, under such circumstances, have not been amerced of their property.

Is it, then, too much to assert, that the

Licence Trade, in its present extended state, affords America a just ground of complaint? or is it exceeding the bounds of the strictest veracity to aver, that it creates an innovation in the law of blockade, irreconcilable with the fundamental principles of that code, which it has been hitherto the pride and glory of Great Britain to have administered in its most unsullied purity: and, finally, that it is directly repugnant to that equity, which has emphatically been styled, the arbitress of the law of nations.

. . . . . .

A fifth objection to the new system might be urged, from the circumstance of its subjecting the whole trade of the country to the controul of the executive government. When commercial speculations become the result of peculiar privileges it must follow, of course, that these privileges will be liable to be obtained by favor, and extorted by intrigue: but as this branch of the subject is not immediately connected with the line of argument which has been pursued, and as the author is extremely desirous of confining his observations

to such considerations as are suggested by the long-established provisions of our maritime code, and the immutable principles of public law; the mere mention of this topic will be sufficient.

Such is the substance of the objections to the Licence Trade, which the writer of these pages has ventured to submit to the consideration of the public. No evil can accrue to the service of the State, from the disclosure of any of the facts which he has stated; and he has felt it his duty to develope them the more imperative, because he is fully impressed with the idea, that, as a measure of policy, it cannot stand the test of accurate and severe investigation. He is even sanguine enough to hope, that so soon as the nature of the traffick shall be generally known, and thoroughly understood, the further prosecution of it must be immediately abandoned, or at least must be so corrected and modified, as to lose much of the alarming character it has now assumed.

If, however, he should be mistaken as to this point, at all events he will have the satisfaction of having put the public in

possession of the principles on which it is founded, and the circumstances under which it is conducted.—They who have not the whole circumstances of a case before them, can never be really judges of it; and when we are told of the enormous increase of our customs, we should be told, at the same time, of the great sacrifices (for any eminent departure from the principles of wisdom and justice must ever be regarded as the greatest sacrifices) by which that increase is effected.

Upon the whole, if he is correct in his apprehension of the facts that have been enumerated, as well as in the inferences deducible from them, it must be obvious, that the Licence Trade, in its present extended state, has effected an entire revolution in that code of laws, under which the European trade of this country has, for nearly two centuries, been fostered and encouraged,—and under which our naval empire has gradually been advanced and extended, and finally elevated to a vantage ground, unparallelled in the history of the world.

It must be equally obvious, that, as a political measure, it is founded on an unsound and unnatural base;—that it is calculated to disseminate over a large portion of the civilized globe, principles the most opposite to true wisdom and true policy;—to overturn ancient and established maxims of morality and good faith;—to do away all those honorable and sure tests of upright and sincere conduct, which courts of the law of nations have in all times respected and upheld:—in a word, that it is calculated to dissolve one of the material links in that chain, by which the all-wise and beneficent Father of the Universe has bound together the happiness and the duty of the human race.

Lastly, it must be obvious, that besides affording the enemy a secure nursery for his military marine, it presents to him every facility of carrying on, under the protection of British Licences, that traffick, which the vigilance and activity of British cruizers could otherwise intercept and annihilate.

In reply to these objections we shall probably be told, to look to the difficulties

under which commerce labours, and to the embarrassments with which, in the actual state of Europe, it is necessarily fettered and incumbered.—We shall be told, that our situation is new and unprecedented; and that it is only by new and unprecedented measures that we can be extricated from it.—

Admitting, however, to the fullest extent, the force of these observations, as far as they relate to the embarrassments of the commercial world, and the unexampled difficulties of our situation, still *these* considerations will not justify the adoption of measures, which are avowedly faulty in their premises, which have their foundation in an anomalous and unnatural combination of things, and which must ultimately tend to the encouragement and increase of iniquity and injustice.—The plea of necessity is a powerful plea, but the imagination can scarcely frame to itself a case of necessity sufficiently grave, to authorise a recourse to a trade of this description; if, however, such a case should exist, it may safely be assumed, that it must be one in

which the claims of self-defence, and self-preservation are paramount enough to supersede every other obligation;—such a case might possibly be made out,—but, thanks be to God we are not yet reduced to the unfortunate dilemma, of having nothing left to us but a choice of unjust and immoral actions;—we are not yet compelled to purchase all that is dear and valuable to us as a nation, at so sad a price;—we have it still in our power to substitute, in the place of these complex, unjust, and unprecedented measures, such as are simple, and just, and reconcileable with the ordinary usages of mankind;—to substitute a provident and comprehensive system in the stead of a capricious, and temporary policy.—True it is, that in order to accomplish this, we must retrace our steps, but better far will it be to retrace them, than to persist in the same inextricable maze of error, in which they have hitherto been perplexed and bewildered.

The foundation of our embarrassments was laid, when we, in imitation of our enemy, receded from the acknowledged

practice of nations; all our subsequent difficulties have increased in the inverse proportion to our deviation from that point, every step of an elongation has led to some new intricacy,—device has been added to device,—one metaphysical subtlety has paved the way for another;

* "Vain Wisdom all and false Philosophy."

The Licence Trade had its rise from the Orders of Council,—it is the legitimate offspring of that unnatural measure,—in all its features we can trace the characteristic lineaments of its race,—it is deeply imbued with the hereditary taint of the parent stock;—this trade, in its turn, has given birth to the evils that have been enumerated, and if the system should be continued, where will be found the prophet bold enough, to predict the acts of injustice and immorality, to which we must ultimately be driven.

Fortunately, however, the remedy is as obvious as the disease, if the nature and

* Milton's Paradise Lost, Book II.

character of the one has been accurately defined and illustrated, it will require but little degree of skill to point out the other. If, for example, it has been demonstrated, that the disorder has originated in a departure from all the wholesome and sound doctrines which have, for ages past, regulated the intercourse of independent nations, if it has been heightened and inflamed by persisting in that departure, surely a return to ancient and established practice, will afford the best rational hope of a permanent and radical cure. The precise time and manner of applying the remedy may be a work of some nicety,—may require, indeed, the touch of consummate skill; "*hæc cognitio ad viros civiles propriè pertinet** :" but the principle on which it must proceed is plain and simple, namely, on the one hand, to revive, as speedily as shall be consistent with the existing circumstances of the empire, the municipal regulations of our navigation system,—and on the other, to

* Vide Bacon's Works, Vol. I.

restore to the nations of the civilized world the pure exercise of maritime law; such, for example, as it existed at the close of the last, and at the commencement of the present war.—

Here it will probably be asked by the advocates for the Licence Trade, whether we are not to retaliate upon France for the violence and injustice of her decrees?—The question, however, is, what is retaliation upon France; and how far we are justified in pursuing it?—

Those who have best explored the principles of original justice, and those who have drunk deepest of the sources of civil knowledge, will alike concur in informing us, that injustice is not best retorted by injustice; but the rather, that a strict adherence to the rules of equity is not only the most upright, but, eventually, the most advantageous species of retaliation.

Further,—in this as in many other respects, it is with States as with individuals; for as in civil societies each individual gives up a part of his natural liberty, in order that he may secure to himself, in return,

the protection of the municipal laws; so, in political societies, each state that is included within the pale of the great commonwealth of the civilized world, gives up what may be appropriately termed a portion of the *summum jus*, as the price for so valuable a consideration; and, in return for the advantages to be derived from social intercourse, binds itself to conform to those rules of conduct, which are usually denominated the laws of nations: rules calculated alike to promote the comfort and happiness of nations during peace, and to set bounds to their hostilities in war. By them, the natural liberty of each state becomes so far curtailed and restrained, as is expedient for the advantage and security of the whole. In retaliating, therefore, against France, we are not merely to look to the effects of our retaliating against that power; we are not even to confine our views to the consideration of how far the act may, or may not, be attended with detriment to ourselves; but we are to be careful, also, (except in cases where self-preservation makes another line

of conduct absolutely necessary,) lest it should be injurious to those innocent states, who stand aloof from actual hostilities, and against whom our retaliatory measures are not immediately directed. "*Qui injuriam* "*non fecit non recté patitur:*" nor can any state deviate, in any considerable degree, from her established course of action, without being responsible for that deviation to the aggregate of states, of which she is a member.

The Decrees of Berlin and Milan are extravagant and unjust in the extreme; but they are not the first decrees by which the nations who profess the exercise of the same public code, have been outraged and insulted. The history of France is fruitful* in such examples: nor are instances of them wanting in the annals of that republic now merged in France, but which once occupied so distinguished a space amongst the maritime powers of Europe;—

* See many of the edicts of Louis XIV, and various decrees issued by the different Governments of France during the last war.

in the year 1652, the States General issued an edict, by which they declared every person an enemy, who should attempt to trade with Great Britain: we do not, however find, that the British Government of that day, energetic as it was, and, from the consciousness of its own usurpation, peculiarly alive to a sense of injury, and jealous to an excess of the semblance even of national insult, retorted upon their enemies by any decree of a similar tendency.—In 1666, the States General promulgated another edict, similar in principle to that of 1652, but more extensive in its operation, because it embraced, together with the European territories of Great Britain, all her possessions in Asia, Africa, and America. These ordinances have been referred to,—partly because they were justified solely on the plea of retaliation,—partly, also, because frequent allusion is made to them, in the immortal works of a Dutch writer, himself, one of the greatest masters who ever illustrated the science of public jurisprudence, and who, for a considerable time, presided at the highest tribunals of

his own country: yet, so far from attempting any vindication of these measures, that profound and enlightened Publicist omits no opportunity of reprobating the principles on which they were founded, clearly unfolding, that they must be most unjust in their operation against those states, who were not in any way concerned in the aggression;—that they would afford every sovereign a pretext for the commission of wrong;—and lastly, that they must necessarily introduce into the practice of nations a monstrous and unnatural system of warfare;—or, as he forcibly expresses it,* "*Mox præstó erunt immania monstrorum,*
"*portenta; nam, ut inquit ille,*

"——————— Si prava est Regula prima
"Omnia mendosé fieri atque obstina necesse est."

And in another place, in alluding to the ordinance of 1666, which was issued to retort upon the English, for having interdicted the Hamburghers from trading with Holland or her colonies, he says, "Quare

* Bynk. Q. J. P. lib. 1. c. 4.

"nec illud * edictum ordinum generalium "29 Nov. 1666, *inde* defendi poterit, quod "Angli antea, et *ulterius*, et *adhuc in-* "*justius*, fuerint progressi."

To return, however, to the impolicy and inexpediency of the Licence Trade.

The times in which we live are arduous in the extreme.—Fortunately, however, the experience of seventeen years has proved, that the people of this country are capable of sustaining, nobly, and magnanimously, the severest privations.—The great mass of them has the forecast to know and to feel, that their existence, as a nation, depends upon their persevering,

* The same writer, in commenting upon a retaliatory edict, issued by his countrymen against Lewis XIV, thus expresses himself. "Ad quod edictum "Regis Franciæ Ordines Generales *ne minus injuriosi* "*viderentur etiam adversús amicos suos*; (nam in "amicorum caput auditur hæc faba—) in hunc modum "edixerunt," &c. &c.

And again, in allusion to the same edict, "Diceres "id edictum *jure retorsionis* subsistere, sed *retorsio* "non est nisi adversús eum, qui ipse damni quid dedit "et *deinde* patitur; non vero adversús communem "amicum."

with constancy and fidelity, in the great cause in which they are embarked.—There is no excuse, therefore, for a recourse to measures, which are not calculated to promote the future and permanent interests of the State.—For mere fiscal purposes,—for the sake of a temporary increase of the duties arising from our exports and imports, we cannot be justified in encouraging a traffick, which preys upon our very vitals, and consumes the strength by which it is nurtured;—which transfers from us to our enemies the carrying trade of Europe, and thereby enfeebles one of the firmest sinews by which our military marine has hitherto been supported and invigorated.—Shall it be said, that our forefathers, in the administration of public affairs, were patient of present inconvenience and prospective of future good; while our measures, on the contrary, are improvident and ill-digested, framed merely to meet the exigencies of the present moment,—but essentially, and from their very nature, pregnant with future evil?—Shall it be tolerated, that they, in the

infancy of our navigation, encountered and endured many toilsome and hazardous struggles, to wrest from a powerful rival the sources of her maritime greatness;—and that we, on the other hand, having consolidated this, our inheritance;—having brought to perfection the system of policy they bequeathed to us;--having attained the full meridian of an unrivalled naval pre-eminence,—shall voluntarily renounce and surrender even the elementary principles of that system, which has been so long intimately blended and interwoven with the maritime prosperity of Great Britain,—and on which, to borrow the emphatic language of the Legislature, "under the "good providence and protection of God, "the wealth and strength of this country, "and the prosperity and safety of every "part of the British Empire so materially "depend?"

Finally, shall it be tolerated, that our forefathers, unwarpt by the violence and aggression of their enemies, pursued an unvarying course, maintaining in their practice, and enforcing by their example,

an uniform and well regulated system of maritime jurisprudence;—whereas we, on on the contrary, in our eagerness to retort upon France the evils of her own injustice, have introduced into that system, capricious and improvident innovations, unequal and unjust in their operation, and well calculated to subject our clearest and most essential rights to perpetual cavil and embarrassment.

He was a wise Statesman, and well knew the relative situation of his own country and that of the Kingdom to which she was opposed, had well weighed the maritime resources of the one, against the military preponderance of the other—who, looking forward to the operations of a protracted war, fraught with unparalleled difficulty and danger, assured the Athenians that they had more to fear from their own errors, than from the wisdom and skill of their antagonists. Μᾶλλον γαρ πεφόβημαι τάς οἰκείας ἡμῶν ἁμαρτίας ἢ τας των ἐναντίων διανοίας.*

* Thucyd. lib. 1. c. 144.

APPENDIX.

No. I.

To all Commanders of His Majesty's Ships of War and Privateers, and all others whom it may concern, greeting:

I, the undersigned, one of his Majesty's principal Secretaries of State, in pursuance of the authority given to me by his Majesty's order of council, under and by virtue of powers given to his Majesty by an Act, passed in the forty-eighth year of his Majesty's reign, entitled "An Act to "permit Goods secured in Warehouses in the "Port of London, to be moved to the Outports, "for Exportation to any Part of Europe; for em-"powering his Majesty to direct that Licences "which his Majesty is authorised to grant under "his Sign Manual, may be granted by one of "the principal Secretaries of State; and for "enabling his Majesty to permit the exportation "of Goods, in Vessels of less Burthen than are

" now allowed by Law, during the present Hos-
" tilities, and until one Month after the Signature
" of the preliminary Articles of Peace;" and in pursuance of an order of council, specially authorising the grant of this licence, a duplicate of which order of council is hereunto annexed, do hereby grant this licence for the purposes set forth in the said order of council, to Messrs. ———, of London, and other merchants, and do hereby permit a vessel, bearing any flag (except the French), and that subject to the conditions hereinafter expressed, to proceed, with a cargo of grain, meal, or flour (if importable according to the provisions of the corn laws), and bare stores, *from any port of France, between Brest and Bayonne, both inclusive,* to any port of the United Kingdom; the master to be permitted to receive his freight, and depart with his vessel and crew, to any port not blockaded, *notwithstanding all the documents, which accompany the ship and cargo, may represent the same to be destined to any other neutral or hostile port, and to whomsoever such property may appear to belong:* provided that the name of the vessel, the name of the master, and the time of clearance from her port of lading, shall be endorsed on this licence, that the vessel shall be permitted *to bear the French flag* only, till she

is two leagues distant from her foreign port of clearance, or the neighbouring coast: provided always, that this licence shall not be understood to protect any vessel navigated by French seamen, or any vessel that shall appear to be French-built, save and except French-built vessels, which may have been transferred into foreign possession, prior to the operation of the order of the 11th of November 1807, or which may have been taken as prize from the French, and shall not have returned again into French possession.

This licence to remain in force for four months from the date hereof, and no longer; and at the expiration of the said period, or sooner if the voyage be completed, to be deposited, as the case may be, with the Commissioners of his Majesty's Customs at the port of London, or with the Collector of the Customs at the outports.

Given at Whitehall, the 29th September 1810, in the forty-ninth year of his Majesty's reign:

(Signed) R. RYDER.

No. II.

To all Commanders of his Majesty's Ships of War and Privateers, and all others whom it may concern, greeting:

I, the undersigned, one of his Majesty's principal Secretaries of State, in pursuance of the authority given to me by his Majesty by order in council, under and by virtue of powers given to his Majesty, by an Act passed in the forty-eighth year of his Majesty's reign, intituled, "An Act "to permit Goods secured in Warehouses in the "Port of London to be removed to the Outports, "for Exportation to any Part of Europe; for em- "powering his Majesty to direct, that Licences "which his Majesty is authorised to grant, under "his Sign Manual, may be granted by one of "the principal Secretaries of State; and for "enabling his Majesty to permit the Exportation "of Goods in Vessels of less burthen than are "now allowed by Law, during the present Hos- "tilities, and until one month after the Signature "of the preliminary Articles of Peace;" and in pursuance of an order of council, specially authorising the grant of this licence, a duplicate of which order of Council is hereunto annexed, do hereby grant this licence, for the purposes set

forth in the said order of council, to ———, of London, Merchant, on behalf of himself and others, and do hereby permit a vessel bearing any flag except the French, and that subject to the conditions hereinafter expressed, to sail in ballast from any port of Holland to any port in Norway or Sweden, without the Baltic, there to load a cargo of such goods as are permitted by law to be imported (except linens and spirits), and to proceed with the same to any port of the United Kingdom; the master to be permitted to receive his freight and depart with his vessel and crew to any port not blockaded, notwithstanding all the documents which accompany the ship and cargo may represent the same to be destined to any other neutral or hostile port, and to whomsoever such property may appear to belong: provided that the name and tonnage of the vessel, name of the master, and time of her clearance from her port of lading, shall be endorsed on this licence, that the vessel shall be permitted to bear the French flag, *only* until she is two leagues distant from her foreign port of clearance, or the neigbouring coast: provided always, that this licence shall not be understood to protect any vessel navigated by French seamen, or any vessel that shall appear to be French-built, save and except French-built vessels which may have been transferred into foreign possession, prior to the operation of the

order of the 11th November 1807; or which may have been taken as prize from the French, and shall not have returned again into French possession: provided that no part of the cargo shall consist of stockfish or oil; and that if any part of the import cargo of the said vessel consist of naval stores, and be destined for any port of this kingdom lying to the south of the port of Hull, the vessel shall, unless under the protection of convoy, stop at Dundee or Leith, and there obtain a fresh clearance for the port of her destination; and provided further, that the said vessel shall not sail from Dundee or Leith without convoy, and shall proceed with such convoy, and not desert the same, till her arrival at the port of her destination, or as long as such convoy shall be instructed to protect her. This licence to remain in force until the 25th day of April next; and at the expiration of the said period, or sooner, if the voyage be completed, to be deposited, as the case may be, with the Commissioners of his Majesty's Customs at the Port of London, or with the Collector of the Customs at the Out-ports.

Given at Whitehall, the 6th day of October, 1810, in the fiftieth year of his Majesty's reign:

(Signed) R. RYDER.

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