



LETTERS AND OTHER WRITINGS

OF

JAMES MADISON.

VOL. II.

LETTERS
AND OTHER WRITINGS
OF
JAMES MADISON
FOURTH PRESIDENT OF THE UNITED STATES.

IN FOUR VOLUMES.

PUBLISHED BY ORDER OF CONGRESS.

VOL. II.

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WORKS OF MADISON.

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TO GEORGE WASHINGTON.

J. Madison presents his apologies to the President for not sending the pamphlets, &c., from Sir J. Sinclair sooner, for the use of Mr. Peters, as was intimated when he last had the honor of seeing the President. He had hopes of being able, prior to this, to have looked a little into them, and have complied with the desire of the President expressed when the papers were put into J. M.'s hands. It has been impossible for him to do this hitherto. To-day and to-morrow he had contemplated an effort for the purpose; but it will be even more convenient for him after Mr. Peters shall have had the requisite use of them.

FEB^y 8th, 1794.

TO THOMAS JEFFERSON.

PHILADELPHIA, March 2d, 1794.

DEAR SIR,—Your favor of the 15th Ult. came to hand two days ago. It was not my intention that my first to you should have been procrastinated to the present date, but several causes have concurred in producing the effect. Among others, I was in hopes every week to be able to furnish you with the proceed-

ings on the subject grounded on your commercial Report,* and particularly with such of them as related to yourself. It has so happened that I never could find leisure to make out for the press the share I had in them till very lately. The earlier part of my observations were sent to the Printer several weeks ago, but never made their appearance till Thursday evening last. The latter part is following, as you will find, as fast as I can write it out, which, from the extreme length of it, the brevity of my notes, and the time that has run since the observations were delivered, is a task equally tedious and laborious. The sequel will be forwarded to you as soon as it gets into print. As you are so little supplied with the current information, it may be necessary to apprise you that after the general discussions on the measure proposed by me had been closed, and the first general resolution agreed to by a majority of 5 or 6, several of the Eastern members, friendly to the object, insisted on a postponement till the first Monday in March. It was necessary to gratify them, and the postponement was carried by a small majority against the efforts of the adverse party, who counted on the votes of the timid members, if forced, before they could learn the sense of their constituents. The interval has produced vast exertions by the British party to mislead the people of the Eastern States. No means have been spared. The most artful and wicked calumnies have been propagated with all the zeal which malice and interest could invent. The blackest of these calumnies, as you may imagine, have fallen to the lot of the mover of the Resolutions. The last Boston paper contains a string of charges, framed for the purpose of making the Eastern people believe that he has been the counsellor and abettor of Genet in all his extravagances, and a corrupt tool of France ever since the embassy of Gerard. It appears, however, that in spite of all these diabolical manœuvres, the town of Boston has been so far awakened as to have a meeting in the town-house, and a pretty unanimous vote for a committee to consider the subject, and re-

* Resolutions of Virginia, or Madison's Resolutions. See his Speeches printed in pamphlet.

port proper instructions for their member in Congress. The Committee consists of men of weight, and, for the most part, of men of the right sort. There are some, however, who will endeavour to give a wrong turn to the business. I see by a paper of last evening that even in New York a meeting of the people has taken place, at the instance of the Republican party, and that a committee is appointed for the like purpose. As far as I know the names, the majority is on the right side. One motive for postponing the question so long was the chance of hearing from England, and the probability that the intelligence would strengthen the arguments for retaliation. Letters from Pinckney have accordingly arrived. As yet they are under the seal of confidence, but it is in universal conversation that they mark precisely, and *more strongly* than ever, the unjust and unfriendly features which have characterized the British policy towards the United States. Soon after the arrival of the Packet, Mr. Randolph wrote to Hammond, desiring to know whether an answer had been received to your letter of May, 1792. His reply was simply that it had not.

The scheme of Frigates to block up the Mediterranean has been pushed slowly, but successfully, to the stage of resolutions, on which a Bill is to be reported. The majority has never exceeded two or three votes. Whether the scheme will finally take effect is not certain. It probably will, unless accounts from Europe furnish hopes that Spain or Portugal, particularly the latter, which is friendly and interested in our trade, may interfere.

Genet has been superseded by Fauchét, the Secretary to the Executive Council. The latter has not been here long enough to develop his temper and character. He has the aspect of moderation. His account of things in France is very favorable on the whole. He takes particular pains to assure all who talk with him of the perseverance of France in her attachment to us, and her anxiety that nothing which may have taken place may lessen it on our side. In his interview with the President he held the same language; and I am told by E. Randolph, that the President not only declared explicitly his affectionate solici-

tude for the success of the Republic, but after he had done so, with great emphasis, desired, in order to be as pointed as possible, that his expressions might be repeated by E. Randolph, who acted as Interpreter. Fauchèt does not speak our language. La Forest comes over with the Minister as Consul General, and Pètry, formerly Consul of S. Carolina, as Consul for this place. The political characters of these gentlemen, as heretofore understood, give some uneasiness to the Republican party; and the uneasiness has been increased by the homage paid by the leaders of the other party to the new Minister. They may probably aim at practising on him by abusing the madness of Genet, and representing the Republicans as rather his partizans than the friends of the French cause. But if he is not an uncommon fool, or a traitor, it is impossible he can play into their hands, because the Anglicism stamped on the Aristocratic faction must warn him of its hostility to his objects. Genet has not taken any decided step in relation to his future movements. He is said to be poor, and, by some, to meditate a return to France, with a view to join the army; by others, a settlement in this Country as a farmer. If he is prudent, he will not venture to France in her present temper, with all the suspicions and follies with which he is loaded. You must have seen that Brissot and his party have been cut off by the Guillotine.

I am informed, by an anonymous letter from N. York, that large purchases are making there, and in the Eastern States, for supplying the British armaments in the West Indies, and that American vessels are chartering for the conveyance of them. This is really horrible. Whilst we allow the British to stop our supplies to the French Dominions, we allow our citizens to carry supplies to hers, for the known purpose of aiding her in taking from France the Islands we have guarantied to her, and transferring these valuable markets from friendly to unfriendly hands. What can be done? The letter writer suggests an Embargo. Perhaps the best step would be to declare that so long as Great Britain will not allow the French to be supplied by us, we will not allow our supplies to go to her. It is not clear, however, that such a measure could stand the clamor of the

Merchants, seconded by the interest of the farmers and Ship owners.

TO THOMAS JEFFERSON.

PHILADELPHIA, March 9th, 1794.

DEAR SIR,—The commercial propositions were postponed for one week longer, on the arrival of the appointed day. To-morrow they will again come on, unless precluded by debates on other business, or again postponed. You will see by the inclosed in what manner the meeting at Boston issued, and the course the subject is taking at New York. There was a large mercantile meeting last night in this city, for obtaining a vote of remonstrance against the propositions. A paper was accordingly introduced by Fitzsimmons, Bingham, &c. It was warmly, and I am told ably, attacked by Swanwick, who explained and defended the propositions. He was clapped, and, on the question, there were three or four noes for one aye to the paper. The minority had the arrogance, notwithstanding, to sign the paper individually, and will recruit all the names they can to-day, among the Quakers and others not present at the meeting, in order to deliver in the paper with more effect to-morrow morning. What the fate of the propositions will be is more uncertain than ever. Some of the friends of them begin to say that more vigorous measures are rendered necessary by the progress of British outrages. The additional instruction of November 6, which you will find in the inclosed papers, is so severely felt by the Merchants, that some of them, also, without relinquishing their opposition to what is proposed, talk of measures more congenial with the crisis. An Embargo on American vessels, on those and British also, and even a seizure of British property, are in the mouths of some of them. The additional instruction is questioned by some as inauthentic, but it is infinitely probable that it is genuinc. The doubt is founded on the earliness of its date, compared with that of our last intelligence from Europe, which is silent as to that matter. But it

may have been decreed in the Cabinet and not put in force, or given into the hands of officers clandestinely, that the American prey might not escape. Our situation is certainly ripening to a most serious crisis. It does not appear, however, that in any event the commercial retaliation can be improper; but, on the contrary, that in every event it will be advantageous.

You will perceive that Fauchèt is going on in the conciliatory plan of reversing the errors of his predecessor.

The project of a squadron of Frigates is pursued with unremitting ardor. In the course of the Bill, the two 20-gun ships have been turned into two of 36 guns, so that the force is to consist of 6 in the whole, 4 of which will be of 40 guns. As the danger of a war has appeared to increase, every consideration rendering them at first unwise now renders them absurd; yet the vague idea of protecting trade when it most needs it misleads the interested who are weak, and the weak who are not interested.

I have this moment received a note informing me that there are letters from New York containing definitive intelligence concerning Toulon. The British burnt sixteen French sail of the Line in their escaping out of the Harbour. Many of the Toulonese were drowned in attempting to get on board the British Ships. All the remaining Inhabitants were drawn up in the public square, and underwent military execution. The information comes by a vessel from Carthage.

Adieu. Yours affectionately.

TO THOMAS JEFFERSON.

March 12th, 1794.

DEAR SIR,—The Merchants, particularly of New England, have had a terrible slam in the West Indies. About a hundred vessels have been seized by the British for condemnation, on the pretext of enforcing the laws of the Monarchy with regard to the Colony trade. The partisans of England, considering a

war as now probable, are endeavoring to take the lead in defensive preparations, and to acquire merit with the people by anticipating their wishes. This new symptom of insolence and enmity in Britain shews either that she meditates a formal war, as soon as she shall have crippled our marine resources, or that she calculates on the pusillanimity of this Country, and the influence of her party, in a degree that will lead her into aggressions which our love of peace can no longer bear. The commercial propositions are, in this state of things, not the precise remedy to be pressed as first in order; but they are in every view, and in any event, proper, to make part of our standing laws, till the principle of reciprocity be established by mutual arrangements.

TO THOMAS JEFFERSON.

PHILADELPHIA, March 14, 1794.

DEAR SIR,—The paper of yesterday inclosed will give you a clue to the designs of the party which has used Sedgwick for its organ. His immediate prompter will be seen both in his speech and in his propositions. Whether more be seriously aimed at than to embarrass the others, which have been long depending, is by some doubted. Perhaps this may be one of the objects; but you understand the game behind the curtain too well not to perceive the old trick of turning every contingency into a resource for accumulating force in the Government. It would seem, however, that less subtlety has prevailed in this than in some other instances. The ostensible reason for the provisional army is not only absurd, but remote from the present sensations of the public; and at the same time disarms the projectors of the cavil and calumny used with most success against the commercial propositions, to wit, that they tended to provoke war by an unnecessary alarm and irritation to Great Britain. The commercial propositions were the subject of yesterday, and will probably be resumed to-day. We admit that the change of appearances may require something further, but

we contend that they ought to make part of our Code until the end be obtained, and that they will be proper, whether we are to be at peace or war. In the former case, they will have their intended operation. In the latter, they will put our Executive on the right ground for negotiation.

TO THOMAS JEFFERSON.

March 24th, 1794.

DEAR SIR,—The past week has been spent chiefly on the question of an Embargo. It was negatived on Friday by 48 against 46, the former composed chiefly of Eastern, the latter of Southern members. The former are now for giving the power to the Executive, even during the session of Congress. In France, everything is in a state of vigor beyond what has been seen there. Fauchèt proceeds with great circumspection and prudence here.

TO THOMAS JEFFERSON.

March 26th, 1794.

DEAR SIR,—My last informed you that an embargo had been proposed and negatived. You will see by the inclosed that, on a renewal of the proposition yesterday, it went through the House of Representatives by a very large majority. The change took place among the Eastern members, whose constituents were growing so clamorous under their losses in the West Indies as to alarm the Representatives. The Senate will have the subject before them to-day, and will probably concur. It is said that some further measures are to be discussed in that House. The commercial propositions have not yet received a vote. The progress of the evils which they were to remedy having called for more active medicine, it has not been deemed prudent to force them on the attention of the House during more critical discussions. They will, however, notwithstanding

a change of circumstances, co-operate with other measures as an alterative system, and will be pressed to a vote at the first favorable moment. Whether they can be carried into a law at the present session is doubtful, on account of the lateness of the day, and the superior urgency of other questions. The point immediately depending is the discrimination between Great Britain and other nations as to the proposed duties on manufactures. If this should succeed, the future parts will, I think, meet with little difficulty. The enquiry into the Treasury is going on, though not very rapidly. I understand that it begins to pinch where we most expected—the authority for drawing the money from Europe into the Bank. Hamilton endeavoured to parry the difficulty by contesting the right of the Committee to call for the authority. This failing, he talks of constructive written authority from the President, but relies on parol authority, which I think it impossible the President can support him in.* The old question of referring the origination of Taxes comes on to-day, and will, in some degree, test the present character of the House. I have written an abundance of letters of late, but fear they are stopped by the small-pox at Richmond.

The people of Charleston are taking a high tone. Their memorial, which is signed by Ramsay, the Gadsdens, Young, Rutledge, and a very great number of respectable Citizens, marks the deliberate sense of her people. The more violent has been expressed by hanging and burning the effigies of Smith, Ames, Arnold, Dumouriez, and the Devil, *en groupe*.

TO THOMAS JEFFERSON.

PHILADELPHIA, March 31, 1794.

DEAR SIR,—I forgot to mention in my last that the question whether the ways and means should be referred to the Secretary of the Treasury, as heretofore, or to a Committee, lately came on, and decided the sense of the House to be regenerated on that

* See E. Randolph's explanation of the enigma.

point. The fiscal party, perceiving their danger, offered a sort of compromise, which took in Mercer, and, with him, sundry others in principle against them. Notwithstanding the success of the stratagem, the point was carried by 49 against 46. If the question had divided the House fairly, there would have been a majority of ten or a dozen, at least.

TO THOMAS JEFFERSON.

PHILADELPHIA, April 14, 1794.

DEAR SIR,—Three propositions levelled at Great Britain have latterly occupied the House of Representatives: 1. To sequester British debts. 2. To establish a lien on British Merchandize, or the value of it, as it arrives. 3. To suspend imports from Great Britain and Ireland till the spoliations be redressed, and the Treaty of Peace be executed. The last has taken the pas in discussion. A majority are apparently in favor. Delay is consequently one of the arts of opposition. It is uncertain, therefore, when a vote will be obtained. It is probable, also, that much will depend on the state of foreign intelligence, which is hourly changing in some of its circumstances. The Executive is said to meditate an Envoy Extraordinary to Great Britain, preferring further negociation to any Legislative operation of a coercive nature. Hamilton is talked of, is much pressed by those attached to his politics, and will probably be appointed, unless overruled by an apprehension from the disgust to Republicanism and to France. His trial is not yet concluded. You will see the issue it will have in the inclosed papers. The letter from the President is inexpressibly mortifying to his friends, and marks his situation to be precisely what you always described it to be. The Committee on Ways and Means was unfortunately composed of a majority infected by the fiscal errors which threaten so ignominious and vexatious a system to our Country. A land tax will be reported, but along with it excises on articles imported and manufactured at home, a stamp tax pervading almost all the transactions of life, and a

tax on carriages, as an indirect tax. The embargo will soon be a subject of deliberation again, as its continuance, if proper, ought to be decided some time before its expiration. Whether this will be the case cannot now be foretold.

The French continue to triumph over their enemies on the Rhine. We learn nothing from the West Indies, except that Martinique had not surrendered on the 25th ult.

I put into the hands of your cabinet workman here the edition of Milton sent you from France. He was packing up things for you, which afforded a commodious berth for it.

Fauchet has informally intimated the distaste to Gouverneur Morris, whose recall will follow of course.

Yours always and affectionately.

TO THOMAS JEFFERSON.

PHILADELPHIA, April 28th, 1794.

DEAR SIR,—The non-importation bill has passed the House of Representatives by 59 against 34. It will probably miscarry in the Senate. It prohibits all articles of British or Irish production after the 1st November, till the claims of the United States be adjusted and satisfied. The appointment of Hamilton as Envoy Extraordinary was likely to produce such a sensation, that, to his great mortification, he was laid aside, and Jay named in his place. The appointment of the latter would have been difficult in the Senate, but for some adventitious causes. There were 10 votes against him in one form of the opposition, and 8 on the direct question. As a resignation of his Judiciary character might, for anything known to the Senate, have been intended to follow his acceptance of the Executive trust, the ground of incompatibility could not support the objections which, since it has appeared that such a resignation was no part of the arrangement, are beginning to be pressed in the Newspapers. If animadversions are undertaken by skilful

hands, there is no measure of the Executive administration, perhaps, that will be found more severely vulnerable.

The English prints breathe an unabated zeal for the war against France. The Minister carries everything, as usual, in Parliament, notwithstanding the miscarriages at Toulon, &c.; and his force will be much increased by the taking of Martinique, and the colouring it will give to the West India prospects. Nothing further appears as to the views prevailing in relation to us. The latter accounts from the West Indies since the new Instruction of January 8 are rather favorable to the Merchants, and alleviate their resentments; so that Great Britain seems to have derived from the excess of her aggressions a title to commit them in a less degree with impunity. The French arms continue to prosper, though no very capital event is brought by the latest arrivals.

JOSHUA BARNEY, FREDERICK FOLGER, AND WILLIAM M^CINTIRE,
ESQ^{RS}.

PHILADELPHIA, May 1, 1794.

GENTLEMEN,—I have been favored with your letter of March 13th, from Jamaica, with its enclosure, in which the American masters of vessels detained in that Island have been pleased to express their sentiments on the Resolutions proposed by me in the House of Representatives on the 3d of January last. Having long regarded the principles on which those Resolutions were founded as the basis of a policy most friendly to the just interests of our country, and most honorable to its public councils, I cannot be insensible to the approbation they may obtain from my fellow-citizens, and particularly from those more immediately attached to the prosperity of our commerce and navigation. Under this impression, I have received the communication transmitted by you in such polite and friendly terms, and I hope it will be believed that I mingle with it all the sympathy which is due to the distresses of those who have been the victims of depredation. With the sincerest

wishes that their unfortunate situation may speedily be exchanged for one which will correspond with their rights and their merits,

I remain, Gentlemen, with great respect and regard.

TO MR. JEFFERSON.

May 9, 1794.

DEAR SIR,—I have your letter on the subject of Mr. Howell, and have seen the old gentleman who interests himself in it. I think it probable you will find reason to be satisfied with the change you have made in your merchant. I have not yet been able to procure Bills on Amsterdam for Van Staphorst. They can be got, I am told, but not with so much ease or choice as on London. I shall not intermit my attention to that object.

We have had a calm ever since the decision on the Treaty. Petitions, however, continue to arrive, chiefly in favor of the Treaty. The New England States have been ready to rise in mass against the House of Representatives. Such have been the exertions and influence of Aristocracy, Anglicism, and Mercantilism, in that quarter, that Republicanism is perfectly overwhelmed, even in the town of Boston. I hope it will prove but a transitory calamity, and that the discovery of the delusion will ultimately work a salutary effect. The people have been everywhere made to believe that the object of the House of Representatives in resisting the Treaty was war; and have thence listened to the summons "to follow where Washington leads." Nothing late from abroad. We expect to adjourn about the 20 or 25 inst.

We have just had a most plentiful rain, after a drought nearly as severe as that with you.

Adieu. Yours affectionately.

TO THOMAS JEFFERSON.

PHILADELPHIA, May 11th, 1794.

DEAR SIR,—Col. Monroe wrote you last week, and I refer to his letter for the state of things up to that date. The House of Representatives has been since employed chiefly on the new taxes. The Report of the Committee, which was the work of a sub-committee in understanding with the Fiscal Department, was filled with a variety of items, copied, as usual, from the British revenue laws. It particularly included, besides stamp duties, excises on Tobacco and sugar manufactured in the United States, and a tax on carriages, as an *indirect* tax. The aversion to direct taxes, which appeared by a vote of seventy odd for rejecting them, will saddle us with all those pernicious innovations, without ultimately avoiding direct taxes in addition to them. All opposition to the new excises, though enforced by memorials from the manufacturers, was vain. And the tax on carriages succeeded, in spite of the Constitution, by a majority of twenty, the advocates for the principle being reinforced by the adversaries to luxury. Six of the *North Carolina* members were in the majority. This is another proof of the facility with which usurpation triumphs where there is a standing corps always on the watch for favorable conjunctures, and directed by the policy of dividing their honest but undiscerning adversaries. It is very possible, however, that the authors of these precedents may not be the last to lament them. Some of the motives which they decoyed to their support ought to premonish them of the danger. By breaking down the barriers of the Constitution, and giving sanction to the idea of sumptuary regulations, wealth may find a precarious defence in the shield of justice. If luxury, *as such*, is to be taxed, the greatest of all luxuries, says Payne, is a great estate. Even on the present occasion, it has been found prudent to yield to a tax on transfers of stock in the funds, and in the Banks.

The appointment of Jay continues to undergo the animadversions of the press. You will see that the Democratic Societies

are beginning to open their batteries upon it. The measure, however, has had the effect of impeding all legislative measures for extorting redress from Great Britain. The non-importation bill, which passed the House of Representatives by a great majority, was so instantly and peremptorily rejected in the Senate, as an interference with the proposed mission, that no further efforts of the same type have been seriously contemplated. Clarke did, indeed, move to insert among the new ways and means an additional duty of 10 per cent. on *British* manufactures, but the symptoms of desertion soon induced him to withdraw it. A member from N. Carolina afterwards was incautious enough to try a discriminating duty on British tonnage, and, by pushing it to a question with the yeas and nays, placed us in a very feeble minority. Notwithstanding this effect of the Executive measure, there is little serious confidence in its efficacy; and, as involving the appointment of Jay, is the most powerful blow ever suffered by the popularity of the President.

The embargo is still in force. A member from Connecticut moved a few days ago to abridge its term a few days, as a notification that it would not be continued. A large majority was against taking up the proposition; but how far with a view to adhere to the embargo, I know not. Yesterday, a motion was laid on the table by Smith (of S. Carolina) for continuing the embargo to June 25. The motion from that quarter excited surprise, and must be either a fetch at popularity, an insidious thing, or suggested by an idea that the balance of the effects of the embargo is in favor of Great Britain.

There are no late accounts of moment from Europe. Those from the West Indies, as well with respect to the treatment of our vessels as the effects of the embargo, are so various and contradictory, that it is impossible to make anything of them.

TO JAMES MADISON, ESQ.

PHILADELPHIA, May 19, 1794.

HONORED SIR,—Your favor of the 5th came to hand a few days ago. I hope you will have secured me the corn, and a plenty of it. I am at a loss to give directions concerning the laths and plank. If M. C. can conveniently spare the horses to bring it from my brother's, it will no doubt be best to get it from him, otherwise it will cost less in the end to take it of Mr. C. I will attend to the Forte-piano and the Dictionary for my sister. As I have not yet sold my land, and probably shall not at present, it will be convenient to receive a bill for about 200 dollars, or more if you can spare it. No time should be lost in remitting it. Mr. Dunbar will probably be able to accommodate you. I am offered 3,600 dollars for the land, but am advised by good judges not to listen to anything like that price.

The discontent as to the excise has probably been stirred up for some electioneering purpose, and will subside, of course, unless fostered by other excises now in agitation here, to wit, on manufactured tobacco and refined sugar. I oppose these, and wish it were possible to get rid of the principle altogether, without a worse alternative. A land tax, though far preferable to excises in my judgment, and, as appears, in that also of my Constituents, is yet viewed in a very unfavorable light generally. It was lately proposed by a Committee of ways and means, and rejected in the House by a vast majority. You will have seen by the papers that the Embargo is not to be continued. The price of flour is, in consequence, at 50s., P^a currency.

There are no late accounts of importance from abroad. The adjournment of Congress will probably, though not certainly, take place in 15 or 20 days. I hope M. C. and Sawney will make ready for harvest without waiting for my presence, as I cannot be sure of being there in time.

My dutiful regards to my Mother and yourself.

TO THOMAS JEFFERSON.

PHILADELPHIA, May 25, 1794.

DEAR SIR,—The enclosed paper will give you the correspondence of Edmund Randolph and Hammond on an occurrence particularly interesting. You will be as able to judge as we are of the calculations to be founded on it. The embargo expires to-day. A proposition some days ago for continuing it was negatived by a vast majority, all parties in the main concurring. The Republican was assured that the Embargo, if continued, would be considered by France as hostility. The other had, probably, an opposite motive. It now appears that throughout the Continent the people were anxious for its continuance, and it is probable that its expiration will save the West Indies from famine, without affording any sensible aid to France. A motion was put on the table yesterday for re-enacting it. Measures of this sort are not the fashion. To supplicate for peace, and, under the uncertainty of success, to prepare for war by taxes and troops, is the policy which now triumphs. Every attack on Great Britain through her commerce is at once discomfited, and all the taxes, that is to say, excises, stamps, &c., are carried by decided majorities. The plan for a large army has failed several times in the House of Representatives. It is now to be sent from the Senate, and being recommended by the Message of the President, accompanying the intelligence from the Miami, will probably succeed. The influence of the Executive on events, the use made of them, and the public confidence in the President, are an overmatch for all the efforts Republicanism can make. The party of that sentiment in the Senate is completely wrecked, and, in the House of Representatives, in a much worse condition than at an earlier period of the Session.

TO THOMAS JEFFERSON.

PHILADELPHIA, June 1, 1794.

DEAR SIR,—The stamp act was poisoned by the ingredient of the tax on transfers. The sentinels of stock, uniting with the adversaries of the general plan, formed a large majority. The Carriage tax, which only struck at the Constitution, has passed the House of Representatives, and will be a delicious morsel to the Senate. The attempt of this Branch to give the President power to raise an army of 10,000, if he should please, was strangled more easily in the House of Representatives than I had expected. This is the 3^d or 4th effort made in the course of the Session to get a powerful military establishment, under the pretext of public danger, and under the auspices of the President's popularity. The bill for punishing certain crimes, &c., including that of selling prizes, has been unexpectedly called up at the last moment of the session. It is pretended that our citizens will arm under French colors, if not restrained. You will be at no loss for the real motive, especially as explained by the circumstances of the present crisis. The bill for complying with Fauchèt's application for a million of dollars passed the House of Representatives by a large majority. The Senate will certainly reject it. Col. Monroe is busy in preparing for his embarkation. He is puzzled as to the mode of getting to France. He leans towards an American vessel, which is to sail from Baltimore for Amsterdam. A direct passage to France is scarcely to be had, and is incumbered with the risk of being captured and carried into England.

TO THOMAS JEFFERSON.

PHILADELPHIA, November 16, 1794.

DEAR SIR,—The Senate having not yet a Quorum, I cannot send you the President's speech. You will have seen by the papers that the Western scene is closed. Hamilton is still with the army. You will perceive his colouring to all the Docu-

ments which have been published during his Mentorship to the Commander-in-Chief. When I first arrived here, the conversation ran high for a standing army to enforce the laws. It is said the Militia will all return with the same doctrine in their mouths. I have no doubt that such an innovation will be attempted in earnest during the session, if circumstances should be favorable. It is probable, however, that the President will not embark in the measure, and that the fear of alarming New England will be another obstacle.

The elections for the next Congress are generally over, except in Virginia, and N. Carolina, and New York. In New Hampshire, the choice is much the same. In Massachusetts, there has been a violent contest in most of the Districts. All that will probably be gained is, a spirit of enquiry and competition in that quarter. Ames is re-elected, after the most unparalleled exertions and calumnies in his favor, and, according to report, by the additional aid of bad votes. Dexter is to run a second heat, but will probably succeed. Sedgwick's fate is not known. The chance is said to be in his favor, but it is agreed that he will be well sweated. As he has not yet appeared, he is probably nursing his declining popularity during the crisis. From New York, we are promised at least half of the new Representatives for the Republican scale. New Jersey has lost old Clarke, who will no doubt be replaced by a successor of other sentiments. In this State, the election, notwithstanding its inauspicious circumstances, is more republican than the last. Nine, at least, out of thirteen, are counted on the right side; among them Swanwick in the room of Fitzsimmons—a stunning change for the aristocracy. Maryland pretty much as heretofore. I should have first noted that in Delaware, Patton, the republican ex-member, is chosen by a large majority. The representation of Maryland will vary little from the present. In S. C., Smith has been carried by the British merchants in Charleston, and their debtors in the country, in spite of the Rutledges and Pinckney, who set up against him John Rutledge, Jr. Tucker was also a candidate. Smith had a majority of all the votes. In general, the changes also in that State will be for the worse.

The death of Gillon has made way for Barnwell, if he chooses to step in. Hunter also is out; but it is said his successor (a Mr. Harper) will be a valuable acquisition, being sound, able, and eloquent. The prospects for the Senate are the re-election of Langdon for N. H.; the election of Paine, an incognitum, in place of Bradley, for Vermont, who appears to have been out of favor with both parties; the re-election of King in N. Y., owing to the death of two Repubⁿ members of the State Legislature; the chance of a republican successor to R. Morris, said to be a good one; a like chance in Delaware. In Maryland, the chance is bad, but nothing more than the present Delegation is to be apprehended. Potts has resigned, and Henry, it is supposed, will either withdraw or be rejected. The event in Virginia you will know. The information from N. C. is not decisive, but favorable; the same as to S. C. Izard has relinquished his pretensions. In Georgia, the question lies between Gunn and Telfair; the former, it is thought, will be re-chosen.

I must refer to newspapers, which I suppose you occasionally see from Richmond, for the posture of things in Europe. In general, they are extremely favorable to France, and alarming to all the sovereigns of Europe. England seems still bent, notwithstanding, on the war. She is now to subsidize the Emperor, as well as the King of Prussia. According to the intelligence handed to the public, it would seem that the humiliating memorial of Jay inspires less contempt than the French victories do terror, and that the tone towards this Country will be much changed. It is even intimated that satisfactory arrangements will be made on most, if not all the points in question. Not a line, official or private, from Monroe. His enthusiastic reception you will have seen.

Prices here are very different from those you mention. Wheat at 12*s*. Corn at 6*s*. 6*d*. Beef at 8*d*., and other things in proportion. House rent is 50 pr cent. higher than last winter.

Mrs. M. offers her best returns to you.

Always and affectionately yours.

TO THOMAS JEFFERSON.

PHILADELPHIA, Nov^r 30, 1794.

DEAR SIR,—The attack on the most sacred principle of our Constitution and of Republicanism, through the Democratic Societies, has given rise to much discussion in the House of Representatives, and has left us in a critical situation. You will have seen the President's speech. The answer of the Senate was hurried through with the most full and emphatic echo of the denunciation of the Societies. In the mean time, the answer of the House of Representatives, though prepared and reported without any loss of time, was, contrary to usage, printed for consideration, and put off from Friday till Monday. On the intervening Saturday the Senate presented theirs, which, with the President's reply, was immediately out in the newspapers. I refer for both to the Richmond Newspapers, which you will probably have seen. The answer of the House of Representatives, both as reported and as agreed to, is inclosed. The Committee consisted of Sedgwick, Scott, and myself. The draught was made as strong as possible on all proper points, in order the better to get it through without the improper one. This succeeded in the Committee, Scott concurring in the *expediency* of silence on that; though, in the House, he changed his ground. When the report was taken up on Monday, Fitzsimons moved "to *reprobate* the self-created societies, &c., which, though in strictness not *illegal*, contributed by their proceedings to mislead the weak and ignorant." This opened the debate, which you will no doubt have an opportunity of reading in the Virginia papers, if you choose. It so happens that I cannot send them by the mail. The arguments in favor of the motion fell with equal weight on the press and every mode of animadverting on public men and measures. After some time the proposition was new-modelled, and, in a less pointed shape, underwent discussion for several days. On the first question, which tried the sense of the House, the division was 47 against 45 for the usurped power. This was in a Committee of the whole. On a renewal of the same question in the House, the decision was

reversed by 47 in the affirmative and 45 in the negative. A motion was then made to limit the censure to the Societies within the scene of insurrection, which was carried by the casting vote of the Speaker. In this form the whole proposition was abandoned. This was on Thursday; on Friday, it being foreseen that some evil accommodation would come from the other side and succeed, it was proposed by Mr. Nicholas to insert the sentence which distinguishes the first paragraph of the answer agreed to from the Report. An attempt was made to add "and self-created societies" after "combinations," but it had so little prospect of success that it was withdrawn. The answer was presented on Saturday, and received the reply in the inclosed paper, which you will be at no loss to understand. The Republicans were considered by their opponents as rather victorious by the result in the House. The reply of the President is claimed by the latter as a final triumph on their side; and it is probable that so it will prove. You will easily conceive my situation through this whole business. It was obvious that a most dangerous game was playing against Republicanism. The insurrection was universally and deservedly odious. The Democratic Societies were presented as in league with it. The Republican part of Congress were to be drawn into an *ostensible* patronage of those societies, and into an ostensible opposition to the President. And by this artifice the delusion of New England was to be confirmed, and a chance afforded of some new turn in Virginia before the elections in the Spring. What the success of this game will really be, time must decide. If the people of America are so far degenerated already as not to see, or to see with indifference, that the citadel of their liberties is menaced by the precedent before their eyes, they require abler advocates than they now have to save them from the consequences. Lengthy as the debate was, I took but little part in it; and that little is very erroneously, as well as defectively, stated in the newspapers. No private letters from Monroe. An official one of September 15th speaks of the utmost prosperity at home, of the irresistible discipline and enthusiasm of their armies, and of the most unalterable affection to this Country.

All that is given out from Jay's negotiation is in favor of some advantageous result.

TO JAMES MONROE.

PHILADELPHIA, Dec^r 4th, 1794.

DEAR SIR,—I did not receive your favor of September 2d, the only one yet come to hand, till yesterday. The account of your arrival and reception had some time ago found its way to us through the English Gazettes. The language of your address to the Convention was certainly very grating to the ears of many here; and would no doubt have employed the tongues, and the pens too, of some of them, if external as well as internal circumstances had not checked them; but more particularly the appearance about the same time of the President's letter, and those of the Secretary of State. Malicious criticisms, if now made at all, are confined to the little circles which relish that kind of food. The sentiments of the President will be best communicated by Mr. Randolph. You are right in your conjecture, both as to the facility given to the Envoy Extraordinary by the triumphs of France, and the artifice of referring it to other causes. The prevailing idea here is that the Mission will be successful, though it is scarcely probable that it will prove so in any degree commensurate to our rights, or even to the expectations which have been raised. Whilst no industry is spared to prepare the public mind to echo the praises which will be rung to the address of the negociator, and the policy of defeating the commercial resolutions proposed at the last session. It will not be easy, however, to hide from the view of the judicious and well-disposed part of the community, that every thing that may be obtained from Great Britain will have been yielded by the fears inspired by those retaliating measures, and by the state of affairs in Europe.

You will learn from the newspapers and official communications the unfortunate scene in the Western parts of Pennsylvania which unfolded itself during the recess. The history of its

remote and immediate causes, the measures produced by it, and the manner in which it has been closed, does not fall within the compass of a letter. It is probable, also, that many explanatory circumstances are yet but imperfectly known. I can only refer to the printed accounts, which you will receive from the Department of State, and the comments which your memory will assist you in making on them. The event was, in several respects, a critical one for the cause of liberty, and the real authors of it, if not in the service, were, in the most effectual manner, doing the business of Despotism. You well know the general tendency of insurrections to increase the momentum of power. You will recollect the particular effect of what happened some years ago in Massachusetts. Precisely the same calamity was to be dreaded on a larger scale in this case. There were enough, as you may well suppose, ready to give the same turn to the crisis, and to propagating the same impressions from it. It happened most auspiciously, however, that, with a spirit truly Republican, the people every where, and of every description, condemned the resistance to the will of the majority, and obeyed with alacrity the call to vindicate the authority of the laws. You will see, in the answer of the House of Representatives to the President's speech, that the most was made of this circumstance, as an antidote to the poisonous influence to which Republicanism was exposed. If the insurrection had not been crushed in the manner it was, I have no doubt that a formidable attempt would have been made to establish the principle that a standing army was necessary for *enforcing the laws*. When I first came to this City, about the middle of October, this was the fashionable language. Nor am I sure that the attempt would not have been made, if the President could have been embarked in it, and particularly if the temper of New England had not been dreaded on this point. I hope we are over that danger for the present. You will readily understand the business detailed in the newspapers relating to the denunciation of the "self-created Societies." The introduction of it by the President was, perhaps, the greatest error of his political life. For his sake, as well as for a variety of obvious rea-

sons, I wished it might be passed over in silence by the House of Representatives. The answer was penned with that view, and so reported. This moderate course would not satisfy those who hoped to draw a party advantage out of the President's popularity. The game was to connect the Democratic Societies with the odium of the insurrection; to connect the Republicans in Congress with those Societies; to put the President ostensibly at the head of the other party, in opposition to both, and by these means prolong the illusions in the North, and try a new experiment on the South. To favor the project, the answer of the Senate was accelerated, and so framed as to draw the President into the most pointed reply on the subject of the Societies. At the same time, the answer of the House of Representatives was procrastinated, till the example of the Senate and the commitment of the President could have their full operation. You will see how nicely the House was divided, and how the matter went off. As yet, the discussion has not been revived by the newspaper combatants. If it should, and equal talents be opposed, the result cannot fail to wound the President's popularity more than anything that has yet happened. It must be seen that no two principles can be either more indefensible in reason, or more dangerous in practice, than that—1. Arbitrary denunciations may punish what the law permits, and what the Legislature has no right by law to prohibit; and that, 2. The Government may stifle all censure whatever on its misdoings; for if it be itself the Judge, it will never allow any censures to be just; and if it can suppress censures flowing from one lawful source, it may those flowing from any other—from the press and from individuals, as well as from Societies, &c.

The elections for the House of Representatives are over in New England and Pennsylvania. In Massachusetts, they have been contested so generally as to rouse the people completely from their lethargy, though not sufficiently to eradicate the errors which have prevailed there. The principal members have been all severely pushed; several changes have taken place, rather for the better, and *not one* for the worse. In Pennsylvania, Republicanism claims 9 out of 13, notwithstanding the

very disadvantageous circumstances under which the election was made. In New York, it is expected the proportion of sound men will be increased. In Maryland, the choice has been much as heretofore. Virginia and North Carolina will probably make no changes for the worse. In the former, Mr. Griffin resigns his pretensions. Mr. Lee will probably either do so, or be dropped by his Constituents. In South Carolina, the death of Gillon will probably let in Mr. Barnwell. In Delaware, Patton is elected, in lieu of Lattimer. On the whole, the prospect is rather improved than otherwise. The election of Swanwick, as a Republican, by the Commercial and political Metropolis of the United States, in preference to Fitzsimmons, is, of itself, of material consequence, and is so felt by the party to which the latter belongs. For what relates to the Senate, I trust to the letters which you will receive from Brown and Langdon, whom I have apprized of this opportunity of answering yours. I shall observe, only, that Tazewell and S. T. Mason were elected by the most decided majorities to fill your vacancy and that of Col. Taylor, who gave in his resignation. Not a single Anti-republican was started. Mr. Dawson was a candidate, and got 40 votes against 122. Brooke is also Governor by a pretty decided vote. He had 90 odd, against 60 odd given to Wood, his only competitor.

I had a letter lately from Mr. Jefferson. He has been confined by the rheumatism since August, and is far from being entirely recovered. Mr. T. M. Randolph has also been in a ticklish situation; what it is at present, I cannot say. Mr. Jones was well a few days ago; he was then setting out to Loudoun, where he has made a great purchase of land from Col. Chs. Carter. I infer from his letters to me that you are included in it. He will no doubt write you fully on that subject, or more probably has written already.

I have not received anything from Wilkinson, nor from Vermont; nor heard anything relating to your interests in New York. I have given notice to Mr. Yard and Doctor Stephens of this conveyance, and expect both will write. Mrs. Heilager is also here, on her way to St. Croix, and will no doubt write

to Mrs. Monroe. She tells me all friends are well in New York. I hope her letter will give all the particulars, which may be interesting.

When in Albemarle last fall, I visited your farm along with Mr. Jefferson, and viewed the sites out of which a choice is to be made for your house. The one preferred by us is that which we favored originally, on the east side of the road, near the field not long since opened. All that could be suggested by way of preparation was, that trees be planted promiscuously and pretty thickly in the field adjoining the wood. In general, your farm appeared to be as well as was to be expected. Your upper farm I did not see, being limited in my stay in that quarter.

I have just seen Mr. Ross, who tells me he has received your letter. He would write by this opportunity, but wishes to be more full than the time will permit. We expect another will offer in a few weeks, when we shall all continue our communications. I should say more to you now, if I could say it in cypher.

Present my best respects to Mrs. Monroe and Eliza, and tell them I shall be able on their return to present them with a new acquaintance, who is prepared, by my representations, to receive them with all the affection they merit, and who, I flatter myself, will be entitled to theirs. The event which put this in my power took place on the 15th of Sept^r. We are at present inhabitants of the house which you occupied last winter, and shall continue in it during the session.

With my sincerest wishes for your happiness and that of your amiable family, I remain, affectionately.

Hamilton has given notice that he means to resign. Knox means to do the same. It is conjectured that the former will contend for the Government of New York. Burr will be the competitor.

TO THOMAS JEFFERSON.

PHILADELPHIA, December 21, 1794.

DEAR SIR,—Your favor of the 9th, by the Orange Post, arrived here on the 18th; that of the 12, by the Richmond Post, on the 20th; so that it appears the latter was one day less on the way. It is to be remarked, however, that as the Orange post leaves Charlottesville on Tuesday, he might easily be in Fredericksburg on Thursday, in time for the mail which passes through it on that day to Dumfries. If this despatch is not required of him, it ought to be. It would make a difference of two days in the journey. Or, at least, the post might wait a day in Charlottesville, and be in time for the Saturday's mail at Fredericksburg.

Our weather here has been as fine as you describe yours. Yesterday there was a change. It was cold, cloudy, and inclined to snow. To-day we have a bright day, and not very cold.

Prices here are very different from yours. Wheat is at 13s. or 14s., and flour in proportion. In general, things are 50 per cent. beyond the prices of last winter.

The phenomenon you wish to have explained is as little understood here as with you; but it would be here quite unfashionable to suppose it needed explanation. It is impossible to give you an idea of the force with which the tide has set in a particular direction. It has been too violent not to be soon followed by a change. In fact, I think a change has begun already. The danger will then be of as violent a reflux to the opposite extreme.

The attack made on the essential and constitutional right of the Citizen, in the blow levelled at the "self-created Societies," does not appear to have had the effect intended. It is and must be felt by every man who values liberty, whatever opinions he may have of the use or abuse of it by those institutions. You will see that the appeal is begun to the public sentiment by the injured parties. The Republican society of Baltimore set the example. That of Newark has advertised a meeting of its members. It is said that if Edw^d Livingston, as is generally

believed, has outvoted Watts for the House of Representatives, he is indebted for it to the invigorated exertions of the Democratic society of that place, of which he is himself a member. In Boston, the subject is well understood, and handled in the newspapers, on the republican side with industry and address.

The elections in Massachusetts have turned out rather better than was of late expected. The two republican members have stood their ground, in spite of the most unexampled operations against them. Ames is said to owe his success to the votes of Negroes and British sailors, smuggled under a very lax mode of conducting the election there. Sedgwick and Goodhue have *bare* majorities. Dexter is to run another heat, but will succeed; Gerry, his only considerable competitor, and who would outvote him, refusing to be elected. There are several changes in the remainder of the delegation, and some of them greatly for the better. In New York there will be at least half republicans, perhaps more. It has unluckily happened that in two Districts two *republicans* set up against one Anti. The consequence is, that a man is re-elected who would not otherwise have taken the field; and there is some danger of a similar consequence in the other district. In New Jersey, it is said that not more than one of the old members will be returned. The people all over the State are signing with avidity a remonstrance against the high salaries of the Government

Hamilton is to resign, according to his own notification, the last of February. His object is not yet unfolded. Knox, as the shadow, follows the substance. Their successors are not yet designated by any circumstance that has escaped.

What think you of a project to disfranchise the insurgent Counties by a bill of exclusion against their Representatives in the State Legislature? The object is to pave the way for Bingham or Fitzsimmons as Senator, and to give an example for rejecting Gallatin in the House of Representatives at the next Congress, of which he is a member. The proposition has been laid on the table, and the event is uncertain. There is some probability the violence of the measure may defeat it; nor is it

certain, I am told, that, if carried through, it would answer the purpose of its authors.

TO EDMUND PENDLETON.

PHILADELPHIA, January 8, 1795.

MY DEAR SIR,—I have received your favor of the 30 ult., and am joined by my partner in the sincerest returns for your congratulations and friendly wishes. I hope this will find you in more confirmed health, and enjoying the commencement of a new year with every prospect that can make it a happy one.

One of the papers inclosed gives you the latest news from Europe. It is to be hoped that the dawn of peace may not be overcast. We have nothing of late date either from Jay or Monroe. No communications whatever as to the negotiations of the former have yet been laid before Congress. The accounts which circulate through private channels have flattered, in general, the wishes entertained by all for his success. In the other paper you will see the opinion of this gentleman, when an advocate for the Constitution, on the nature of the tax on carriages. If it remains the same when he is to decide as Chief Justice, we may yet hope to see this breach in the Constitution repaired. The House of Representatives have been engaged in revising the naturalization law, which has been found not duly guarded against intrusions and evasions. The new bill, as passed the House, requires of the candidate for Citizenship residence for five years, an oath of abjuration as well as of allegiance, satisfaction to the Court of good Character, attachment to the *principles* of the Constitution, and of being well disposed to the good order and happiness of the United States. On the motion of Mr. Giles, a clause was added requiring of all who may have belonged to the order of Nobility, or borne any hereditary title, to make an express renunciation on these points in court and upon record. You will think it strange, perhaps, that this should have met with opposition; and yet it became a question of some heat, tho' opposed rather as unimportant than improper.

Several of the conditions have reference to the present State of Europe, and the danger of an influx to this country both of aristocracy and licentiousness. It seems not amiss that we should be on our guard against both extremes. There will be a serious effort made to begin an effectual operation for paying off the public debt. The increase of the impost presents a fund that will of itself, if not diverted, answer the purpose. The Legislature of this State has just passed an exclusion vote in each House against the Representatives and Senators from the Counties lately in insurrection. I am not able to say on what principle. I wish it may not have been too much a work of party. If they proceed to any business not urgent, before the vacant seats can be refilled, it will wear so much of that appearance as to threaten a revival of discontents, which ought to be buried as much as possible.

How is Col. Taylor, and how employed? Offer him, if you please, my best and sincerest wishes for his health and happiness.

With the truest esteem and affection, I am, dear sir, yours.

Tazewell has been here a short time only, and Mason has not been heard of.

TO MR. JEFFERSON.

PHILADELPHIA, January 11, 1795.

DEAR SIR,—The last subject before the House of Representatives was a Bill revising the naturalization law, which, from its defects and the progress of things in Europe, was exposing us to very serious inconveniences. The Bill requires—1. A probationary residence of 5 instead of 2 years, with a formal declaration on oath of the intention 3 years, at least, prior to the admission. 2. An oath of *abjuration*, as well as of allegiance. 3. Proof of good character, attachment to the principles of our Government, and of being well disposed to the good order and

happiness of the United States. 4. Where the candidate has borne any title, or been of any order of Nobility, he is to renounce both on record. This last raised some dust. The Eastern members were weak enough to oppose it; and Dexter, as a set off, moved a correspondent clog on emigrants attached to slaveholding. Whether they will be able to throw the dust they have raised into the eyes of their constituents, I know not. It will not be easy, I think, to repair the blunder they have committed, if it reaches the people. On the ayes and nays, there were 60 for and little more than 30 against the clause. The Bill is gone to the Senate.

Our revenue from trade is so increased as to supply a fund for commencing the discharge of the public debt. The excises laid at the last session will probably be left as they stand. The Treasury bench have attempted to make them perpetual, and brought about a report of a Committee to prolong them till the year 1801. Another Committee, after conferring with the sugar-bakers and snuff-makers, have agreed on a counter Report, which will probably defeat the project. The French gain victories faster than we can relate them. In Spain, Sardinia, and Holland, they are equally sweeping everything before them. They were not in Amsterdam, but expected in a few days. The patriotic party was openly revived, and it was not doubted that the Stadtholder would move off to England for his personal safety. The Duke of York has been well drubbed again at Nimeguen. It was said to be agitated in the British Cabinet whether he should not, with all his troops, have withdrawn from the Continent. It is surmised that Prussia has actually treated with France, and that the Emperor is taking the same course. It is, indeed, agreed that France can dictate peace to all her enemies, except England, and that she will probably do so, in order to have a fair campaign with England alone. Nothing final yet from Jay. It is expected here that he will accomplish much, if not all he aims at. It will be scandalous if we do not, under present circumstances, get all that we have a right to demand.

Not a word from Monroe.

TO THOMAS JEFFERSON.

PHILADELPHIA, January 26, 1795.

DEAR SIR,—I have received your favor of December 28, but not till three weeks after the date of it. It was my purpose to have answered it particularly, but I have been robbed of the time reserved for the purpose. I must, of consequence, limit myself to a few lines, and to my promise given to the Fresco painter to forward you the enclosed letter.

Nothing since my last from Jay or Monroe. The Newspapers, as usual, teem with French' victories, and rumors of peace. There seem to be very probable indications of a progress made to this event, except in relation to Great Britain, with whom a Duet campaign is the cry of France. The naturalization has not yet got back from the Senate. I understand, however, it will suffer no material change. They have the prudence not to touch the nobility clause. The House of Representatives are on the Military establishment and the public debt. The difficulty and difference of opinion, as to the former, produced a motion to request the President to cause an estimate of the proper defence, &c. It was, in its real meaning, saying, we do not know how many troops ought to be provided by our Legislative duty, and ask your direction. It was opposed as opening the way for dragging in the weight of the Executive for one scale on all party questions; as extorting his opinion, which he should reserve for his negative; and as exposing his unpopular opinions to be extorted at any time by an unfriendly majority. The prerogative men chose to take the subject by the wrong handle, and being joined by the weak men, the resolution passed. I fancy the Cabinet are embarrassed on the subject. On the subject of the Debt, the Treasury faction is spouting on the policy of paying it off as a great evil, and laying hold of two or three little excises, past last session under the pretext of war, are claiming more merit for their zeal than they allow to the opponents of their puny resources. Hamilton has made a long valedictory Report on the subject. It is not yet printed, and I have not read it. It is said to contain a number of improper

things. He got it in by informing the Speaker he had one ready, (on the actual revenues,) for the House, when they should please to receive it.

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TO THOMAS JEFFERSON.

PHILADELPHIA, Feb^y 15, 1795.

DEAR SIR,— * * * * *

Although nearly three months have passed since the signing of the Treaty by Jay, the official account of it has not been received, and the public have no other knowledge of its articles than are to be gleaned from the imperfect scraps of private letters. From these it is inferred that the bargain is much less in our favour than might be expected from the circumstances, which co-operated with the justice of our demands. It is even conjectured that on some points, particularly the Western posts, the arrangements will be inadmissible. I find that in New York there are accounts, which are credited, that the posts, after the surrender, are to be thoroughfares for the traders and merchandize of both parties. The operation of this will strike you at once, and the sacrifice is the greater, if it be true, as is stated, that the former regulation on the subject secured to the United States the monopoly of the fur trade, it being impossible for the Canadian traders to get to and from the markets without using our portages, and our parts of the lakes. It is wrong, however, to prejudge; * * * but I suspect that Jay has been betrayed by his anxiety to couple us with England, and to avoid returning with his finger in his mouth. * * * * It is apparent that those most likely to be in the secret of the affair do not assume an air of triumph.

The elections in New York give *six* republicans, instead of the former *three*. E. Livingston had in the city 205 votes more than Watts, the present member. In Massachusetts, the elections are, in several instances, still to be repeated. Dexter is to run a *third* heat. In the last his rival outvoted him, but was

disappointed by a few scattering votes, which prevented his having a majority of the whole. It is said that if nothing new turns up, Varnum will be sure to succeed on the next trial. The choice of Senators continues to run on the wrong side. In Delaware, where we were promised of late a Republican, it was contrived, by a certain disposition of offices, as some tell us, or, according to others, occasioned by particular sicknesses, that Latimer, of the House of Representatives, lately dropped by the people, has been appointed by the Legislature. N. Carolina has appointed Bloodworth, whom you may recollect. His countrymen here do not augur favorably of his political course. Clinton has declined a re-election to the Government of New York. His party set up Yates and Floyd against Jay and Van Rennselaer. Hamilton does not interfere with Jay. It is pompously announced in the newspapers that poverty drives him back to the Bar for a livelihood.

The session has produced, as yet, but few acts of consequence. Several important ones are depending; on the subject of the Militia, of the Military Establishment, and the discharge of the public debt. On the first, little more will probably be done than to digest some regulations, which will be left for public consideration till the next session. On the second, the present Military Establishment will be continued and completed; notwithstanding the late Treaty with the six Nations, the success of Wayne against the other tribes, and the disappearance of ominous symptoms in the aspect of Great Britain. I am extremely sorry to remark a growing apathy to the evil and danger of standing armies. And a vote passed two days ago, which is not only an evidence of that, but, if not, the effect of unparadonable inattention, indicates a temper still more alarming. In the Military acts now in force, there are words limiting the use of the army to the protection of the Frontiers. The Bill lately brought in revised the whole subject, and omitted this limitation. It was proposed to reinstate the words. This was rejected by a large majority. It was then proposed to substitute another phrase, free from the little criticisms urged against the first proposition. The debate brought out an avowal that

the Executive ought to be free to use the regular troops, as well as the Militia, in support of the laws against our own citizens. Notwithstanding this, the amendment was lost by 8 votes. The House was very thin, and it is supposed that the majority would have been in favor of the amendment if all the members had been present. The mischief, however, is irremediable, as the Senate will greedily swallow the Bill in its present form. This proceeding is the more extraordinary when the President's Speech and the answer of the House of Representatives are recollected and compared with it. The third subject is the reduction of the public debt. Hamilton has, in an arrogant valedictory Report, presented a plan for the purpose. It will require about 30 *years* of uninterrupted operation. The fund is to consist of the surpluses of impost and excise, and the temporary taxes of the last session, which are to be prolonged till 1817. You will judge of the chance of our ever being out of debt, if no other means are to be used. It is to be lamented that the public are not yet better reconciled to direct taxes, which alone can work down the debt faster than new emergencies will probably add to it. Of this dislike the partizans of the Debt take advantage, not only to perpetuate it, but to make a merit of the application of inadequate means to the discharge of it. The plan of Hamilton contained a number of new irredeemabilities, among the remodifications proposed by him. All these have been struck out.

Mr. Christie, of the House of Representatives, intends to visit England in the interval between the present and next session. He is ambitious of a line from you introducing him to Mr. Pinekney, and has made me his solicitor for it. He is a man of good sense, and second to none in a decided and systematic devotion to Republicanism. Will you oblige us both by inclosing me such a letter? You need not fear its [not?] reaching me, as I shall be detained here some time after the adjournment.

Adieu.

TO JAMES MONROE.

PHILADELPHIA, March 11, 1795.

DEAR SIR,—

* * * * *

I have not yet received a single line from you except yours of September 2d, long since acknowledged. Your last letters of the official kind were duplicates of Oct^r 16, Nov^r 7, and 20. You will perceive in the newspapers that the parts of them relating to the Jacobin societies have been extracted and printed. In New York they have been republished, with your name prefixed. The question agitated in consequence of the President's denunciation of the Democratic societies will account for this use of your observations. In New York, where party contests are running high in the choice of a successor to Clinton, who declines, I perceive the use of them is extended, by adroit comments, to that subject also. It is proper you should be apprized of these circumstances, that your own judgment may be the better exercised as to the latitude or reserve of your communications.

The Treaty concluded with Great Britain did not arrive before the adjournment and dispersion of Congress. The Senators received a summons to reassemble on the 8th of June, on the calculation that the Treaty could not fail to be received by that time. It arrived a few days after. It is a circumstance very singular that the first knowledge of its contents, as finally settled, should not have come to the Executive till more than three months after the date of it. What its contents are, the Executive alone as yet know, the most impenetrable secrecy being observed. You will easily guess the curiosity and disappointment of the public. Complaints, however, are repressed, by the confidence that some adequate reasons exist for the precaution. The arrival of this Treaty and the delicate relations in which we stand to France are beginning to turn the public attention to the prospect of meliorating the Treaty with her, and the arrangements that may have been taken on either side for the purpose. It is certainly much to be desired that the crisis should not be suffered to elapse without *securing* to this Country the

previous advantages in commerce which we now enjoy from the indulgence or temporary embarrassments of that Nation; and still more, that the possibility should be precluded of any collisions that may endanger the general friendship already stipulated between them.

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TO THOMAS JEFFERSON.

PHILADELPHIA, March 23, 1795.

DEAR SIR,—Your two last favors contained, one of them, the letter for Mr. Christie, which has been sent to him; the other accompanied the letters to the President and Mr. Randolph. The two latter were duly delivered also. The President touched on the subject the other day in conversation with me, and has no doubt written to you on it. There are difficulties, I perceive, in the way of your suggestion, besides the general one arising from the composition of the Scientific body *wholly* out of foreign materials. Notwithstanding the advantages which might weigh in the present case against this objection, I own that I feel its importance. It was not sufficient, however, to induce me to withhold your remarks from the President, as your letter would have authorized me to do. Whilst I am acknowledging your favors, I am reminded of a passage in a former one,* which I had proposed to have answered at some length. Perhaps it will be best, at least for the present, to say, in brief, that reasons of *every* kind, and some of them of the most insuperable as well as *obvious* kind, shut my mind against the admission of any idea such as you seem to glance at. I forbear to say more, because I can have no more to say with respect to myself; and because the great deal that may and ought to be said beyond that restriction will be best reserved for some other occasion; perhaps for the latitude of a free conversation. You ought to be preparing yourself, however, to hear truths which no inflexibility will be able to withstand.

* Decr 28, 1794. Jefferson's Correspondence.

I have already told you of my failure to get from Edmund Randolph one of your books, which has slipped out of his memory as well as his hands. I have since, after repeated applications, got from Wilson Flandon, [?] Fleta, Bracton, &c. Mably, he says, he lent to Gallatin, with your permission. This was not mentioned, however, till very lately; and Gallatin is at present in New York. As soon as he returns I will renew my efforts.

I have procured for you the "sketches on rotations," which I find to be truly a good thing. It was written by Mr. Boardly. The other publications referred to in page 43 are not to be had at the booksellers. I propose, if an opportunity offers, to get them through some friend, who can carry the enquiry to the author himself. I have also procured you the correspondences with Hammond, &c. All these, with some other things deemed worth your possessing, I shall pack up for a conveyance by water to Richmond, addressing them to the merchant there from Staunton, whose name I cannot at this moment recollect.

The Treaty with England arrived soon after the adjournment. It is kept an impenetrable secret by the Executive. The Senate are summoned to meet it the 8th of June. I wish it may not be of a nature to bring us into some delicacies with France, without obtaining fully our objects from Great Britain. The French, it is said, are lately much less respectful than heretofore to our rights on the seas.

We have no private letters from Monroe. His last public ones were no later than November. They contained a history of the Jacobin clubs, in the form of an apology for the Convention. Extracts on that subject were immediately put into the newspapers, and are applied to party purpose generally, particularly in New York, where the election of Governor is on the anvil. Yates and Jay are the candidates. The last accounts from Amsterdam foretell in the next the capture of that place by the French. The enclosed speeches of Pitt and Fox will give you the English politics, and a general view of the crisis in Europe.

I have been detained here by a sick family, and am so at

present by the state of the roads, which are kept bad by the rains and the frosts. I am extremely anxious to be on the journey, and shall set out as soon as I can prudently venture.

Yours always, and most affectionately.

TO JAMES MONROE.

PHILADELPHIA, March 26, 1795.

DEAR SIR,—My last was written about ten days ago, for a conveyance intimated to be in the view of the office of State. I have since that received yours committed to Mr. Swan, and two hours ago that of December 18, covering the private one for Mr. Randolph. The other, referred to as sent by the way of Havre, is not yet come to hand.

Mr. Swan is much embarrassed in his operations by the enormous price of Wheat and flour. The latter has been above ten dollars a barrel, and is now at that price. The former has been as high as 15s. 3d., and is now very little below that. Mr. Swan is apprehensive that he will be compelled to direct his attention to some other quarter of the world. It is a matter of double regret that such a necessity should happen. The causes of this extraordinary rate of produce are differently explained. The deficiency of the last harvest is certainly a material one. The influence of the Bank credits on mercantile enterprize and competition may be another, though this cause cannot at this moment operate, as the Banks are in another paroxysm of distress, and have for some time discontinued their discounts. The idea of *great* demands from Europe, particularly from France, has no doubt contributed to the effect; though this cannot particularly refer to the object of Mr. Swan, because the high prices preceded his operation, and, in fact, are not peculiar to the articles he wants, or limited to articles having any relation to them. In general, prices are exorbitantly high, and in this place incredibly so. The markets have been nearly 100 per cent. advanced in some, and fifty in most instances, beyond the

state of them prior to your departure. - House Rents have kept the same course. These circumstances denote some general and deeply-rooted cause.

From as near a view as I have yet been able to take of your letter to Mr. R., I see no reason why I should hesitate to deliver it. I cannot forbear believing that the Report of stipulations, offensive and defensive, is quite without foundation; but your view of things, on the contrary supposition, involves a variety of interesting ideas; and your communications and reflections in general with regard to the Treaty, as proceeding from one in your position and of your sentiments, merit too much attention in the Executive Department to be withheld altogether from it. I mentioned in my last that the Treaty was come, but kept a profound secret. In that state it remains. Its contents have produced conjectural comments without number. As I am as much out of the secret as others, I can say nothing that goes beyond that character. I should hope it to be impossible that any stipulation, if any should be attempted, inconsistent with the Treaties with France, can ever be pursued into effect. I cannot even believe that any such stipulation would be hazarded. The President, to say nothing of the people, would so certainly revolt at it, that more than wickedness would be requisite in the authors. At the same time, it is possible that articles may be included that will be ominous to the confidence and cordiality of France towards the United States, not to mention that any arrangements with Great Britain, (beyond the simple objects you mention,) made at the present juncture and extorted by the known causes, must naturally appear in the light you represent. How the instructions to Jay may square with what he may have done, or both or either with the language you were authorized to hold, must await future lights. As I do not know how far official communications may or may not put you in possession of the contents of the Treaty before this arrives, and as it appears you had no previous or contemporary knowledge of the particulars, I ought not to decline the task of giving you what appears to me to be the most probable account of them; premising that I speak without the least clue or hint from the offi-

cial quarter, and what is truly to be taken for conjecture, or, at most, for inferences from circumstances mostly of newspaper publicity: 1. It is generally agreed that the posts are to be surrendered, but not before June, 1796; and it is among the reports, that they are afterwards to be a sort of thoroughfare for both parties. This would be a very disagreeable and a very unpopular ingredient. 2. The Compensations for losses are supposed to be in a train primarily judicial, eventually diplomatic. The sufferers, I believe, are very little sanguine, but they are, in general, silent, from causes which you will readily imagine. 3. I should have mentioned the other stipulations in the treaty of peace, besides the delivery of the posts. On this, little is said, except, in general, that they are to be executed on both sides. Perhaps the question of interest during the war, and complaints on the British side from State laws affecting their debts, may be referred, along with some of the American losses from privateers and Admiralty Courts, to Commissioners. This, however, is purely conjectural. 4. A footing of reciprocity with respect to the trade directly with Great Britain, so far as to put British and American vessels on the same footing in American ports, and American and British on the same footing in British ports. As this would take from our vessels the advantage they now enjoy, particularly with respect to the difference of ten per cent. in the duties, it would be injurious, and, if not countervailed, unpopular. 5. An admission of American vessels to the British West Indies, if under 100, or, perhaps, 75 tons. Whether the right be renounced of reducing British vessels to the same size, is a question of some consequence in relation to this point. 6. The Treaty in relation to the commerce with Great Britain to continue for 12 years; to that with *the West Indies, for 4 years*. I should be led, from some particular circumstances, not to doubt the latter limitation, if the aspect and effect of it were not so strikingly revolting. Having had but a few moments' notice of this opportunity, I am obliged to conclude a very hasty letter with abrupt assurances of the affection with which I am, dear sir, your friend and serv^t.

TO THOMAS JEFFERSON.

August 6, 1795.

DEAR SIR,—I return the paper covered by your favor of the third, which was handed me by a gentleman who picked it up in Charlottesville. I find that the meeting in New York was not exactly as represented to you. The Republicans were never outnumbered, and the vote of a very full meeting was finally unanimous in remonstrating against the Treaty. The Chamber of Commerce has had a separate meeting, and has passed some counteracting Resolutions. In Portsmouth, Boston, and Philadelphia, *unanimous* Remonstrances have also issued from Town Meetings, and been sent by express to the President. The silence of the disaffected minorities is easily explained. I understand that Mr. Wythe presided at the Richmond meeting, a circumstance which will not be without its weight, especially as he presided at the former meeting in support of the Proclamation. A gentleman who was present says he was told two individuals only in the City openly espoused the Treaty. Even Andrews joins in the general denunciation of it. I have a letter from the Bishop, which is a philippic on the subject. In short, from all quarters, the public voice seems to proclaim the same detestation, except from Alexandria, and its neighbourhood, where there is some division. Doctor Stuart and the Lees take the side of the Treaty. I have a letter from Chancellor Livingston, which tells me he has taken the liberty of writing a free letter to the President, with a view to impress on him the public sentiment, and the consequences of ratifying an act so hostile to the opinions and interests of the people, and to the good understanding with France. The inclosed papers contain some remarks on the Treaty from a hand which will claim attention. They are borrowed, and you may, therefore, return them by Mr. Jones, or any other convenient opportunity.

TO ROBT. R. LIVINGSTON.

August 10, 1795.

D^R SIR,—Your favour of July 6 having been addressed to Williamsburg, instead of *Orange Court House*, did not come to hand till two days ago. Your gloomy Picture of the Treaty does not exceed my ideas of it. After yielding terms which would have been scorned by this Country in the moment of its greatest embarrassments, and of Great Britain's full enjoyment of peace and confidence, it adds to the ruinous bargain with this Nation a disqualification to make a good one with any other. In all our other Treaties it has been carefully stipulated that the Nation to be treated as the most favored Nations, and to come in for all new privileges that may be granted by the United States, must pay for them the same, or an equivalent price, with the grantee. The proposed Treaty with Great Britain, disregarding this obvious rule of justice and equality, roundly agrees that no duty, restriction, or prohibition, with respect to Ships or Merchandize, shall be applied to Great Britain, which do not operate on all other nations. [See Art. XV.] Should any other Nation, therefore, be disposed to give us the most precious and peculiar advantages in their trade, in exchange for the slightest preferences in ours, this Article gives Great Britain a negative on the transaction, unless it be so modified as to let her in for the favour without paying the price of it. But what Nation would be willing to buy favours for another, especially when the inducement to buy and the value of the purchase might depend on the peculiarity of the favour? It must be seen at once that this extraordinary feature would monopolize us to Great Britain, by precluding any material improvement of our existing Treaties, or the hope of any new ones that would be of much advantage to us. That so insidious an Article should have occurred to Lord Grenville's jealousy of the United States, and his policy of barring their connection with other Countries, and particularly with the French Republic, can surprise no one. The concurrence of the American Envoy may not be so easily explained; but it seems impossible to screen him from the most

illiberal suspicions, without referring his conduct to the blindest partiality to the British Nation and Government, and the most vindictive sensations towards the French Republic. Indeed, the Treaty, from one end to the other, must be regarded as a demonstration that the party to which the Envoy belongs, and of which he has been more the organ than of the United States, is a British party, systematically aiming at an exclusive connection with the British Government, and ready to sacrifice to that object, as well the dearest interests of our commerce, as the most sacred dictates of National honour. This is the true Key to this unparalleled proceeding, and can alone explain it to the impartial and discerning part of the public. The leaders of this party stand *self-condemned* in their efforts to palliate the Treaty, by magnifying the necessity of the British Commerce to the United States, and the insufficiency of the United States to influence the regulation of it. You will find, on turning to a pamphlet addressed to your people by Mr. Jay, when the Federal Constitution was before them, that he then could see our power under such a Constitution to extort what we justly claimed from Great Britain, and particularly to open the West India ports to us. As an Agent for the Constitution, he now voluntarily abandons the very object which, as an advocate for the Constitution, he urged as an argument for adopting it. Read, also, the paper N^o. XI, in the publication entitled the *Federalist*, for the view of the subject then inculcated by another advocate. It is with much pleasure, I assure you, that the sentiments and voice of the people in this State, in relation to the attempt to prostrate us to a foreign and unfriendly Nation, are as decided and as loud as could be wished. Many, even of those who have hitherto rallied to the most exceptionable party measures, join in the general indignation against the Treaty. The few who hold out will soon be under the dilemma of following the example, or of falling under imputations which must disarm them of all injurious influence. You will see by the Newspapers that the City of Richmond has trodden in the steps of the other Cities by an unanimous address to the President. You will remark that our Chancellor, Mr. Wythe, presided in the Meeting;

a circumstance which will draw the more attention to it, as he is not only distinguished for his moderation of character, but was President of the Meeting which addressed the President in support of his proclamation of neutrality. How far the other Towns and Counties will imitate Richmond is uncertain. If they should be silent, it will assuredly be the effect, in the former, of a supposed notoriety of their harmony in opposition; and in the latter, to the same cause, added to the dispersed situation of the people. I think it certain that there is not a Town or County in this State, except, perhaps, Alexandria, where an appeal to the inhabitants would be attended with any show of opposition. You will readily conclude, therefore, that *here*, the *public* do not need the measure which you suggest. With respect to the President, his situation must be a most delicate one for himself as well as for his Country; and there never was, as you observe, a crisis where the friends of both ought to feel more solicitude, or less reserve. At the same time, I have reasons, which I think good, for doubting the propriety, and of course utility, of uninvited communications from myself. He cannot, I am persuaded, be a stranger to my opinion on the merits of the Treaty; and I am equally persuaded that the state of the public opinion within my sphere of information will sufficiently force itself on his attention.

It is natural enough for the apologists of the Treaty to lay hold of the doctrine maintained by Mr. Jefferson; but whether that doctrine be right or wrong, they might be reminded that he expressly urges the policy of guarding against it, instead of establishing it by Treaty. The appeal to him, therefore, must add to their condemnation. See his letter to Mr. G. Morris, explaining the discussions with Mr. Genet.

TO _____.

ORANGE, August 23d, 1795.

DEAR SIR,—Your favor of the 3d instant did not come to hand till a few days ago, having been probably retarded by the

difficulty the post met with in passing the water-courses, which have been much swelled of late by excessive rains. It gives me much pleasure to learn that your health has been so much improved, as well as that you are taking advantage of it to co-operate in elucidating the great subject before the public. We see here few of the publications relating to it, except those which issue from meetings of the people, and which are of course republished everywhere. The only Philadelphia paper that comes to me is the Aurora, which, besides frequent miscarriages, is not, I find, the vehicle used by the regular champions on either side. I have occasionally seen Dunlap's, and in that some specimens of the display of the "Features, &c." I wish much to see the whole of it. Your obliging promise to forward it, along with any other things of the kind, will have a good opportunity by the return of Mr. Wilson Nicholas, who is on his way to Philadelphia, and will call on me on his way home. I requested the favour of him to apprize you of the opportunity. I am glad to find that the author of the "Features, &c." meditates a similar operation on "The defence of the Treaty, by Camillus," who, if I mistake not, will be betrayed by his Anglomania into arguments as vicious and as vulnerable as the Treaty itself. The Resolutions of the Chamber of Commerce in New York justify this anticipation. What can be more absurd than to talk of the advantage of securing the *privileges* of sending raw materials to a manufacturing nation, and of buying merchandizes which are hawked over the four quarters of the globe for customers? To say that we must take the Treaty or be punished with hostilities, is something still worse. By the way, it is curious to compare the language of the author and abettors of the Treaty with that held on the subject of our commercial importance, when the Constitution was depending. Jay himself could then view its adoption as the only thing necessary to extort the Posts, &c., and *open the West India ports*. (See his address to the people of New York in the Museum.) The Federalist [N^o. XI] will exhibit a still more striking contrast on this point in another quarter. You intimate a wish that I would suggest any ideas in relation to the Treaty that may oc-

cur to my reflections. In my present sequestered situation, I am too little possessed of the particular turns of the controversy to be able to adapt remarks to them. In general, I think it of importance to avoid laying too much stress on minute or doubtful objections, which may give an occasion to the other party to divert the public attention from the palpable and decisive ones, and to involve the question in uncertainty, if not to claim an apparent victory. The characteristics of the Treaty which I have wished to see more fully laid open to the public view are: 1. Its ruinous tendency with respect to the carrying trade. The increase of our shipping under the new Government has, in most Legislative discussions, been chiefly ascribed to the advantage given to American vessels by the difference of 10 per cent. on the impost in their favor. This, in the valuable cargoes from Great Britain, has been sufficient to check the preference of British Merchants for British bottoms; and it has been not deemed safe hitherto by Great Britain to force on a contest with us in this particular by any countervailing regulations. In consequence of the Treaty, she will no doubt establish such regulations, and thereby leave the British capital free to prefer British vessels. This will not fail to banish our tonnage from the trade with that country. And there seems to have been no disposition in the negociator to do better for our navigation in the West India trade; especially if the exclusion of our vessels from the re-exportation of the enumerated articles, Sugar, Coffee, &c., be taken into the account. The nature of our exports and imports, compared with that of the British, is a sufficient, but at the same time our only defence against the superiority of her capital. The advantage they give us in fostering our navigation ought never to have been abandoned. If this view of the subject be just, and were presented to the public with mercantile skill, it could not fail to make a deep impression on New England. In fact, the whole Treaty appears to me to assassinate the interest of that part of the Union. 2. The insidious hostility of the Treaty to France, in general; but particularly the operation of the 15th article, which, as far as I have seen, has been but faintly touched on, though it be, in fact, pregnant

with more mischief than any of them. According to all our other Treaties, as well as those of all other nations, the footing of the most favored nations is so qualified that those entitled to it must pay the price of any particular privilege that may be granted in a new Treaty. The Treaty of Jay makes every new privilege result to Great Britain, without her paying any price at all. Should France, Spain, Portugal, or any other nation, offer the most precious privileges in their trade, as the price of some particular favour in ours, no bargain could be made unless they would agree not only to let the same favor be extended to Great Britain, but extended gratuitously. They could not purchase for themselves without at the same time purchasing for their rival. In this point of view, the 15th article may be considered as a direct bar to our treating with other nations, and particularly with the French Republic. Much has been said of a suspected backwardness to improve our commercial arrangements with France, and a predilection for arrangements with Great Britain, who had less to give, as well as less inclination to give what she had. It was hardly imagined that we were so soon to grant every thing to Great Britain for nothing in return; and to make it a part of this bad bargain with her, that we should not be able to make a good one with any other nation. 3. The spirit in which every point of the law of nations is regulated. It is the interest of the United States to enlarge the rights of neutral nations. It is the general interest of humanity that this should be done. In all our other Treaties this policy has prevailed. The same policy has pervaded most of the modern Treaties of other nations. Great Britain herself has been forced into it in several of her Treaties. In the Treaty of Jay, every principle of liberality, every consideration of interest, has been sacrificed to the arbitrary maxims which govern the policy of Great Britain. Nay, a new principle has been created, in the face of former complaints of our Executive, as well as against the fundamental rights of nations and duties of humanity, for the purpose of aiding the horrible scheme of starving a whole people out of their liberties.

I. Even waiving the merits of the respective complaints and

pretensions of the two parties, as to the inexecution of the Treaty of peace, the waiver implies that the two parties were to be viewed either as equally culpable or equally blameless; and that the execution of the Treaty of peace equally by both ought now to be provided for. Yet, whilst the United States are to comply in the most ample manner with the article unfulfilled by them, and to make compensation for whatever losses may have accrued from the delay, Great Britain is released altogether from one of the articles unfulfilled by her, and is not to make the smallest compensation for the damages which have accrued from her delay to execute the other.

The inequality of these terms is still further increased by concessions on the part of the United States, which, besides adding to the Constitutional difficulties unnecessarily scattered through the Treaty, may, in a great measure, defeat the good consequences of a surrender of the Western posts.

The British settlers and traders, within an undefined Tract of Country, are allowed to retain both their lands and their allegiance at the same time; and, consequently, to keep up a foreign and unfriendly influence over the Indians within the limits of the United States.

The Indians within those limits are encouraged to continue their trade with the British by the permission to bring their goods duty free from Canada, where the goods, being charged with no such impost as is payable on the goods of the United States, will be offered for sale with that tempting preference; a regulation but too likely, also, to cloak the frauds of smuggling traders in a country favorable to them. The reciprocity in this case is ostensible only, and fallacious.

Under another ostensible and fallacious reciprocity, the advantage secured to the United States, in the fur trade, by their possession of the carrying places, is abandoned to the superiority of British capital, and the inferiority of the Canada duties on imports.

A part only of the Ports, harbours, and bays, of a single British Province, is made free to the United States, in consideration of a freedom of all the ports, harbors, and bays, of the

whole United States. The goods and merchandize of the United States, not entirely prohibited by Canada, (but which, in fact, are always entirely prohibited, when partial and temporary admissions are not dictated by necessity,) may be carried there, in consideration of a free admission of all goods and merchandize from Canada, not entirely prohibited by the U. States, (where, in fact, there never is this entire prohibition.) A like stipulation, liable to the like observations, is extended to the exports of the United States and the Province of Canada. These are further instances of a nominal and delusive reciprocity.

In the case of the Mississippi, there is not even an ostensible or nominal reciprocity. The ports and places on its Eastern side are to be equally free to both the parties; although the Treaty itself supposes that the course of the Northern Boundary of the United States will throw the British beyond the very source of that river. This item of the Treaty is the more to be noticed, as a repetition and extension of the stipulated privileges of Great Britain on the Mississippi will probably be construed into a partiality in the United States to the interests and views of that nation on the American Continent, not likely to conciliate those from whom an amicable adjustment of the navigation of the Mississippi is to be expected; and were no doubt intended by Great Britain as a snare to our good understanding with the nations most jealous of her encroachments and her aggrandizement.

II. Without remarking on the explicit provision for redressing past spoliations and vexations, no sufficient precautions are taken against them in future; on the contrary,

By omitting to provide for the respect due to sea letters, passports, and certificates, and for other customary safeguards to neutral vessels, "a general search-warrant, (in the strong but just language of our fellow-citizens of Charlestown,) is granted against the American navigation." Examples of such provisions were to be found in our other Treaties, as well as in the Treaties of other nations. And it is matter of just surprise that they should have no place in a Treaty with Great Britain, whose

conduct on the seas so particularly suggested and enforced every guard to our rights that could reasonably be insisted on.

By omitting to provide against the arbitrary seizure and impressment of American seamen, that valuable class of Citizens remains exposed to all the outrages, and our commerce to all the interruptions, hitherto suffered from that cause.

By expressly admitting that provisions are to be held contraband in cases other than when bound to an invested place, and impliedly admitting that such cases exist at present, not only a retrospective sanction may be given to proceedings against which indemnification is claimed, but an apparent license is granted to fresh and more rapacious depredations on our lawful commerce. And facts seem to shew that such is to be the fruit of the impolitic concession. It is conceived that the pretext set up by Great Britain, of besieging and starving whole nations, and the doctrine grounded thereon, of a right to intercept the customary trade of neutral nations in articles not contraband, ought never to have been admitted into a Treaty of the United States; because—1. It is a general outrage on humanity, and an attack on the useful intercourse of nations. 2. It appears that the doctrine was denied by the Executive in the discussions with Mr. Hammond, the British Minister, and demands of compensation founded on that denial are now depending. 3. As provisions constitute not less than of our exports, and as Great Britain is nearly half her time at war, an admission of the doctrine sacrifices a correspondent proportion of the value of our commerce. 4. After a public denial of the doctrine, to admit it, in the midst of the present war, by a formal Treaty, would have but too much of the effect, as well as the appearance, of voluntarily concurring in the scheme of distressing a nation in friendship with this Country, and whose relations to it, as well as the struggles for freedom in which they are engaged, give them a title to every good office not strictly forbidden by the duties of neutrality. 5. It is no plea for the measure to hold it up as an alternative to the disgrace of being involuntarily treated in the same manner, without a faculty to redress ourselves; the disgrace of being plundered with impu-

nity against our consent being, under no circumstances, greater than the disgrace of consenting to be plundered with impunity; more especially as the calamity in the former case might not happen in another war; whereas, in the latter case, it is bound upon us for as much of twelve years as there may be of war within that period.

By annexing to the implements of war, enumerated as contraband, the articles of ship-timber, tar, or rosin, copper in sheets, sails, hemp, and cordage, our neutral rights and national interests are still further narrowed. These articles were excluded by the United States from the contraband list when they were themselves in a state of war.*. Their other Treaties expressly declare them not to be contraband. British Treaties have done the same. Nor, as is believed, do the Treaties of any nation in Europe, producing these articles for exportation, allow them to be subjects of confiscation. The stipulation was the less to be admitted, as the reciprocity assumed by it is a mere cover for the violation of that principle; most of the articles in question being among the exports of the United States, whilst all of them are among the imports of G. Britain.

By expressly stipulating with Great Britain against the freedom of enemy's property in neutral bottoms, the progress towards a compleat and formal establishment of a principle in the law of nations so favorable to the general interest and security of commerce receives all the check the United States could give to it. Reason and experience have long taught the propriety of considering free ships as giving freedom to their cargoes. The several great maritime nations of Europe have not only established it at different times by their Treaties with each other, but on a solemn occasion [the armed neutrality] jointly declared it to be the law of nations by a specific compact, of which the United States entered their entire approbation. Great Britain alone dissented. But she herself, in a variety of prior Treaties, and in a Treaty with France since, [1786,] has acceded to the principle. Under these circumstances,

* See Ordinance regulating captures in 178 .

the United States, of all nations, ought to be the last to unite in a retrograde effort on this subject, as being more than any other interested in extending and establishing the commercial rights of neutral nations. Their situation particularly fits them to be carriers for the great nations of Europe during their wars. And both their situation and the genius of their Government and people promise them a greater share of peace and neutrality than can be expected by any other nation. The relation of the United States by Treaty on this point to the enemies of Great Britain was another reason for avoiding the stipulation. Whilst British goods in American vessels are protected against French and Dutch capture, it was enough to leave French and Dutch goods in American vessels to the ordinary course of Judicial determinations, without a voluntary, a positive, and an invidious provision for condemning them. It has not been overlooked, that a clause in the Treaty proposes to renew, at some future period, the discussion of the principle it now settles; but the question is then to be, not only in what, but whether in any cases, neutral vessels shall protect enemy's property; and it is to be discussed at the same time, not whether in any, but in what cases, provisions and other articles, not bound to invested places, may be treated as contraband. So that when the principle is in favor of the United States, the principle itself is to be the subject of discussion; when the principle is in favor of Great Britain, the application of it only is to be the subject of discussion.

III. Whenever the law of nations comes into question, the result of the Treaty accommodates Great Britain in relation to one or both of the Republics at war with her, as well as in diminution of the rights and interests of the United States.

Thus, American vessels bound to Great Britain are protected by sea papers against French or Dutch searches; bound to France or Holland, are left exposed to British searches, without regard to such papers.

British property in American vessels is not subject to French or Dutch confiscation. French or Dutch property in American vessels is subjected to British confiscation.

American provisions in American vessels, bound to the enemies of Great Britain, are left by Treaty to the seizure and use of Great Britain; provisions, whether American or not, in American vessels, cannot be touched by the enemies of Great Britain.

Timber for ship-building, tar, or rosin, copper in sheets, sails, hemp, and cordage, bound to the enemies of Great Britain, for the equipment of vessels of trade only, are contraband; bound to Great Britain for the equipment of vessels of war, are not contraband.

American citizens, entering, as volunteers, the service of France or Holland against Great Britain, are to be punished. American volunteers joining the arms of Great Britain against France or Holland are not punishable.

British ships of war and privateers, with their prizes made on citizens of Holland, may freely enter and depart the ports of the United States. Dutch ships of war and privateers, with their prizes made on subjects of Great Britain, are to receive no shelter or refuge in the ports of the United States. And this advantage in war is given to Great Britain, not by a Treaty prior, and having no relation, to an existing war, but by a Treaty made in the midst of war, and prohibiting a like article of Treaty with Holland for equalizing the advantage.

The article prohibiting confiscations and sequestrations is unequal between the United States and Great Britain. American Citizens have little, if any, interest in public or Bank stock, or in private debts within G. Britain. British subjects have a great interest in all within the United States. Vessels and merchandize belonging to individuals, governed by the same "confidence in each other, and in regard to their respective Governments for their municipal laws, and for the laws of nations allowed to be part thereof as consecrates private debts," are not exempted from such proceedings. So that, where much would be in the power of the United States, and little in the power of Great Britain, the power is interdicted. Where more is in the power of Great Britain than of the United States, the power is left unconfined. Another remark is applicable. When

the modern usage of nations is in favor of Great Britain, the modern usage is the rule of the Treaty. When the modern usage was in favor of the United States, the modern usage was rejected as a rule for the Treaty.

IV. The footing on which the Treaty places the subject of Commerce is liable to insuperable objections.

1. The nature of our exports and imports, compared with those of other Countries, and particularly of Great Britain, has been thought by the Legislature of the United States to justify certain differences in the tonnage and other duties in favor of American bottoms; and the advantage possessed by Great Britain in her superior capital was thought at the same time to require such countervailing encouragements. Experience has shewn the solidity of both these considerations. The American navigation has, in a degree, been protected against the advantage on the side of British capital, and has increased in proportion; whilst the nature of our exports, being generally necessaries or raw materials, and of our imports, consisting mostly of British manufactures, has restrained Great Britain from any attempt to counteract the protecting duties afforded to our navigation. Should the Treaty go into effect, this protection is relinquished; Congress are prohibited from substituting any other; and the British capital, having no longer the present inducement to make use of American bottoms, may be expected, *through whatever hands operating*, to give the preference to British bottoms.

2. The provisions of the Treaty which relate to the West Indies, where the nature of our exports and imports gives a commanding energy to our just pretensions, instead of alleviating the general evil, are a detail of peculiar humiliations and sacrifices. Nor is a remedy by any means to be found in the proposed suspension of that part of the Treaty. On the contrary,

If Great Britain should accede to the proposition, and the Treaty be finally established without the twelfth article, she will, in that event, be able to exclude American bottoms altogether from that channel of intercourse, and to regulate the

whole trade with the West Indies in the manner hitherto complained of; whilst, by another article of the Treaty, the United States are compleatly dispossessed of the right and the means hitherto enjoyed of counteracting the monopoly, unless they submit to a universal infraction of their trade, not excepting [that?] with nations whose regulations may be reciprocal and satisfactory.

3. The Treaty, not content with these injuries to the United States in their commerce with Great Britain, provides, in the XV article, against the improvement or preservation of their commerce with other nations, by any beneficial Treaties that may be attainable. The general rule of the United States in their Treaties, founded on the example of other nations, has been, that where a nation is to have the privileges that may be granted to the most favored nations, it should be admitted gratuitously to such privileges only as are gratuitously granted; but should pay for privileges not gratuitously granted the compensations paid for them. This prudent and equitable qualification of the footing of the most favored nation was particularly requisite in a Treaty with Great Britain, whose commercial system, being matured and settled, is not likely to be materially varied by grants of new privileges that might result to the United States. It was particularly requisite at the present juncture, also, when an advantageous revision of the Treaty with France is said to be favored by that Republic, when a Treaty with Spain is actually in negotiation, and Treaties with other nations whose commerce is important to the United States cannot be out of contemplation. The proposed Treaty, nevertheless, puts Great Britain in all respects, *gratuitously*, on the footing of the most favored nation; even as to future privileges, for which the most valuable considerations may be given. So that it is not only out of the power of the United States to grant any peculiar privilege to any other nation, as an equivalent for peculiar advantages in commerce or navigation to be granted to the United States; but every nation desiring to treat on this subject with the United States is reduced to the alternative, either of declining the Treaty altogether, or of including

Great Britain, *gratuitously*, in all the privileges it purchases for itself. An article of this import is the greatest obstacle, next to an absolute prohibition, that could have been thrown in the way of other Treaties; and that it was insidiously meant by Great Britain to be such is rendered the less doubtful by the other kindred features visible in the Treaty.

It can be no apology for these commercial disadvantages that better terms could not be obtained at the crisis when the Treaty was settled. If proper terms could not be obtained at that time, commercial stipulations, which were no wise essentially connected with the objects of the Envoyship, ought to have waited for a more favorable season. Nor is a better apology to be drawn from our other Treaties. The chief of them were the auxiliaries or the guaranties of our independence, and would have been an equivalent for greater commercial concessions than were insisted on. [Under other circumstances, there is no ground to suppose that the same treaties, tho' more favorable in several material articles than the Treaty in question, would have been embraced by the United States.]

V. A Treaty thus unequal in its conditions, thus derogatory to our national rights, thus insidious in some of its objects, and thus alarming in its operation to the dearest interests of the United States in their commerce and navigation, is, in its present form, unworthy the voluntary acceptance of an Independent people, and is not dictated to them by the circumstances in which Providence has kindly placed them. It is sincerely believed that such a Treaty would not have been listened to at any former period when Great Britain was most at her ease, and the United States without the respectability they now enjoy. To pretend that, however injurious the Treaty may be, it ought to be submitted to in order to avoid the hostile resentment of Great Britain, which would evidently be as impolitic as it would be unjust on her part, is an artifice too contemptible to answer its purpose. It will not easily be supposed that a refusal to part with our rights without an equivalent will be made the pretext of a war on us; much less that such a pretext will be founded on our refusal to mingle a sacrifice of our commerce

and navigation with an adjustment of political differences. Nor is any evidence to be found, either in History or Human nature, that nations are to be bribed out of a spirit of encroachment and aggressions by humiliations which nourish their pride, or by concessions which extend their resources and power.

To do justice to all nations; to seek it from them by peaceable means in preference to war; and to confide in this policy for avoiding that extremity, or securing the blessing of Heaven when forced upon us, is the only course of which the United States can never have reason to repent.

TO THOMAS JEFFERSON.

August 24, 1795.

DEAR SIR,—I hear nothing of Monroe but through the Newspapers containing his correspondence with Pickering. As that appears to have been closed on the 31st of last month, I am in hourly expectation of seeing him. I am also without any late information with respect to the progress of the Committee on Blount's and Liston's conspiracy. Dawson wrote me some time ago, "that they were going on well, and that he had well-grounded reasons, which he could not communicate by letter, to say that they should bring in some large fish." It is much to be wished none of this description may escape, though to be feared that they will be most likely to do so.

Mrs. Madison offers her respects to the ladies, and joins in my inclination to visit Monticello; but I am so completely plunged into necessary occupations of several kinds, that I cannot positively decide that we shall have the pleasure.

Yours affectionately.

TO THOMAS JEFFERSON.

ORANGE, October 18, 1795.

DEAR SIR,—On opening the letter forwarded by Pickering, which I omitted at Monticello, because I took for granted that it merely covered, like yours, a copy of the French Constitution; I found a letter from Monroe, of the 30 June, from which the following is an extract: “You will be surprised to hear that the only Americans whom I found here were a set of New England men connected with Britain, and who, upon British capital, were trading to this country; that they are hostile to the French revolution is what you well know; but that they should be thriving upon the credit which the efforts of others in other quarters gain the American name here, you could not expect; that, as such, *they* should be in possession of the little confidence we had, and give a tone to characters on our side of the Atlantic, was still less to be expected. But such was the fact. With a few exceptions, the other merchants are new-made Citizens, from Scotland. Swan, * * * * * by virtue of being the agent of France, and as we had no Minister, and he being (though of the latter description) the only or most creditable resident American here, had a monopoly of the trade of both Countries. Indeed, it is believed that he was connected with the agents on one side, and the Minister on the other. I mention this as a trait worthy your attention. You will confide this view to Mr. Jefferson only. But good may come from it, and especially if the allurements here will draw them off from the other side of the channel.” The remainder of the letter is little more than you have probably seen from him.

I have seen Philadelphia papers down to the 12th instant. One of them contains another letter from Edmund Randolph to the President, dated the 8th, and sent to the press on the 10th, applying for a paper refused him by Pickering, intimating that the want of this alone delayed his final statement, and notifying the President that his consent would be expected to a publication of it. It appears that the State elections in Pennsylvania will be very warm, and are hinged on the distinction of Treaty

and anti-Treaty candidates. In Delaware, they are over, and have given a triumph to the Anti-Treaty party. The French Constitution has been *unanimously* concluded by the Convention. It is not yet authenticated that war has taken place between England and Spain, but reports and circumstances continue to point at it.

Yours affectionately.

TO THOMAS JEFFERSON.

FREDERICKSBURG, Nov^r 8th, 1795.

DEAR SIR,—I am thus far on my way to Philadelphia, and shall proceed on the journey this morning. I left with my Father, subject to your order, the packet of papers promised you. In case of his absence, the overseer will be charged with them. Should you send a special messenger, it will be well to provide against much roughness in the carriage, as the papers are in a state not unsusceptible of being injured by it.

I hear nothing new at this place, except that Wheat is falling in Philadelphia, and consequently so here. Two reasons are assigned: the bad quality of the crop, and the English harvest turning out better than was expected. The last cause is no doubt exaggerated, if not forged, but rather in England than here, for the papers are full of such paragraphs copied from English papers or English letters.

Mr. Randolph's publication is said to be in the press, but has not yet made its appearance. In the mean time, Reports continue to circulate to his disadvantage; and I find that malice is busy in attempts to implicate others with his affair. I hope you will not forget to draw on our friend in N. Carolina for his political anecdotes, &c. He will, at least, in answer to your queries, give you a history of the particular points comprehended in your review. What passed in relation to the seat of Government, I know has been entered in his Diary.

Yours truly,

TO THOMAS JEFFERSON.

PHILADELPHIA, Dec^r 6, 1795.

DEAR SIR,—The inclosed letter, with a pamphlet under the same cover, came to me a few days ago from the post office, with a charge of a dollar postage. I have delayed to forward it till further expence could be avoided. The pamphlet I will send by the first good opportunity. I have your favor of the 26th ult., corroborating the view I had before received of matters at Richmond. There is likely to be a quorum of both Houses of Congress to-morrow. Muhlenberg and Dayton will probably be the candidates for the Chair in the House of Representatives. I can say nothing yet of the complexion of the body, more than has been known from general accounts long ago. With respect to the Cabinet, I am without the least information. It does not appear that any final step has been taken for filling the vacant Departments. The offer of the Secretaryship of State to P. Henry is a circumstance which I should not have believed, without the most unquestionable testimony. Col. Coles tells me Mr. Henry read the letter to him on that subject. It appears that there have been some agitations in Paris, produced by the *decree of two-thirds* tacked to the Constitution; but as the Jacobins united with the Convention in crushing them, the crisis was probably the expiring struggle of the counter-revolutionists. From the nature of the Decree, it is not wonderful that it should not have been swallowed without some resistance. Randolph's pamphlet is not yet out. I am told it will appear in a few days. As soon as I can send you a copy you shall have one.

Yours affectionately.

TO THOMAS JEFFERSON.

PHILADELPHIA, Dec^r 13, 1795.

DEAR SIR,—I received yesterday your favor, covering a letter to Mons^r Liancourt, which I have put into the hands of Noailles, who will attend to the delivery of it. I inclose a copy of the President's Speech. The Senate have answered it, as was to be expected. You will see the first fruits of their open doors in the debates it produced. The answer of the House of Representatives will be reported to-morrow. It has been delayed by a disagreement of ideas in the Committee, which consisted of Sedgwick, Sitgreaves, and myself. The two former are strongly for the Treaty, and wish to favor it, at the same time that they are afraid to hazard direct expressions to that effect. The policy of that party is to obtain it a quiet passage through the present session, pretending that it is too soon now to meddle with it, as they will hereafter pretend that it is then too late. The means employed are to blazon the public prosperity, to confound the Treaty with the President, and to mouth over the stale topics of war and confusion. The answer, as it stands to be reported, contains a clause which will put the House of Representatives in a dilemma similar to that forced on the House of Delegates, and I believe will never be swallowed, because it is in part notoriously untrue. It affirms the confidence of his fellow-citizens to be undiminished, which will be denied by many who sincerely wish it to be the case. It cannot yet be determined what course the business will take. It seems most probable at present that the answer will be neutralized, and the subject immediately after taken up in a committee of the whole on the state of the Union; which will have the advantage of disentangling it from the President, and of accommodating the wishes of some individuals who will be much influenced by the mode. There is pretty certainly a great majority against the Treaty on its merits; but besides the ordinary difficulty of preventing schisms, there is a real obscurity in the constitutional part of the question, and a diversity of sincere opinions about it, which the other side will make the most of. Nothing very

late from abroad. The provision order has been repealed, but the spoliations go on. The publication of E. R. is not yet out. It is said it will appear the latter end of this week.

Flour 14 dollars, and it is thought will rise to 16. The purchases of British agents for the W. India armaments are, no doubt, one of the causes of this extraordinary rise.

TO JAMES MONROE.

PHILADELPHIA, Dec^r 20, 1795.

DEAR SIR,—The last of your favors come to hand bears date Sept^r 8, 1795, of which a duplicate has also been received. The others which it may be proper to acknowledge or reacknowledge are of Nov^r 30th, 1794, which was opened at Halifax, and forwarded to me in that state; Dec^r 18, 1794, covering a copy of one of the same date to Mr. Randolph; Feb^y 18, 1795, covering a copy of one of Feb^y 12 to the same; Feb^y 25, covering a duplicate of Ditto; June 13, inclosing a copy of a letter of May 4, from Mr. Short; June 3, 28, 30, July 26, covering the correspondence with Jay; and Aug^t 15. As I cannot now give minute answers to each of these letters, and the necessity of them as to most has been superseded, I shall proceed to the object most immediately interesting to you, to wit, the posture of things here resulting from the embassy of Mr. Jay. The Treaty concluded by him did not arrive till a few days after the 3d of March, which put an end to the last session of Congress. According to previous notification to the Senators, that branch assembled on the 28th of June, the contents of the Treaty being in the mean time impenetrably concealed. I understood it was even withheld from the Secretaries at War and the Treasury, that is, Pickering and Wolcott. The Senate, after a few weeks consultation, ratified the Treaty, as you have seen. The injunction of secrecy was then dissolved by a full House, and quickly after restored, sub modo, in a thin one. Mr. Mason, disregarding the latter vote, sent the Treaty to the press, from whence it flew with an electric velocity to every part of the Union. The

first impression was universally and simultaneously against it. Even the mercantile body, with the exception of Foreigners and demi-Americans, joined in the general condemnation. Addresses to the President against his ratification swarmed from all quarters, and without a possibility of preconcert, or party influence. In short, it appeared for a while that the latent party in favor of the Treaty were struck dumb by the voice of the Nation. At length, however, doubts began to be thrown out in New York whether the Treaty was as bad as was represented. The Chamber of Commerce proceeded to an address to the President, in which they hinted at war as the tendency of rejecting the Treaty, but rested the decision with the constituted authorities. The Boston Chamber of Commerce followed the example, as did a few inland villages. For all the details on this subject I refer to the Gazettes, which I presume you continue to receive from the Department of State. It appears that the struggle in the public mind was anxiously contemplated by the President, who had bound himself, first, not to disclose the Treaty till it should be submitted to the Senate, and, in the next place, not to refuse his sanction if it should receive that of the Senate. On the receipt here, however, of the predatory orders renewed by Great Britain, the President, as we gather from Mr. Randolph's pamphlet, was advised not to ratify the Treaty unless they should be revoked, and adhered to this resolution, from the adjournment of the Senate, about the last of June, till the middle of August. At the latter epoch Mr. Fauchèt's intercepted letter became known to him, and as no other circumstance on which a conjecture can be founded has been hinted to the public, his change of opinion has been referred to some impression made by that letter, or by comments upon it; although it cannot easily be explained how the merits of the Treaty, or the demerits of the provision order, could be affected by the one or the other. As soon as it was known that the President had yielded his ratification, the British party were reinforced by those who bowed to the name of constituted authority, and those who are implicitly devoted to the President. The principal Merchants of Philadelphia, with others, amounting to

about four hundred, took the lead in an address of approbation. There is good reason to believe that many subscriptions were obtained by the Banks, whose directors solicited them, and by the influence of British capitalists. In Baltimore, Charleston, and the other commercial towns, (except Philadelphia, New York, and Boston,) no similar proceeding has been attainable. Acquiescence has been inculcated with the more success by exaggerated pictures of the public prosperity, an appeal to the popular feeling for the President, and the bugbear of war; still, however, there is little doubt that the real sentiment of the mass of the community is hostile to the Treaty. How far it may prove impregnable, must be left to events. A good deal will depend on the result of the session, and, more than ought, on external contingencies. You will see how the session opened in the President's Speech, and the answer to it. That you may judge the better on the subject, I add in the margin of the latter the clause expunged, as not true in itself, and as squinting too favorably at the Treaty. This is the only form in which the pulse of the House has been felt. It is pretty certain that a majority disapproves the Treaty, but it is not yet possible to ascertain their ultimate object, as matters now lie. The Speech of the President was well adapted to his view. The answer was from a Committee, consisting of myself, Sedgwick, and Sitgreaves, in the first instance, with the addition of two other members on the recommitment. In the first committee, my two colleagues were of the Treaty party; and, in the second, there was a willingness to say all that truth would permit. This explanation will assist you in comprehending the transaction. Since the answer, as passed, and was presented, nothing has been said or done in relation to the Treaty. It is much to be feared that the majority against the Treaty will be broken to pieces by lesser and collateral differences. Some will say it is too soon to take up the subject before it is officially presented in its finished form; others will then say it is too late. The opportunity of declaring the sense of the House in the answer to the speech was sacrificed to the opinion of some, from whom more decision was expected than will be experienced towards

an immediate consideration of the subject by itself. The truest policy seems to be, to take up the business as soon as a majority can be ascertained; but not to risk that event on a preliminary question. What the real state of opinions may be, is now under enquiry. I am not sanguine as to the result. There is a clear majority who disapprove the Treaty, but it will dwindle under the influence of causes well known to you; more especially as the States, instead of backing the wavering, are themselves rather giving way. Virginia has, indeed, set a firm example; but Maryland, North Carolina, and New Hampshire, have counteracted it, and New York will soon follow with some strong proceedings on the same side.

I am glad to find by your letters that France, notwithstanding the late Treaty, continues to be friendly. A magnanimous conduct will conduce to her interest as well as ours. It must ultimately baffle the insidious projects for bartering our honour and our Trade to British pride and British monopoly. The fifteenth article of the Treaty is evidently meant to put Britain on a better footing than France, and prevent a further Treaty with the latter; since it secures to Britain, gratuitously, all privileges that may be granted to others for an equivalent, and of course obliges France, at her sole expense, to include the interest of Britain in her future treaties with us. But if the Treaty should take effect, this abominable part will be of short duration, and, in the mean time, something, perhaps, may be done, disconcerting the mischief in some degree. You will observe a navigation act is always in our power. The article relating to the Mississippi, being permanent, may be more embarrassing, yet possibly not without some antidote for its poison. I intended to go on in cypher, but the tediousness obliges me to conclude the present letter, in order to seize a conveyance just known to me. Mr. Randolph's pamphlet is just out. Mr. Tazewell will send that and several other things collected for you by this conveyance. Pickering is Secretary of State; Charles Lee, Attorney General; no Secretary at war. The Senate have negatived Rutledge as Chief Justice. Mr. Jones keeps you informed of your private affairs. He and Mr. Jefferson are well.

I have just received your two favors of October 23 and 24, with the accompaniments, by Mr. Murray. The articles have probably not arrived in the same Ship, as Mr. Yard has no information from N. York thereon.

Accept from Mrs. Madison and myself ten thousand thanks for your and Mrs. Monroe's goodness, which will, as generally happens, probably draw more trouble upon you. Mr. and Mrs. Y. well. Your friends at New York so, too.

TO ROBERT SIMMS, (OF S. C.)

PHILADELPHIA, December, 1795.

Your letter, under the same cover with a memorial to the House of Representatives, came duly to my hands through those of Major Butler, and the memorial was, according to your request, put into the hands of the Speaker. As it has not been, and is not meant to be, laid before the House, it may be proper for me to give you this information, and to add that the part relating to an impeachment of the Senate, which is beyond the Constitutional authorities of the House of Representatives, was thought to render it so palpably improper to be read by them, as to supersede the consideration of other parts of the memorial. I cannot avoid expressing my hope that your recollection of the services of the President, and your attachment to Republican Government, in which mildness to the involuntary errors, not less than gratitude for the successful exertions of public servants, is among its truest merits, will overbalance the regret which might otherwise attend your disappointment in this case.

With my acknowledgments for the favorable sentiments you have thought fit to express toward me, I remain, your obt, h^{ble} serv.

TO THOMAS JEFFERSON.

PHILADELPHIA, Dec^r 27, 1795.

DEAR SIR,—Mr. Randolph's pamphlet is out, and will be forwarded by the first opportunity. Although I have kept up an enquiry, I have not been able to collect the impression it makes. As it relates to the President, nothing seems to be said; and as it relates to parties in general, very little. By Fenno's and Webster's papers, it appears that an effort will be used to run down Mr. R., and, if necessary for the purpose, to call in the incidents to which his pecuniary embarrassments have exposed him. The Speech of the President will have shewn you the guarded and perplexing shape in which the Treaty was brought into view. The answer was the result of circumstances, which my communications to you explain in part. The silence of it as to the Treaty was an accommodation to the wishes of a few, who preferred taking it up by itself afterwards. These individuals have not shewn as much forwardness as was expected, and owing to that cause, and to the account of an exchange of ratifications and the momentary expectation of the Treaty, nothing is yet done on the subject. The situation is truly perplexing. It is clear that a majority, if brought to the merits of the Treaty, are against it. But as the Treaty is not regularly before the House, and an application to the President brings him personally into the question, with some plausible objections to the measure, there is great danger that enough will fly off to leave the opponents of the Treaty in a minority. Enquiries are on foot to ascertain the true state of opinions and the probable turn of votes; and if there be found a firm majority on the right side, an attempt will be made to get at the subject. There are accounts from Paris to the 5th of Nov^r. The new Constitution was taking an auspicious commencement. Monroe's letters to me of Oct. 23 and 24 give a favorable prospect on that side, as well as with regard to French affairs in general. He confirms the late naval advantages, and speaks of the check on the Rhine as a bagatelle. He knew only from Report the ratification of the Treaty by the President. His language breathes equal

mortification and apprehension from the event. He says that England would have refused us nothing, and we have yielded everything; and he cannot but speak as reason dictates. A nation threatened with famine at home, and depending on the forlorn hope of West India armaments, which our market only can feed, was a nation to make rather than receive concessions. I am just told that 97 out of 98 of the Bermuda Judge's decrees against our vessels are announced to be reversed in England. This is another proof of Monroe's opinion. The reversal in such a lump must have resulted not from principle, but from policy, as the lumping condemnation proceeded from cupidity. Flour at 14 dollars at present. We have had no winter as yet. The weather is now as mild as October. I hope it will assist you against your rheumatism.

Adieu.

TO THOMAS JEFFERSON.

PHILADELPHIA, January 10, 1796.

DEAR SIR,—The House of Representatives have been latterly occupied with a pretty curious affair. Certain Traders and others, of Detroit, entered into a contract with certain individuals of the United States, for obtaining the peninsula formed by Lakes Huron and Michigan, and containing 20 or 30 millions of acres of valuable land. The traders, by means of their influence over the Indians, were to extinguish the Indian Title; and the other party, by means of their influence, and that of their connexions, with Congress, to extinguish the title of the United States. The Country was to be divided into shares, of which the greater part was to be disposed of by the party who had to deal with Congress. The reason of this, obvious enough in itself, has been sufficiently established by proof. Ever since the session commenced, two of the partners deputed to work the project through Congress have been employed with great industry, opening themselves in different degrees and forms, to different members, according to circumstances. Some of the

members, who scented the criminality of the object, waited for a full disclosure. Others, through an eagerness of some sort or other, ran with the tale *first* to the President, and then into the House of Representatives, without concerting or considering a single step that ought to follow. In consequence of the information to the President, and a representation to the District Judge of the *United States*, a warrant issued, and the offenders were taken into custody by the Marshal. The House could not be prevailed on to take a single day to consider the subject, and a warrant issued from the Speaker, also, by virtue of which the Prisoners were transferred to the Sergeant-at-arms. For the proceedings which have ensued, I must refer you to the newspapers. They ended in the discharge of one of the men, and in the reprimand of the other at the bar, and remanding him to Gaol, where he now lies. In the arguments of the Counsel, and in the debates in the House, the want of jurisdiction in such a case over persons not members of the body was insisted on, but was overruled by a very great majority. There cannot be the least doubt, either of the turpitude of the charge, or the guilt of the accused; but it will be difficult, I believe, to deduce the privilege from the Constitution, or to limit it in practice, or even to find a precedent for it in the arbitrary claims of the British House of Commons. What an engine may such a privilege become, in the hands of a body once corrupted, for protecting its corruptions against public animadversion, under the pretext of maintaining its dignity and preserving the necessary confidence of the public! You will observe that a part of the charge consisted of the slanderous assertion that a majority of the Senate, and nearly a majority of the other House, had embarked in the job for turning a public measure to their private emolument. Apply the principle to other transactions, and the strictures which the press has made on them, and the extent of its mischief will be seen at once. There is much room to suspect that more important characters, both on the British and American sides of this affair, were behind the ostensible parties to it.

The Treaty has not yet been touched. I understand from

Mr. Giles that the delay has been explained by him to you. A *copy* of the British ratification arrived lately, and it was hoped a communication of it would have followed. The Executive decided otherwise; and to appease the restlessness of the House of Representatives, Pickering laid the papers before the Speaker, to satisfy him, and enable him to explain the matter to others *individually*. This mode of proceeding does not augment the respect which a more direct and less reserved stile of conduct would inspire, especially as the papers were sufficiently authentic for any use the House of Representatives would be likely to make of them. It is now said that the original is arrived by a British Packet just announced from New York. Having been kept within doors by the badness of the day, I have not ascertained the truth of the account.

I have letters from Col. Monroe of the 23 and 24 of Oct^r. His picture of the affairs of France, particularly of the prospect exhibited in the approaching establishment of the Constitution, is very favorable. This, as far as we know, has had an easy birth, and wears a promising countenance. He had not learnt with certainty the ratification of the Treaty by the President, but wrote under the belief of it. His regrets, and his apprehensions, were as strong as might be expected. I have a letter from T. Paine, which breathes the same sentiments, and contains some keen observations on the administration of the Government here. It appears that the neglect to claim him as an American Citizen when confined by Robespierre, or even to interfere in any way whatever in his favor, has filled him with an indelible rancour against the President, to whom it appears he has written on the subject. His letter to me is in the stile of a dying one, and we hear that he is since dead, of the abscess in his side, brought on by his imprisonment. His letter desires that he may be remembered to you.

I inclose a copy of the proceedings relating to the presentation of the French flag. What think you of the President's Jacobinical speech to Adèt?

Randolph's vindication has just undergone the lash of the Author of the "Bone to gnaw." It is handled with much satir-

ical scurrility, not without strictures of sufficient ingenuity and plausibility to aid the plan of running him down. By Mr. Carr, who is now here, we will endeavor to contrive you a copy.

TO JAMES MONROE.

PHILADELPHIA, Jan^y 26, 1796.

DEAR SIR,—Since my last I have had the pleasure of your two favors of October 23 and 24. The business of the Treaty with Great Britain remains as it stood. A copy of the British ratification has arrived, but the Executive wait, it seems, for the original, as alone proper for communication. In the mean time, although it is probable that the House, if brought to say yea or nay directly on the merits of the Treaty, will vote against it, yet a majority cannot be trusted on a question applying to the President for the Treaty. In the mean time, also, information has arrived of the conclusion of a Treaty with Spain, with which the other will of course be combined. No hint of the terms is yet given to the public, nor are they probably otherwise known to the Executive than by the instructions. That provision is made for the Mississippi is to be presumed. Its aspect on the Mississippi article in the British Treaty will be particularly interesting. Among other attitudes given by this event to our situation, it is highly probable that the Spanish Treaty will comprise stipulations at once popular, and similar in principle to some attacked in the British Treaty.

General Smith, of Baltimore, has offered to the House a resolution, that after the day of no vessel shall land in the United States any article not produced by the country to which the vessel belongs. It will embarrass the Eastern members, but they will venture to oppose it as tending to perplex the treaty question; and probably with success, if joined by the Southern members, as hitherto, from other motives.

You will be pleased, and perhaps surprised, at the scene produced by the French flag. The harangue of the President must grate the British party, but they are cunning enough to be

silent. It seems that Adèt, notwithstanding the complimentary and cordial language of the President and Representatives, is much disgusted at the deposit of the Flag elsewhere than in the Hall of Congress. You can, perhaps, better appreciate the case than we can. Such a result, where other circumstances are so propitious, is unfortunate. I send a copy of the proceeding. I also send a copy of the proceedings in the case of Randal and Whitney, which need no comment beyond your own reflections.

I send, also, E. Randolph's vindication, with a malignant attack on it, by a satirical, but scurrilous writer. The latter has published several other pamphlets, exhibiting him in the same character. Bond is among the putative authors. But the real author is, probably, some hireling, to whom materials may be supplied. Randolph is resettled at Richmond, and resumes the practice of the law with flattering prospects, as is said. The effect of his pamphlet is not yet fully known. His greatest enemies will not easily persuade themselves that he was under a corrupt influence of France, and his best friends cannot save him from the self-condemnation of his political career, as explained by himself. The "Political observations" is a fugitive thing of my own writing, at the heel of the last session, in pure compliance with the urgency of certain friends. It is full of press blunders, you will perceive.

We have accounts here that Mr. Paine is dead. I spoke to Mr. Bache on the subject of the advance by you, to be repaid for Mr. Paine through my hands. He said only that he would call on me and shew me the papers, which he has not done. I inferred from his manner that there was a deficit of funds in his hands, to be explained by him. I heard nothing from Mr. Pickering on the other pecuniary subject. Just as I am making up this packet, I have the pleasure of a letter for you from Mr. Jones, which will no doubt give you all the requisite information for which you rely on him.

Mrs. M. seconds all the acknowledgments due to you and Mrs. Monroe, as well as the affectionate esteem with which I ever remain, yours.

P. S. Chs. Lee has entered on the duties of Attorney General. No Secretary at war yet nominated, nor any Judge in the place of J. Rutledge, and Mr. Blair, who has resigned. Mr. Rutledge also sent his resignation, but the Senate had previously rejected him.

TO THOMAS JEFFERSON.

PHILADELPHIA, Jan^y 31, 1796.

DEAR SIR,— * * * * *

The original of the British ratification of the Treaty is still to arrive, and we are not likely to be furnished with a copy. Some members are anxious to apply to the President for the communication, and some would take up the subject on its mere notoriety. It is pretty evident, however, that either attempt would be defeated by the advantage which the rub against the President in one case, and the informality in the other, would give to the friends of the Treaty, in the discussion, and the pretext they would afford to the insincere and cautious opponents. The Treaty with Spain, also, is not yet arrived, though there is reason for hourly expecting it. The same as to the Treaty with Algiers. You will see in the Gazette inclosed a sketch of the debate on the proposition to employ Robertson, of Petersburg, as Stenographer to the House of Representatives. The more the subject is opened, the more the objections are found to be insuperable. There is little doubt that the project will be rejected.

A committee of ways and means are employed in investigating our revenues and our wants. It is found that there are between six and seven millions of anticipations due to the Banks, that our ordinary income is barely at par with our ordinary expenditures, and that new taxes must be ready to meet near one and a half millions, which will accrue in 1801. The proposition of the Treasury is to fund the anticipation, and the foreign debt due in instalments, with an absolute irredeemability for such a period, say 20 or 30 years, as will sell the new stock

at par. This is treading as fast on the heels of G. Britain as circumstances will permit. It is probable the House will not consent to such an abandonment of the sound principle it has been latterly favouring; but loans, at least, in some form or other, will be indispensable, in order to face the demands on the public, until new taxes can be brought into action. With respect to this, the Committee are now in deliberation and embarrassment. The excise system is unproductive, and new excises that will be popular, even in the Eastern States, do not occur. On the other hand, direct taxes have been so blackened in order to recommend the fiscal policy of indirect ones, and to inspire hatred and jealousies in the Eastern against the Southern States, and particularly Virginia, that it is doubtful whether the measure, now that it is become necessary, will be borne. Gallatin is a real treasure in this department of Legislation. He is sound in his principles, accurate in his calculations, and indefatigable in his researches. Who could have supposed that Hamilton could have gone off in the triumph he assumed, with such a condition of the finances behind him?

You will see that Gov^r Adams has launched a pretty bold attack against the Treaty. The Legislature have not yet answered his speech. Their unhandsome treatment of the Virginia amendments portends a counter tone. Nothing could, more than this treatment, demonstrate the success with which party calumny has sown animosity and malignity in the State of Massachusetts against a State which feels no return of ill-will, and towards which there were formerly in that quarter the strongest habits of cordiality and co-operation.

The navigation project of Gen^l Smith waits for a favorable moment of discussion. The Treaty party will make war on it, as secretly levelled at that transaction, and thus endeavour to escape the consequences of sacrificing the obvious interests of the Eastern States.

TO EDMUND PENDLETON.

PHILADELPHIA, Feb 7, 1796.

MY DEAR SIR,—Your favor of January 6th, owing to failures of the mail South of Baltimore, did not come to hand within the usual time; and subsequent delays in the communication, consultation, and decision of Mr. Giles and myself; on the manner of publishing and applying your observations on the Carriage tax, have brought down the return of my thanks for your favor to the present date. I read with real pleasure the paper you put into the hands of Mr. Giles; which is unquestionably a most simple and lucid view of the subject, and well deserving the attention of the Court which is to determine on it. The paper will be printed in the Newspapers, in time for the Judges to have the benefit of it. I did not find that it needed any of those corrections which you so liberally committed to my hand. It has been thought unnecessary to prefix your name; but Mr. Giles will let an intimation appear, along with the remarks, that they proceed from a quarter that claims attention to them. It is said that both the Judges and the Attorney General have expressed a wish that the question should be argued on both sides at the Bar; but as the ordinary motive does not operate on the side of the Defendant, it is not certain that any professional appearance for him will take place. It is, perhaps, better that the cause should rest on the printed arguments, and on the discernment of the Bench, than that it should be espoused by junior and unskilful volunteers. There never was a question on which my mind was more satisfied, and yet I have very little expectation that it will be viewed by the Court in the same light it is by me.*

The British Treaty in its final form, as ratified by both parties, has not yet been laid before the House of Representatives. The delay is accounted for by the copy only, and not the origi-

* The alterations in the Carriage tax, recommended by the President, had no reference to the Constitutional question.

nal, of the British ratification having been received. I am sorry that so much weight is allowed to forms. My advice to the President would have been, to have opened the actual state of the business in his speech, and to have communicated all the documents relating to it to the Legislature. A different opinion has prevailed, and nothing is more uncertain than the moment when the Treaty will be laid on the Table for our consideration. In the mean time, there is no apparent disposition in the majority either to apply for it, or to take it up informally, on its general notoriety; and the name of the President is everywhere used with the most wonderful success, by the Treaty partizans, in subduing the popular objections to that instrument. No where has this policy been exerted with so much effect as in New England, as is shewn by the proceedings of the Legislatures of New Hampshire and Massachusetts. The manner in which the latter has treated the proposed amendments of Virginia, is as unworthy on the part of Massachusetts as it is unmerited on that of her sister. It speaks an influence which cannot be friendly to either.

The Treaty with Spain is not yet arrived, nor is that with Algiers. The contents of both are unknown. There can be little doubt that the former contains some beneficial arrangements on the subject of the Mississippi. The countenance of English affairs grows more and more lowering. Among other signs truly alarming to that Country, the Parliament are allowing a bounty, amounting to 2s. 6d. Sterling a bushel, on the importation of foreign wheat. The accounts from France, subsequent to the establishment of the Constitution, are favorable to internal order and tranquillity, and, of course, to her prospects on every side.

Since the knowledge of the English Bounty, Flour has taken a fresh start. It is now at about 14 dollars, and a further rise is expected. For other domestic intelligence I must refer to the newspapers, which I presume you occasionally see, and one of which is inclosed.

I beg you to offer my best respects to Colonel Taylor, and to

accept the same yourself. With the truest esteem and attachment, I am, dear sir, your obt friend and serv^t.

TO THOMAS JEFFERSON.

PHILADELPHIA, Feb 7, 1796.

DEAR SIR,—Several mails preceding that of yesterday brought nothing more Southern than Baltimore. This will account for my not receiving your favor of the 24th ult. till yesterday. I will make the enquiries and execute the commissions in it with pleasure, and without delay. I am afraid to make the same promise as to the weekly history of what passes in the Government behind the curtain; especially as the cypher might be required for some parts of it. What I can, I will do on the subject. I have already made a partial collection of the Tracts you wish. I know not what is meant by the correspondence of Jay and Jefferson; probably it is the correspondence not between them, but between each and others.

I thank you for the copy of your statement and letter to Mr. Wythe. I value it not only as a gratification to myself, but as another security for the preservation of the document.

Dohrman maintains a silence that justifies strong suspicions of aversion or inability to pay his debts. I feel no longer any other restraints from resorting to his deed of trust but that which Mazzei's interest dictates. As yet, the land would sell for considerably less than the sum due. The general rise of price which is going on will probably soon remove this difficulty, especially if the Treaty with Spain should have done what is hoped as to the navigation of the Mississippi.

You will see that the aspect of English affairs grows more and more lowering. The alarm of the Seditious Bills, the bounty on foreign wheat and *flour*, the detention of the armament fitted up for the forlorn experiment in the West Indies, are more portentous than any thing previous to these signs of a ripening crisis. The accounts from France are not of very late date,

but continue to be auspicious. The Treaties with Algiers and Spain loiter, as that with England did. It is to be hoped this is the only instance in which the parallel holds.

An idea begins to shew itself that an unrestrained exportation of the Bread articles threatens a scarcity in our own country. The large towns will of course be the first seat of such an apprehension. It is certain that the crops of grain in North Carolina failed to such a degree as to start the price of corn at a dollar a bushel, where it used to be at $\frac{1}{3}$ of a dollar. In Virginia, if the present price be the measure of the quantity, there will be little corn to spare, and probably not a great deal more of wheat. In this State, it is turning out more and more in evidence that the crop of wheat has been very scanty. The Eastern States always require large importations from the others. In New Jersey and New York alone the crops of wheat appear to have been good; and that is probably exaggeration on the favorable side. Flour at present, in this place, is rising under the information of the English bounty. All in the market is said to be bought up, probably by English agents. It sold a day or two ago, or rather there was offered for it, 14 dollars a barrel, and the best informed speak with confidence of successive rises. In this attitude of things, what a noble stroke would be an embargo! It would probably do as much good as harm at home, and would force peace on the rest of the World, and, perhaps, liberty along with it. But you know the spell within the Government, as well as the obstacles to such a measure, in the clamours that would be raised among the Merchants, the Millers, and Farmers, to say nothing of the Tories, &c., who would make more noise than any of them.

I intreat you not to procrastinate, much less abandon, your historical *task*. You owe it to yourself, to truth, to the world.

There is some reason to think that John Rutledge is not right in his mind. Cushing has been put at the head of the Bench, but, it is said, will decline the pre-eminence. Chase in the place of Blair!! A vacancy remains to be filled. M^cHenry, Secretary at War. Through what official interstice can a ray of republican truths now penetrate to the President?

TO THOMAS JEFFERSON.

PHILADELPHIA, Feb^y 21, 1796.

DEAR SIR,— * * * * *

I find, as I conjectured, that the provision made for the daughters of De Grasse was not in the way of loan, but of gift. It would be difficult, perhaps, to justify the act in either way, by the text of the Constitution. The precedent, nevertheless, is in favour of Mad^e de Chastellux's son. Whether his claim will be viewed with the same indulgence, on the score of his father's merits, is more than I can venture to decide. The services of De Grasse were critical. Chastellux, you recollect, was not a favorite here, tho' the cause may have been erroneous. Congress also were afraid of the precedent at the time, and endeavoured to interweave ingredients of peculiarity. I am really apprehensive that a compliance with the wishes of Mad^e de Chastellux would entail on us a provision for the families of the whole French army that served in this Country. Congress are occupied with a Bill for selling the Western lands. Opinions are various, and the result doubtful. The British Treaty not yet before us; nor the Spanish before the Senate, or even arrived, as far as I know. The Algerine is come to hand, and under the deliberation of the Senate. The history of it contains some envious features, which it is not possible for me to explain in time. In general, it cost an immense sum, and the annual tribute is to be paid in *naval stores*, infinitely *underrated* in the Tariff. The friendly interference of France, tho' applied for, and in train, was precluded by the agent's precipitancy in closing the Treaty, for the hardness of which the apology is, that it was the best that could be got. The letter from Paris in the inclosed paper is Monroe's, and the latest in date that has been received from him. The Federal Court has not yet given judgment in the case of payments into the Virginia Treasury. Marshall and Campbell were the counsel on one side, and Lewis and Tilghman on the other. Marshall's argument is briefly [?] spoken of. Campbell and Ingersoll will appear vs. the Carriage tax. Hamilton is here, and to join Lee on the other side.

TO JAMES MONROE.

PHILADELPHIA, Feb^y 26, 1796.

DEAR SIR,—I have written you several particular letters latterly, and now add this for a conveyance of which I am just apprised.

The British Treaty is still in the situation explained in my last. Several circumstances have indicated an intention in the Executive to lay it before the House of Representatives, but it has not yet taken place. There is reason to believe that some egregious misconception of —— has disappointed the Executive of the original ratification. Still, however, the Executive is not to be excused for sacrificing substance to form by withholding the subject; and as this idea must gain strength with the delay, a call for the Treaty will become daily more and more practicable and probable.

The Algerine and Spanish Treaties are both before the Senate. Mr. Tazewell is to make them the subject of a letter to you by the present opportunity, he being fully acquainted with them. The former is stamped with folly, and the most culpable irregularities. The latter gives general joy. I have not yet ascertained whether it clashes with the British Treaty as to the Mississippi, or is in any point chargeable with the unconstitutionality alleged against the British.

You already know that Pickering is Secretary of State, and that Charles Lee is Attorney General. The vacancy in the Secretaryship of War has been filled with Doctor M^cHenry. On the exclusion of John Rutledge, Cushing was made Chief Justice, but has declined it, and no successor is yet nominated. *Chase* is appointed to the vacancy produced by Mr. Blair's resignation. There is still a vacancy, resulting from Jay's translation to the Government of New York, to be filled. On these several appointments you will make your own comments. They are, to a man, of the Treaty party.

The amendments proposed by Virginia for requiring the consent of the House of Representatives to Treaties, limiting the terms of Senators to three years, &c., have excited the most ac-

tive party venom against that State, and the success of the hue and cry has been greater than could have been imagined. The Legislatures of N. Hampshire, Massachusetts, Rhode Island, N. Jersey, Pennsylvania, and Delaware, have all rejected, and several of them insulted [?] the example.

It is now pretty certain that the President will not serve beyond his present term. The British party had Jay first in view, as is believed. It is now said Adams is the object. Their second man is not fixed on or discovered. It will probably be a man who will cause a diversion of Southern blows. H. Lee has been conjectured, but they will hardly think him the fittest for the purpose. The Republicans, knowing that Jefferson alone can be started with hope of success, mean to push him. I fear much that he will mar the project and ensure the adverse election by a peremptory and public protest. The candidate for the Vice President is not yet designated.

The immediate subjects before the House of Representatives are: a bill for guarantying a loan on a mortgage of the public lots in the federal City, for completing the preparations there in time, without selling the lots below their value. The bill has been delayed by objections of various sorts, urged from various motives. As the President has recommended the measure, it is probable, though not certain, that it will be allowed to pass. 2. A bill for selling the lands North West of the Ohio. On this, also, opinions are multifarious, and the issue not certain. 3. New taxes. Notwithstanding the parade with respect to our finances, there are 6,200,000 dollars of anticipations due to the Bank now called for, besides the foreign instalments, and about 1,100,000 for the deferred debt, which will accrue by the time plans laid now will become regularly and adequately productive. Wolcott, in the spirit of his predecessor, proposes to fund the anticipations, &c., by selling new stock *irredeemable for 25 years*; that is, the redemption is not to commence till the end of 25 years. The new revenues contemplated are an increase of the duty on salt, a stamp tax, a tax on testamentary dispositions, an increase of the tax on Carriages, &c. A tax on leather and hats was also brought forward in a committee

of ways and means, but will not be passed. Would you have supposed that a land tax and House tax, as *indirect taxes*, had also a patronage?

The Constitutionality of the Carriage tax has been just argued here before the federal Court of Appeals; Ch^s Lee and Hamilton on the side of the tax; Ingersoll, and Campbell, of Richmond, against it. Lee did not distinguish himself, and took ground different from that of his coadjutor. Hamilton exerted himself as usual. Ingersoll appeared to advantage, and Campbell, I am told, acquitted himself ably and very eloquently. The Judges on the Bench were Wilson, Patterson, Iredell, and Chase. No decision has yet been given, but an affirmance of the law is generally anticipated. The payments into the Virginia Treasury have also been argued at this term. Marshall and Campbell came hither for the purpose, in behalf of the debtors. They were combated by Lewis and Tilghman. Marshall is said to have figured very powerfully in his argument; and it is thought the event is at least doubtful.

The birthday of the President has been celebrated with greater splendour than ever. The crisis explains the policy. A circumstance has taken place, however, more indicative in its nature than any display within the fashionable circle. You will recollect the usage of adjourning for half an hour to compliment the President on the anniversary of his birth. Last year there were but thirteen dissentients; this year, the motion to adjourn was negatived by fifty against thirty-eight.

It has been whispered that you are to be recalled, and Bingham to replace you. I entirely disbelieve it; but the whisper marks the wishes of those who propagate it.

Pickering will pay your draught on him. Bache has not yet received the second part of the Rights of Man, which he says is the only fund on which Mr. Paine could draw.

Mrs. M. offers her best respects, along with mine, to Mrs. Monroe.

Adieu. Yours sincerely.

A letter from Mr. Jones accompanies this. We are three months without intelligence from France.

TO THOMAS JEFFERSON.

PHILADELPHIA, Feb^y 29, 1796.

DEAR SIR,—The Treaty with Spain arrived on Tuesday last. It adjusts both the boundary and navigation in a very satisfactory manner. I have not yet been able to decide whether, on the latter point, it clashes or not with the British Treaty, the article being differently represented by different members of the Senate. Nor am I able to say whether any of the article comes within the objections to the Constitutionality of the British Treaty. In what relates to contraband and other points in the law of nations, I understand it presents an honorable contrast to Jay's stipulations. The Algerine Treaty has some curious features. Among others, the sum of one million paid for the ransom and the peace does not appear before the Senate as any part of the Treaty, but has been paid as a verbal part of the Contract, under the authority of the law of appropriation; so that the most material part of the Treaty has been made by the President and the Legislature, without the Treaty-agency of the Senate. The British Treaty, as finally ratified, has been republished in the newspapers from foreign copies, but is still not laid before Congress.

The President's birthday has been celebrated with unexampled splendor. The crisis explains the policy of this. It is remarkable, however, that the annual motion to adjourn for half an hour to pay the compliment of the day was rejected this year by 50 vs. 38, altho' last year, on the yeas and nays, 13 only voted in the negative.

TO THOMAS JEFFERSON.

PHILADELPHIA, March 6, 1796.

DEAR SIR,—The Senate have unanimously ratified the Algierine and Spanish Treaties. The latter was a bitter pill to some, for two reasons: first, as inviting additional emigrations to the Western country; secondly, as jostling with the Mississippi article in the British Treaties. The Spanish article is in the words following: “It is likewise agreed that the Western boundary of the United States which separates them from the Spanish colony of Louisiana is in the middle of the channel or bed of the river Mississippi, from the northern boundary of the said States to the completion of the 31° of latitude north of the Equator. And his Catholic Majesty has likewise agreed that the navigation of the said river, in its whole breadth, from its source to the ocean, shall be free only to his subjects and the Citizens of the United States, unless he should extend this privilege to the subjects of other powers by special Convention.” Doubts were expressed by King, in the Senate, whether this could be construed into a harmony with the stipulations to G. B., and the pulse of the body felt on the subject with a view to a declaratory proviso to the ratification. It was concluded, however, not to risk the project, and to presume a construction that would avoid the inconsistency. It seems that Pinckney considered the article as admitting a construction reconcileable with the British article. It is also said that he was offered and refused a proposition, expressing or implying our right to the navigation, but more directly clashing with the British Treaties.

The President laid the Treaty before the House of Rep^s on Tuesday last, about one o’clock; and in the afternoon it appeared in a Proclamation in Brown’s paper. I am well-informed that its publication was concerted with the Printer prior to its communication to the House. Whether an original ratification was received as the ground of this proceeding, or the copy, heretofore not deemed of sufficient formality, has been viewed in a more favorable light, I cannot undertake to say. I suspect the latter to be the case. Perhaps, also, the ratification

of the Spanish and Algerine Treaties, which contain some stipulations analogous to those complained of as unconstitutional in the British Treaty, may have had weight on the occasion. In general, however, the Spanish Treaty forms rather a contrast to the British, being more than reciprocal in its essential articles, and on the subject of contraband, and the freedom of goods in free ships, being perfectly satisfactory. A motion has been laid on the table by Mr. Livingston, calling on the President for the instructions to Jay, &c. The policy of hazarding it is so questionable, that he will probably let it sleep or withdraw it. Notice of direct propositions on the Treaty will probably be given to-morrow. The purport and form of them create much diversity of ideas among the opponents of the Treaty. The state of the business as it now presents itself, with the uncertainty of the particular way of thinking in several quarters of the House, make it truly difficult to decide on the course most acceptable to the body of anti-treaty members. The other side, of course, have no difficulties of this sort to contend with.

The bill for the sale of the back lands makes progress, tho' but slowly. Its fate is very uncertain. The proposed aid to the federal city will probably succeed in the event, under the patronage of the President, but, in the mean time, will no doubt be played off in favour of the Treaty.

The Court has not given judgment yet on the carriage tax. It is said the Judges will be unanimous for its constitutionality. Hamilton and Lee advocated it at the Bar, against Campbell and Ingersoll. Bystanders speak highly of Campbell's argument, as well as of Ingersoll's. Lee did not shine; and the great effort of his coadjutor, as I learn, was to raise a fog around the subject, and to inculcate a respect in the Court for preceding sanctions in a doubtful case.

We are three months without news from France, or even G. Britain. There is a report that one of the Sedition bills has passed the House of Lords, and is not likely to pass the H. of Commons. There is a paragraph which says that Sweden and Denmark have prohibited the exportation of Grain. Flour here is about 15 doll^s, and wheat 20s.

TO THOMAS JEFFERSON.

PHILADELPHIA, Mar. 13, 1796.

DEAR SIR,—Since my last, by the last weekly mail, I have seen Mr. Rittenhouse on the subject of the kitchen stoves. He says that at Lancaster, where they were invented and are best known, two only remain in use. They certainly save fuel, but are so much complicated in their operation as to require particular care, and are liable to the objection of keeping the kitchen excessively hot. Mrs. Rittenhouse intimated that as several modes of cookery, roasting, baking, &c., were carried on at the same time, it often happened that one of the modes did not keep pace with the other. Mr. R. could not learn the price. He supposed, from the quantity of Iron, that it must be considerable.

We are at length embarked in the discussion of the Treaty, which was drawn in rather abruptly, by a proposition calling on the President for papers. The point in debate is, the constitutional right of Congress in relation to Treaties. There seem at present strong reasons to conclude that a majority will be firm in the doctrine that the House has a Constitutional right to refuse to pass laws for executing a Treaty, and that the Treaty power is limited by the enumerated powers. Whether the right ought, in the present case, to be exerted, will be a distinct question on the merits of the Treaty, which have not yet come into discussion. I understand the Treaty party expect success on this question, but despair on every other.

Nothing very late from Europe. The British armament is arriving in the West Indies, which looks like a postponement of peace. It will augment the call on this country for provisions, and of course the price. Flour is about 15 doll^s here at present.

TO THOMAS JEFFERSON.

PHILADELPHIA, April 4, 1796.

DEAR SIR,—I have received yours of the 6th ultimo; also your letters for Monroe, Mazzei, and Van Staphorst; and shall have a good conveyance for them in two or three days. I am in some doubt, however, whether it may not be best to detain those for Mazzei and V. until you can add the information I am now able to furnish you from Dohrman. He has at length closed the business of Mazzei in a just and honorable manner, by allowing the N. Y. damages in the bills of 20 per cent., and the N. Y. rate of interest of 7 per cent. This mode of settlement, after deducting the partial payments, for which he has receipts, leaves a balance of 3,087 dollars, which has been just paid into my hands, and will be disposed of as you shall direct. You will of course lose no time in writing to me on the subject.

I have not yet heard from Bringham on the subject of Sharpless. He has no doubt written to you, according to his promise. I have seen Mr. Howell, who says there would be no difficulty in allowing you the credit you desire, if his son should take the place of Lownes.

I was not unaware of the considerations you suggest with regard to the post roads; but do not consider my proposition as involving any dangerous consequences. It is limited to the choice of roads, where that is presented, and to the opening them, in other cases, so far only as may be necessary for the transportation of the mail. This I think fairly within the object of the Constitution. It had, in fact, become essential that something should be done, and something would have been attempted on a worse principle. If the route shall be once fixed for the post road, the local authorities will probably undertake the improvement, &c., of the roads; and individuals will go to work in providing the proper accommodations on them for general use.

The newspapers will inform you that the call for the Treaty papers was carried by 62 against 37. You will find the answer of the President herewith inclosed. The absolute refusal was

as unexpected as the tone and tenor of the message are improper and indelicate. If you do not at once perceive the drift of the appeal to the General Convention and its journal, recollect one of Camillus's last numbers, and read the latter part of Murray's Speech. There is little doubt in my mind that the message came from N. Y., when it was seen that an experiment was to be made, at the hazard of the Pres., to save the faction against the Rep^s of the people. The effect of this reprehensible measure on the majority is not likely to correspond with the calculation of its authors. I think there will be sufficient firmness to face it with resolutions declaring the constitutional powers of the House as to Treaties, and that, in applying for papers, they are not obliged to state their reasons to the Executive. In order to preserve this firmness, however, it is necessary to avoid, as much as possible, an overt rencontre with the Executive. The day after the message was received, the bill guarantying the loan for the federal City was carried thro' the H. of Rep^s by a swimming majority.

I have letters from Monroe of the 12th and 20th of Jan^r. The truce with Austria was demanded by the latter, and was not likely to be renewed. A continuance of the war with England was counted on. The French Government was in regular and vigorous operation, and gaining daily more and more of the public confidence. A forced loan was going on for 25 million Sterl^g, 12 mil. of which was receivable in assignats at 100 for one; the balance in specie and produce. It is said that the British armament for the West Indies had suffered a *third* Coup de Vent, after leaving the channel a *third* time.

According to my memory, and that of others, the Journal of the Convention was, by a vote, deposited with the Pres., to be kept sacred until called for by some competent authority. How can this be reconciled with the use he has made of it? Examine my notes, if you please, at the close of the business, and let me know what is said on the subject. You will perceive that the quotation is nothing to the purpose. Most of the majority would decide as the Convention did; because they think there may be some Treaties, as a mere Treaty of peace, that would not

require the Legislative power; a ratification by law also expressed a different idea from that entertained by the House of its agency.

TO JAMES MONROE.

PHILADELPHIA, April 7, 1796.

DEAR SIR,—The letters from you of latest date are those of Oct. 23, 24, and 29, and of Jan^y 12 and 20th. The three first have been heretofore acknowledged. For the interesting contents of the two last, I now thank you. I have given the explanation you desired, as to Mr. Paine, to F. A. M., who has not received any letter as yet, and has promised to pay due regard to your request. It is proper you should know that T. Paine wrote some time ago a severe letter to the President, which Pickering mentioned in harsh terms to me when I delivered a note from T. P. to the Secretary of State, inclosed by T. P. in a letter to me. Nothing passed, however, that betrayed the least association of your patronage or attention to T. P. with the circumstance; nor am I apprehensive that any real suspicion can exist of your countenancing, or even knowing the steps taken by T. P., under the impulse of his personal feelings or political principles. At the same time, the caution you observe is by no means to be disapproved. Be so good as to let T. P. know that I have received his letter and handed his note to the Secretary of State, which requested copies of such letters as might have been written hence in his behalf. The note did not require any answer either to me or through me, and I have heard nothing of it since I handed it to Pickering. It is proper T. P., as well as yourself, should know that, on my first application to Mr. Bache for the payment of the draught in your favor, Mr. B. had no funds in his hands, but he now tells me he shall be able to honor the draught in a few days. Pickering has been spoken to several times, and has promised, as soon as he can find your letter and leisure, he will attend to the draught on his department. I have communicated to Mr. Yard the para-

graph relating to Mr. and Mrs. K. It was impossible that we should not all approve the conduct of Mrs. M. The known eccentricity of character will easily explain the occurrence, if it should ever arrive here.

Some of your enemies here have been base enough to throw into circulation insinuations that you have launched into all the depths of speculation. It has even been propagated that you and Skipwith, or perhaps you, through Skipwith, had purchased Chantilly, the magnificent estate of the late Prince of Condé. I was joined by others of your friends in the roundest contradictions of such malicious reports, and in explaining the incredibility and palpable falsehood of them. Having heard nothing latterly on the subject, I conclude that the antidote has effectually destroyed the poison. I understand, however, that the circumstance of the money of which you were robbed, and which it is said ought to have gone long before to Amsterdam, where the public faith was violated by the delay, is a topic of unfavorable conversation within the Treasury Department and in unfriendly circles. If you ever wrote any thing to me on the subject, it has totally miscarried. The first account I had of it was very lately, from Mr. Swan, who threw the whole blame on Skipwith, who was charged with the operation of remitting the money to Holland. I am not apprehensive that any impressions can be entertained, even among your enemies in the Cabinet, of anything more than incaution on your part; I am sure that nothing beyond that can be impressed on others. In the mean time, it is right you should know every handle that can be taken against you. It continues to be the suspicion of some that the Cabinet meditates your recall, and, of course, that they may possibly lay hold of the slightest pretext. I retain my opinion that such a step will never be hazarded on a slight pretext, and, consequently, that it will never be hazarded at all.

I am much obliged by your kind offer to procure me articles which I may want toward housekeeping, as well as Books. As to the latter, I shall from time to time trouble you, particularly for what is wanting to my set of the *Encyclopedie Methodique*, as

soon as I get to Virginia, and can ascertain the volumes which I have not. As to the former, I am obliged to consult a certain degree of economy, and have, in everything of that sort, a reference to the order of things in Virginia. I recollect nothing at present that I can particularize, unless it be a clock for the chimney-piece, and a pair of glasses, not exceeding 100 dollars, in which the size would be preferred to the ornamental expense. The china is not yet arrived, but I look for it by every vessel that escapes the British depredations. Whatever articles you may be good enough to provide for me after the receipt of this, I wish you to address to Virginia, not to this place, unless it may be such as will be wanted particularly here in the course of next winter, which I mean to 1569, 293, 1525. You will find that the elections in Boston are running in favor of republicanism. This will have a good effect. I have much always to say to you when I take up my pen, but am often obliged to hurry to a close sooner than I could wish. I am the less concerned at it now, as the bearer, Mr. Fulton, will be able to give you a thousand details which I omit. I have never been more occupied with the drudgeries of my station than at this moment. I began this on the 7th and conclude it on the 19th April, 1796.

Always and affectionately adieu to yourself and Mrs. Monroe, to whom I offer my sincerest and best wishes, along with those of Mrs. M.

I send, herewith, three letters from Mr. Jefferson, 1 from Mr. Jones, and 1 from Mr. Langdon.

I send, also, three numbers of the Debates on the Treaty, and will, from time to time, add the rest as they come out. I also send a large collection of Newspapers, which contain most of the speeches not yet published in the pamphlet form. These papers will possess you of the whole history of Congressional proceedings for some time past.

TO THOMAS JEFFERSON.

PHILADELPHIA, Apr^l 11, 1796.

DEAR SIR,—Yours of the 27th has been duly received. You already know that the call for papers was refused, and reasons assigned more extraordinary a great deal than the refusal. This measure of the Executive produced two propositions, asserting the right of the House to judge of the expediency of Treaties stipulating on Legislative subjects, and declaring that it was not requisite in a call for papers to express the use to be made of them. It was expected that a long and obstinate discussion would have attended these defensive measures. Under that idea, I entered into a free but respectful review of the fallacy of the reasons contained in the message, and the day being nearly spent, the Com^o rose and an adjournment succeeded. The next morning, instead of a reply, the question was called for, and taken without a word of argument on the subject. The two resolutions were carried by 57 against 35; and six members, who, not foreseeing the early call for the question, had not taken their seats, soon appeared, and desired to have their names added to the majority. This was not permitted by the rules of the House; but the case is explained in the newspapers. To-day is fixed for taking up the Treaties.

We shall separate the Spanish and other Treaties from the British, and proceed to make the necessary provisions. With respect to the latter, it seems at present probable that it will be hung up on a recital of the vices of the Treaty itself, the want of information, and the perseverance in seizing our ships and seamen, which ought to have the same influence on our decision, whether viewed as consistent with or an infraction of the Treaty. An Embargo on Indian Corn is proposed, but has not been discussed. Nothing very material from abroad. Bache is publishing the Treaty Debates in no^s, for an 8^o Vol. I inclose the 1st no., under address to Mr. Carr.

TO THOMAS JEFFERSON.

PHILADELPHIA, April 18, 1796.

DEAR SIR,—My last requested your orders relating to Dohrman's payment to me for Mazzei, and I impatiently wait for them.

Resolutions have passed for carrying into effect the Spanish, Indian, and Algerine Treaties. The British is now depending. I inclose the proposition in which the opponents of it will unite. According to present calculation, this proposition will be carried by *nearly* the same majority as prevailed in the vote asserting the rights of the House on the subject of Treaties. The debate is but just commenced. Those who at first were for a silent question will probably now spin out time, for the purpose of calling in the mercantile interference in its behalf. You will see the expedient on foot in this City. The petition of the merchants, &c., will be signed by 7 or 800, as is said. An adverse petition will be signed by 3 or 4 times that number. In N. Y. and Boston, it is hoped, the counter petitioners will equally preponderate. Baltimore, which was at first most opposed to the Treaty, is become most generally reconciled to the execution. The hope of indemnification for past losses, and the fears for their floating speculations, which have been arranged on the idea that the Treaty would go into effect, bear down with that class all attention to the general and permanent good of the Country, and, perhaps, their own real and comprehensive interest. The Country is also under an operation for obtaining petitioners for the Treaty. The Western Counties have yielded a number; being dexterously alarmed for the Spanish Treaty, as involved in the fate of the British. I expected to have sent you my observations on the President's message, which the Printer told me should certainly be out this morning. He thought Mr. Iredell's charge and the echo of the G. Jury entitled to priority.

TO JAMES MONROE.

PHILADELPHIA, April 18, 1796.

DEAR SIR,—A letter, chiefly on private subjects, written about ten days ago, will accompany this, which I have postponed to the last moment of the opportunity by Mr. Fulton. This will relate chiefly to the British Treaty and to subjects connected with it. For a general view of the proceedings of Congress I refer you to the Newspapers, &c., which Mr. Fulton will receive for you from myself, and other friends. You will find that the British Treaty was, after long delay, laid before the House. It gave rise to a motion calling for the instructions to the Envoy, his correspondences, and other documents relating to the Treaty. This unqualified form being objected to, the motion was varied, (by the mover, Mr. Livingston,) so as to except from the papers called for such of them as might relate to existing negociations. In order to render the motion perfectly unobjectionable, and the more justifiable to the public in case of a refusal of the papers, I moved to enlarge the exception to all such papers as the President might deem it inconsistent with the interest of the United States at this time to disclose. This accommodating amendment was opposed by the whole Treaty party, who, being joined by the warmer men on the other side, succeeded in rejecting it. The principal motion was then discussed at full length, and was made to turn, in the debates, principally on the constitutional power of the House in relation to Treaties. The debates will shew you the ground taken on both sides. They were spun out to a duration of several weeks. When the question was at length taken, the majority for the call was very decided, not less than twenty. Every eye within and without doors was then turned to the President. The prevailing belief was, that he would send a part, if not the whole, of the papers applied for. If he thought any part improper to be disclosed, or if he wished to assert his prerogative without coming to a rupture with the House, it was seen to be easy for him to avoid that extremity by that expedient. You will find by his Message, in answer, that he not only ran into the extreme

of an absolute refusal, but assigned reasons worse than the refusal itself. I have no doubt that the advice, and even the Message itself, were contrived in New York, where it was seen that if the rising force of the republicans was not crushed, it must speedily crush the British party, and that the only hope of success lay in favoring an open rupture with the President. It is to be lamented that he so easily lent himself to the stratagem. It was expected that the Message would have produced long and animated discussion. In that expectation I entered into a full comment on it, and in support, at the same time, of the two Resolutions asserting the rights of the House, which you will find in the Newspapers. No reply, however, was given to me, and the question on the Resolutions was taken without anything more on the subject. They were carried by about 60 against 35. The next step was to go into a committee of the whole on all the Treaties. An attempt to lump them all, or, at least, the British and Spanish, was made, but readily defeated. The Spanish, Algerine, and Indian Treaties, were then decided on separately, and bills are ordered for carrying them into effect. The House is now engaged on the British Treaty. This is the third day of its discussion. I refer to the motion of Mr. Maclay for the form in which it is proposed to get rid of the Treaty. If no defections take place, the motion will succeed by a majority of about twenty. But vast exertions are on foot without and within doors. You will observe the memorial proposed by the Mercantile interest of this place. A counter one, it is said, will be circulated, and will be signed by the greater number. It is probable the example on both sides will be followed in the other large Towns. The Country, also, is stirred up to join in petitions for carrying the Treaty into effect. The four insurgent Counties of this State have been alarmed, by a dexterous combination of the Spanish and British Treaties, into petitions in favor of both. This has been the manœuvre of Ross, the Senator. What the result of the whole is to be, is among the arcana of time. I trust, without being sure, that the House will be firm. If so, the public mind will rally under their auspices. If not, you can

appreciate the consequences, which will be mischievous, but I hope temporary.

April 19.—Another day has passed in discussing the British Treaty. The event will probably be procrastinated for the sake of the experiment making out of doors. I have put off closing this till the last moment, and, therefore, am obliged, with the truest cordialities, in which my partner joins, to Mrs. Monroe and yourself, to bid you Adieu.

TO THOMAS JEFFERSON.

April 23, 1796.

DEAR SIR,—I inclose another number of the Debates on the Treaty. The subject is still going on in the House, as well as the press. The majority has melted, by changes and absence, to 8 or 9 votes. Whether these will continue firm is more than I can decide. Every possible exertion is made, as usual, on the other side. A sort of appeal has been made to the people, with an expectation that the mercantile force would triumph over the popular sentiment. In this city, the majority of petitioners has appeared against the mercantile party. We do not know the event of the experiment in N. York. Petitions on both sides are running thro' the adjoining States of Delaware and N. Jersey. Among other extraordinary manœuvres, the Insurance Companies, here and in N. York, stopped business, in order to reduce prices and alarm the public. The Banks have been powerfully felt in the progress of the petitions in the Cities for the Treaty. Scarce a merchant or Trader but what depend on discounts, and at this moment there is a general pinch for money. Under such circumstances, a Bank Director, soliciting subscriptions, is like a highwayman with a pistol, demanding the purse. We hope the question will be taken to-morrow. But if carried against the Treaty, the game will be played over again in other forms. The Senate will either send it down by itself, or coupled with the Spanish Treaty, or both. Nothing of importance from Europe.

TO THOMAS JEFFERSON.

PHILADELPHIA, May 1st, 1796.

DEAR SIR,—I have your favour of the 17 Apr^l, covering two Extracts—one from your notes, the other from mine. The latter corresponds with the recollection which myself and other members had expressed, and the former with that of Maj^r Butler, and with the Journals of the Senate. The report of the Committee to which you refer cannot be found, tho' Mr. B. says he knows one was made. This enquiry has been set on foot without your name.

The Treaty question was brought to a vote on Friday in Com^o of the whole. Owing to the absence (*certainly* casual and momentary) of one member, and the illness of another, the Committee were divided, 49 and 49. The Chairman (Muhlenberg) decided in the affirmative, saying that in the House it would be subject to modification, which he wished. In the House yesterday an enemy of the Treaty moved a preamble, reciting "that altho' the Treaty was highly objectionable, yet considering all circumstances, particularly the duration for two years, &c., and confiding in the efficacy of measures that might be taken for stopping the spoliations and impressments, &c." For this ingredient, which you will perceive the scope of, all who meant to persevere against the Treaty, with those who only yielded for the reasons expressed in it, ought to have united in voting, as making the pill a bitter one to the Treaty party, as well as less poisonous to the public interest. A few wrongheads, however, thought fit to separate, whereby the motion was lost by one vote. The main question was then carried in favour of the Treaty, by 50 against 48. This revolution was foreseen, and might have been mitigated, tho' not prevented, if sooner provided for. But some, who were the first to give way to the crisis under its actual pressure, were not averse to prepare for it. The progress of this business throughout has been to me the most worrying and vexatious that I ever encountered; and the more so, as the causes lay in the unsteadiness, the follies, the perverseness, and the defections among our friends, more than

in the strength, or dexterity, or malice of our opponents. It is impossible for me to detail these causes to you now. My consolation under them is in the effect they have in riveting my future purposes. Had the preamble, condemning the Treaty on its merits, exercising the discretionary power of the House, and requiring from the Ex. a stoppage of the spoliations, &c., been agreed to, I have reason to believe the Treaty party would have felt it a complete defeat. You will be informed by the newspapers of the means practised for stirring up petitions, &c., in favor of the Treaty. The plan was laid in this City, and circulated by a correspondence thro' the towns every where. In the mean time, the Banks, the British merchants, the Insurance Comp^s, were at work in influencing individuals, beating down the prices of produce, and sounding the tocsin of foreign war and domestic convulsions. The success has been such as you would suppose. In several neighbouring districts, the people have been so deluded as to constrain their Representatives to renounce their opposition to the Treaty. An appeal to the people on any pending measure can never be more than an appeal to those in the neighbourhood of the Government, and to the Banks, the merchants, and the dependents and expectants of the Government at a distance.

TO THOMAS JEFFERSON.

May 9th, 1796.

DEAR SIR,—We have had a calm ever since the decision on the Treaty. Petitions, however, continue to arrive, chiefly in favor of the Treaty. The N. England States have been ready to rise in mass against the H. of Rep^s. Such have been the influence and exertions of Aristocracy, Anglicism, and Mercantilism, in that quarter, that Republicanism is perfectly overbalanced, even in the town of Boston. I hope it will prove but a transitory calamity, and that the discovery of the delusion will ultimately work a salutary effect. The people have been every where made to believe that the object of the H. of Rep^s in re-

sisting the Treaty was war; and have thence listened to the summons "to follow where Washington leads." Nothing late from abroad. We expect to adjourn about the 20th or 25th Inst.

TO JAMES MONROE.

PHILADELPHIA, May 14, 1796.

DEAR SIR,—My last, with some pamphlets and newspapers, was put into the care of Mr. Fulton, who, I had hoped, was half across the Atlantic, when he reappeared here in consequence of shipwreck. I avail myself of his second departure to add a little more to the printed budget, as well as to the narrative in my letter. At the date of it the British Treaty was in full discussion, and the event hanging in uncertainty. It soon appeared, that the majority was not entirely composed of materials firm enough for the crisis. It daily melted down till the day of the question, when Muhlenberg, in the chair of the committee, gave very unexpectedly a casting vote in the affirmative, observing that he did so with a view to some modification in the House. It is to be remarked that when the vote was taken, Patton was ill, and Varnum casually not present; both of them firm against the Treaty. In the House, a proposition was made by Mr. Dearborn, reciting as a preamble, that although the Treaty was objectionable and injurious, yet, considering all circumstances, and particularly that the last eighteen articles will be of short duration, and confiding in the efficacy of measures that may be taken for bringing about a discontinuance of spoliations and impressments, Resolved, &c. This was lost by a single vote only; seven or eight of the stiffest anti-treaty men taking a wrong-headed course. Such a preamble would have been a bitter ingredient, though it would have transferred a few votes. On the main question there was a majority of three, 51 and 48, for carrying the Treaty into effect. Many of the means by which this majority was brought about will occur to you. But it is to be

ascribed principally to an appeal to petitions under the mercantile influence, and the alarm of war. A circular letter from the Merchants of Philadelphia gave the signal to all other towns. The people were everywhere called on to chuse between peace and war, and to side with the Treaty if they preferred the former. This stratagem produced in many places a fever, and in New England a delirium, for the Treaty, which soon covered the table with petitions. The counter petitions, though powerful from Philadelphia, and respectable from some other quarters, did not keep pace. Indeed, there was not time for distant parts, where the Treaty was odious, to express their sentiments before the occurrence was over. Besides the alarm of war in the *smaller States*, a great excitement was produced in them by the appeal of the President, in his message, to their particular interest in the powers of the Senate. What the effect of this whole business will be on the public mind cannot yet be traced with certainty. For the moment, at least, it presses hard on the republican interest. It probably would have been better if the great majority existing at one moment had been taken advantage of for a strong preface in the tone of Dearborn, and if the Treaty party had then carried their object with the consequences on their own heads. The final turn of the majority ought at least to have been sooner prepared for. This was, in fact, contemplated. But before some were ripe for the arrangement, others were rotten. As soon as the subject was finished, an explanatory article, signed by Bond & Pickering, marked with sundry curious features, was laid before the Senate, and has been ratified. The avowed object is to declare that the Indian Treaty, which requires a special licence to Traders residing at the Indian Towns, shall not affect the British privileges under the third article. This, when known by the public, will justify an important ground of opposition to the Treaty. Adèt seems to have conducted himself with great circumspection throughout the crisis here, nor do I know what, or whether anything, escapes him since the the conclusion of it. It will be deeply interesting to know how France will take it all. I hope no rash councils will prevail

with her. You can foresee the consequences of such here. Whilst the war lasts, England will command most attention, because she can do this country most harm. In peace, France will command most attention, because she can do it most good. This view of the subject may, perhaps, be worth your development on fit occasions. Among the bills just passed the House of Representatives is one prohibiting the sale of prizes in our ports. It did not pass without doubts and opposition. The real object with most was to protect Spanish and Dutch vessels as much as possible, on the supposition that the British Treaty protected hers in this respect against all nations. It is now generally understood that the President will retire. Jefferson is the object on one side; Adams, apparently, on the other. The secondary object still unsettled. The general result is rendered doubtful by the probable complexion of the New York Legislature, and by a late law of Pennsylvania for choosing Electors by a general ticket. If the decision should result to the House of Representatives, it will be safe. I have just received yours of Nov. 8th; your last was of January 20. The papers will inform you that Fitzsimmons and Innes are the American Commissioners for the Debts, and Pinkney of Maryland and Gore of Massachusetts for the spoliations. The tediousness of the cypher obliges me to close in haste. I will write again before I leave this, which, I hope, will be in about ten days, there being now a general impatience to adjourn. Our best respects and regards to Mrs. Monroe and yourself.

Adieu. Yrs aff^{ly},

J. M., JR.

TO THOMAS JEFFERSON.

PHILADELPHIA, May 22, 1796.

DEAR SIR,—Congress are hurrying through the remnant of business before them, and will probably adjourn about Saturday next. Petitions in favour of the Treaty still come in from distant places. The name of the President and the alarm of

war have had a greater effect than were apprehended on one side, or expected on the other. A crisis, which ought to have been so arranged as to fortify the Republican cause, has left it in a very crippled condition; from which its recovery will be the more difficult, as the elections in N. York, Massachusetts, and other States, where the prospects were favorable, have taken a wrong turn under the impressions of the moment. Nothing but auspicious contingencies abroad or at home can regain the lost ground. Peace in Europe would have a most salutary influence, and accounts just received from France revive in some degree the hope of it with the Emperor, which will hasten, of course, a peace with England. On the other hand, a scene rather gloomy is presented by a letter I have just received from Col. Monroe. It is dated Feb^r 27. The following extracts form the substance of it. "About a fortnight past, I was informed by the Minister of Foreign affairs that the Government had at length resolved how to act with us in respect to our treaty with England; that they considered it as having violated, or rather annulled, our treaty of alliance with them, and taken part with the coalesced powers; that they had rather have an open enemy than a perfidious friend; that it was resolved to send an envoy extraordinary to the U. S., to discuss this business with us, and whose powers would expire with the execution of the trust. I was astonished with the communication, and alarmed with its probable consequences. I told him it might probably lead to war, and thereby separate us, which was what our enemies wished; that it hazarded much, and without a probable gain; that from the moment a person of that character arrived, their friends would seem to act under his banner, and which circumstance would injure their character and lessen their efforts; in truth, I did every thing in my power to prevent this measure, and in which I am now told by the minister that I have succeeded, the Directors having resolved to continue the ordinary course of representation only. But thro' this I hear strong sentiments will be conveyed. The whole of this is made known to the Executive by me."

"The forced loan was less productive than was expected, and

the embarrassment in the finance extreme. Some think another movement at hand, but I see no evidence of it at present. In all calculations on this subject, it ought to be recollected that the Executive are sound, and, having the Government in their hands, are strong."

"There are strong symptoms of an actual rupture between us and this country. The minister of the Government preferred to have us as open enemies rather than perfidious friends. Other proofs occur to shew that this sentiment has gone deep in their Councils."

The "Minerve," of N. York, lately announced, with an affected emphasis, a letter from Paris to N. York, intimating that influential persons in the U. S. were urging measures on France which might force this Country to chuse war against England as the only alternative for war against France. It is probable that categorical steps on the part of France towards us are anticipated, as the consequence of what has been effected by the British party here, and that much artifice will be practised by it to charge them in some unpopular form on its Republican opponents.

Before I leave this I shall make up a parcel of pamphlets, &c., for you, to be forwarded to Richmond. The inclosed number of the Debates is a continuation, which has been regular. I hope the preceding numbers have all arrived safe.

King is appointed Minister to London, and Humphreys to Madrid, Pinckney and Short retiring. The vacancy at Lisbon not yet filled.

TO THOMAS JEFFERSON.

May 30th, 1796.

Congress will adjourn the day after to-morrow. News as late as April 8 from London; peace likely to take place between France and England; provisions falling much in price, both in F. and G. B. The moneyed distresses reviving in the latter, and great alarms for a terrible shock to the Banking and Mercantile Houses.

TO GEORGE WASHINGTON.

J. Madison presents his respectful compliments to the President, and returns the Treatise on Small Canals, &c., with his acknowledgements for the perusal of it. He is not enough conversant with such subjects to decide on the merits of the various plans and machinery recommended by the Author. In general, his principles appear to be both effective and practicable; but the question of their utility must be decided by a very accurate comparison of expense and saving, which cannot easily be made without partial experiments, at least; and which must vary, also, in different Countries and different situations of Society. The Author, however, is certainly entitled to much praise for his ingenuity and laudable zeal for improvement; and has probably, by his work, really contributed to it, either immediately or by the use that may be made of his ideas by others.

PHILADELPHIA, Dec^r 1, 1796.

TO THOMAS JEFFERSON.

PHILADELPHIA, Dec. 5, 1796.

DEAR SIR,—It is not possible yet to calculate with any degree of certainty whether you are to be left by the Electors to enjoy the repose to which you are so much attached, or are to be summoned to the arduous trust which depends on their allotment. It is not improbable that Pinckney will step in between the two who have been treated as the principals in the question. It is even suspected that this turn has been secretly meditated from the beginning, in a quarter where the *leading* zeal for Adams has been affected. This Jockeyship is accounted for by the enmity of Adams to Banks and funding systems, which is now become public, and by an apprehension that he is too headstrong to be a fit puppet for the intriguers behind the skreen. It is to be hoped that P. may equally disappoint those who expect to make that use of him, if the appointment should in reality light on him. We do not, however, absolutely despair that a choice

better than either may still be made; and there is always the chance of a devolution of the business on the H. of Rep^s, which will, I believe, decide it as it ought to be decided.

Adêt's note, which you will have seen, is working all the evil with which it is pregnant. Those who rejoice at its indiscretions, and are taking advantage of them, have the impudence to pretend that [it] is an electioneering manœuvre, and that the French Gov^t have been led to it by the opponents of the British Treaty. Unless the unhappy effect of it here, and cause of it in France, be speedily obviated by wise councils and healing measures, the crisis will unquestionably be perverted into a perpetual alienation of the two Countries by the secret enemies of both. The immediate consequences of such an event may be distressing; but the permanent ones to the commercial and other great interests of this country form a long and melancholy catalogue. We know nothing of the policy meditated by the Executive on this occasion. The speech will probably furnish some explanation of it.

TO THOMAS JEFFERSON.

December 10th, 1796.

DEAR SIR,—Exitus in dubio is still the motto to the election. You *must* reconcile yourself to the secondary, as well as the primary station, if that should be your lot. The prevailing idea is that Pinckney will have the greatest number of votes, and I think that Adams will be most likely to stand next. There are other calculations, however, less favourable to both. The answer to the President's speech is in the hands of Ames, Sitgreaves, Smith of Carolina, Baldwin, and myself. The form is not yet settled. There is a *hope* that it may be got into a form that will go down, without altercation or division in the House.

Yours sincerely.

TO THOMAS JEFFERSON.

PHILADELPHIA, Dec. 19, 1796.

DEAR SIR,—The returns from N. Hampshire, Vermont, S. Carolina, and Georgia, are still to come in, and leave the event of the election in some remaining uncertainty. It is but barely possible that Adams may fail of the highest number. It is highly probable, tho' not absolutely certain, that Pinckney will be third only on the list. You must prepare yourself, therefore, to be summoned to the place Mr. Adams now fills. I am aware of the objections arising from the inadequateness of the importance of the place to the sacrifices you would be willing to make to a greater prospect of fulfilling the patriotic wishes of your friends, and from the irksomeness of being at the head of a body whose sentiments are at present so little in unison with your own. But it is expected, that as you had made up your mind to obey the call of your country, you will let it decide on the particular place where your services are to be rendered. It may even be said, that as you submitted to the election knowing the contingency involved in it, you are bound to abide by the event, whatever it may be. On the whole, it seems *essential* that you should not refuse the station which is likely to be your lot. There is reason to believe, also, that your neighbourhood to Adams may have a valuable effect on his councils, particularly in relation to our external system. You know that his feelings will not enslave him to the example of his predecessor. It is certain that his censures of our paper system, and the intrigues at New York for setting Pinckney above him, have fixed an enmity with the British faction. Nor should it pass for nothing, that the true interest of New England particularly requires reconciliation with France as the road to her commerce; add to the whole, that he is said to speak of you now in friendly terms, and will no doubt be soothed by your acceptance of a place subordinate to him. It must be confessed, however, that all these calculations are qualified by his political principles and prejudices. But they add weight to the obligation, from which you must not withdraw yourself.

You will see in the answer to the President's speech much room for criticism. You must, for the present, be content to know that it resulted from a choice of evils. His reply to the foreign paragraph indicates a good effect on his mind. Indeed, he cannot but wish to avoid entailing a war on his successor. The danger lies in the fetters he has put on himself, and in the irritation and distrust of the French Government.

TO THOMAS JEFFERSON.

PHILADELPHIA, Dec^r 25, 1796.

DEAR SIR,—I cannot yet entirely remove the uncertainty in which my last left the election. Unless the Vermont election, of which little has, of late, been said, should contain some fatal vice in it, Mr. Adams may be considered as the President elect. Nothing can deprive him of it but a general run of the votes in Georgia, Tennessee, and Kentucky, in favour of Mr. Pinckney, which is altogether contrary to the best information. It is not even probable that Mr. P. will be the second on the list; the secondary votes of N. Hampshire being even said to have been thrown away on Ellsworth; and a greater number consequently required from the States above mentioned than will be likely to fall to his lot. We have nothing new from Europe. The prospect and projects in our foreign Department are under a veil, not a corner of which I have been able to lift. I fear the distrust with which the French Government view the Executive here, and the fetters which the President has suffered himself to put on, will be obstacles to the reconciliation which he cannot fail to desire. It is whispered, also, that the Spanish minister has intimated the probable dissatisfaction of his Court at the Explanatory article of the British Treaty. Nor can it be doubted, from the nature of the alliance between that and France, that a common cause will be made in all the steps taken by the latter with respect to this Country. In the mean time, the British party are busy in their calumnies for turning the blame of the present crisis from themselves, on the pretended instigations of

France, by Americans at Paris; and some of them are already bold enough to talk of an alliance with England, as the resource in case of an actual rupture with France. The new President, whoever he will be, will have much in his power; and it is important to make as many circumstances as possible conspire to lead him to a right use of it. There never was greater distress than at this moment in the monied world. Failures and frauds occur daily; and are so much connected with Banks, that these Institutions are evidently losing ground in the public opinion.

TO THOMAS JEFFERSON.

PHILADELPHIA, Jan^y 8. 1797.

DEAR SIR,—I have received your favour of the 17th ult. The election is not likely to terminate in the equilibrium of votes, for which the Constitution has not provided. If the Vermont votes should be valid, as is now generally supposed, Mr. Adams will have 71 and you 68, Pinckney being in the rear of both. It is to be hoped that the nicety, and, in truth, the unpropitious casualty of the choice of Mr. A., will lessen the evil of such an ostensible protest by this Country against Republicanism. Your acceptance of a share in the administration will not fail to aid this tendency. It is suggested to me that it will be necessary for you to be here before the adjournment of Congress, in order to be qualified. I have not examined the Constitution and the law on this subject. You will have the means of doing both, and of deciding on the question. Altho' I am sensible of the inconveniency of such a trip at this season of the year, yet I see so many advantages likely to result from it, that I cannot help wishing it may be found necessary. If you cannot qualify elsewhere, you must come, of course, that the danger of an interregnum may be provided against. The expense would be no objection; and is, besides, balanced by the effect of the qualification in settling the date of the compensation.

The special communication from the President on our affairs with France is not yet made. The gloom over them is in no

respect diminished. Not a word from Monroe, or any other quarter, relating to his recall, or enabling us to judge on the question whether Pinckney will be received. We wait with anxiety for the light that will probably be thrown on the first point by the expected communication.

The inclosed paper will give you the foreign news as it has first made its appearance here. A comparison of paragraphs renders the Italian part of it unfavourable to the French very improbable. There may, nevertheless, be some foundation for it. The French operations against our trade seem to be better authenticated, as well as the renewal of the Algerine warfare. The abortive result of Lord Malmesbury's errand is also highly probable. I just understand that Spain declared war against G. Britain on the 8th of October.

TO THOMAS JEFFERSON.

PHILADELPHIA, JAN^y 15, 1797.

DEAR SIR,—The last mail brought me your favour of Jan^y 1, inclosing an unsealed one for Mr. A., and submitting to my discretion the eligibility of delivering it. In exercising this delicate trust I have felt no small anxiety, arising by no means, however, from an apprehension that a free exercise of it could be in collision with your real purpose, but from a want of confidence in myself, and the importance of a wrong judgment in the case. After the best consideration I have been able to bestow, I have been led to suspend the delivery of the letter, till you should have an opportunity of deciding on the sufficiency or insufficiency of the following reasons: 1. It is certain that Mr. Adams, on his coming to this place, expressed to different persons a respectful cordiality towards you, and manifested a sensibility to the candid manner in which your friends had, in general, conducted the opposition to him. And it is equally known that your sentiments towards him personally have found their way to him in the most conciliating form. This being the state of things between you, it deserves to be considered

whether the idea of bettering it is not outweighed by the possibility of changing it for the worse. 2. There is, perhaps, a general air on the letter which betrays the difficulty of your situation in writing it, and it is uncertain what the impression might be resulting from this appearance. 3. It is certain that Mr. A. is fully apprized of the trick aimed at by his pseudo friends of N. Y., and there may be danger of his suspecting in mementos on that subject a wish to make his resentment an instrument for revenging that of others. A hint of this kind was some time ago dropped by a judicious and sound man, who lives under the same roof, with a wish that even the newspapers might be silent on that point. 4. May not what he said, "of the sublime delights of riding in the storm, &c.," be misconstrued into a reflection on those who have no distaste to the helm at the present crisis? You know the temper of Mr. A. better than I do, but I have always conceived it to be rather a ticklish one. 5. The tenderness due to the zealous and active promoters of your election makes it doubtful whether their anxiety and exertions ought to be depreciated by anything implying the unreasonableness of them. I know that some individuals who have deeply committed themselves, and probably incurred the political enmity at least of the P. elect, are already sore on this head. 6. Considering the probability that Mr. A.'s course of administration may force an opposition to it from the Republican quarter, and the general uncertainty of the posture which our affairs may take, there may be real embarrassments from giving written possession to him of the degree of compliment and confidence which your personal delicacy and friendship have suggested.

I have ventured to make these observations because I am sure you will equally appreciate the motive and the matter of them; and because I do not view them as inconsistent with the duty and policy of cultivating Mr. A.'s favorable dispositions, and giving a fair start to his Executive career. As you have no doubt retained a copy of the letter, I do not send it back as you request. It occurs, however, that if the subject should not be changed in your view of it by the reasons which influence mine,

and the delivery of the letter be accordingly judged expedient, it may not be amiss to alter the date of it, either by writing the whole over again, or authorizing me to correct that part of it.

The special communication is still unmade. It is, I am told, to be extremely voluminous. I hope, under the sanction of the P.'s reply to our address, that it will be calculated rather to heal than irritate the wounded friendship of the two Countries. Yet I cannot look around at the men who counsel him, or look back at the snares into which he has hitherto been drawn, without great apprehensions on this subject. Nothing from France, subsequent to the arrival of Pinckney. The negociations for peace, you will see, are suspended. The accession of Spain to the war enforces the probability that its calamities are not likely yet to be terminated. The late news from the Rhine and from Italy are, on the whole, favorable to the French. The last battle was on the 27th Oct., in the Hunspruck, and ended in a victory on their side. The H. of Rep^s are on direct taxes, which seem to be so much nauseated and feared by those who have created both the necessity and odium of them, that the project will miscarry. Hamilton, you will recollect, assured the farmers that all the purposes of the Government could be answered without resorting to lands, houses, or stock on farms. This deceptive statement, with other devices of his administration, is rising up in judgment against him, and will very probably soon blast the prospects which his ambition and intrigues have contemplated. It is certain that he has lost ground in New York of late, and his treachery to Adams will open the eyes of New England.

TO THOMAS JEFFERSON.

PHILADELPHIA, Jan^y 22, 1797.

DEAR SIR,—I have received yours of Jan^y 8th. You will find by the papers that the communication on French affairs has been at length made. It being ordered to be printed without

being read, I have no direct knowledge of its character. Some of the Senate, where it has been read in part, represent it as well fitted to convert into an incurable gangrene the wound which the friendship between the two Republics has suffered. Adding this, on our side, to the spirit manifested in the language and proceedings on the other, an awful scene appears to be opening upon us. The only chance to escape it lies in the President elect. You know the degree in which I appreciate it. I am extremely apprehensive that he may have been drawn into a sanction to this last step of the Executive by a complimentary initiation into the business which is soon to devolve on him. This is, however, apprehension merely, no circumstance being known from which the fact can be inferred. We hear nothing from Monroe or from Pinckney. It has got in the newspapers that an Envoy Extraord^y was to go to France, and that I was to be the person. I have no reason to suppose a shadow of truth in the former part of the story, and the latter is pure fiction.

Doc^t. Logan has put into my hands a copy of his agricultural experiments for you, which I will forward. A vote has passed in favour of a direct tax. The event is, notwithstanding, doubtful. The Eastern members, after creating the necessity for it, increasing the odium of it, and reproaching their brethren with backwardness in supporting the Government, are now sneaking out of the difficulty, and endeavouring, whilst they get what they wish, to enjoy the popularity of having opposed it.

TO THOMAS JEFFERSON.

PHILADELPHIA, Jan^y 29, 1797.

DEAR SIR,—Yours, covering an unsealed letter to Mr. Tazewell, came duly to hand, and will be turned to the use you wish. As you take the Philadelphia Gazette, in which the belligerent answer to Adêt's note has been printed in toto, I refer to that for the posture and prospect of things with France. The British party, since this overt patronage of their cause, no longer wear the mask. A war with France, and an alliance with

Great Britain, enter both into print and conversation; and no doubt can be entertained that a push will be made to screw up the President to that point before he quits the office. The strides latterly made with so much inconsistency, as well as weakness, in that direction, prepare us for receiving every further step without surprise. No further discovery has been made of the mind of the President elect. I cannot prevail on myself to augur much that is consoling from him. Nothing from abroad, nor more at home than you will gather from the newspapers.

TO THOMAS JEFFERSON.

PHILADELPHIA, Feb 5, 1797.

DEAR SIR,—I have received yours of , giving notice that we shall have the pleasure of seeing you here soon, but that letters written before the 7th would arrive before you leave home.

Nothing occurs to alleviate the crisis in our external affairs. The French continue to prey on our trade. The British, too, have not desisted. There are accounts that both of them are taking our East Indiamen. This is an alarming symptom, there being 60 or 70 vessels from different parts of the U. S. engaged in that trade. Pickering's corrosive letter has not yet been fully printed, so as to come before the H. of Rep^s. It is extremely difficult to decide on the best course to be taken. Silence may be construed into approbation. On the other hand, it is not likely that any opportunity will be given for negating an approving resolution. And it is, at least, doubtful whether a vote of positive disapprobation in any form whatever could be safely risked in the House, or, if passed, whether the public opinion would not be brought to side with the Executive against it. It is, moreover, extremely difficult to shape any measure on the occasion so as to escape the charge either of censuring or advising without a proper warrant, from the nature of our constitutional relation to the Executive. Nor is it unworthy of consideration that there are formidable steps not yet taken by

the Pres^t which may be taken before the moment of his exit, which, if taken, might be efficacious, and which his successor, without his sanction, would not dare to take.

A bill for collecting the proposed taxes on land, &c., is before the Committee of Ways and Means. The difficulties of the subject, the shortness of the time, and the aversion of the Eastern people, render it uncertain whether it will pass or not at the present Session. I suspect the policy of the Treasury Department is, to separate the preparatory arrangements from the actual collection of the tax, and to provide for the former only at present; an expedient not unlikely to succeed, as it will smooth the way for the Eastern members. Some, I find, who do not disapprove of the plan of direct taxes, are unwilling to fortify the disposition to embroil us with France, by enlarging, at the present juncture, our system of revenue.

I reserve for a verbal communication the indications by which we judge of the prospect from the accession of Mr. A. to the helm. They are not, I conceive, very flattering.

I just learn that a British packet brings London accounts to Dec^r 7. Nothing is as yet given out but that the negociations at Paris have ended in abortion. It is probable that what is not given out is not more favorable to G. B. I do not believe that any intelligence has been received from Monroe or Pinckney subsequent to the arrival of the latter. It is said that the Spaniards are fortifying at the Chickasaw Bluffs. If this be the case, it strengthens the apprehension that they regard the British Treaty, with the explanatory article, as superseding the obligation or policy of their Treaty with us.

TO THOMAS JEFFERSON.

PHILADELPHIA, Feb^y 11, 1797.

DEAR SIR,—After several little turns in the mode of conveying you notice of your election, recurrence was had to the precedent of leaving the matter to the Senate, where, on the casting vote of Mr. Adams, the notification was referred to the President of

the U. States, in preference to the Pres. of the Senate. You will see in the papers the state of the votes, and the manner of counting and proclaiming them. You will see, also, the intimation given by Mr. A. of the arrangement he had made for taking the oath of office. I understand he has given another intimation which excites some curiosity, and gives rise to several reflections, which will occur to you; it is, that he means to take the advice of the Senate, on his coming into office, whether the offices held during pleasure are, or are not, vacated by the political demise of his predecessor. This is the substance. I do not aim at or know the terms of the question, of which previous notice is there given, that the members of the Senate may the better make up their opinions. What room is there for such a question at all? Must it not have been settled by precedent? On what principle is the Senate to be consulted? If this step be the result of deliberation and system, it seems to shew—

1. That the maxims of the British Government are still uppermost in his mind.
2. That the practice of his predecessor are not laws to him, or that he considers a second election of the same person as a continuation of the same reign.
3. That the Senate is to be brought more into Executive agency than heretofore.

Accounts have been received of the arrival of Pinckney in France, but not at Paris. Nothing yet from Monroe since he knew of his recall. Everything relating to that quarter remains in statu quo.

You will find in the inclosed papers that Buonaparte has nearly cut up another Austrian army. It is to be hoped that its consequences may force the Emperor to a peace, and, thro' him, G. Britain.

Adieu.

This goes by Mr. Bloodworth, son of the Senator from N. Carolina, appointed to carry you notification of your appointment.

TO THOMAS JEFFERSON.

ORANGE, Aug. 5th, 1797.

DEAR SIR,—Yours of the 3d arrived safe yesterday. I will converse with Co^l Monroe, as you desire, on the subject of his letter to you, and listen to all his reasons for the opinion he gives. My present conviction is opposed to it. I have viewed the subject pretty much in the light you do. I consider it, moreover, as a ticklish experiment to say publicly yes or no to the interrogatories of party spirit. It may bring on dilemmas, not to be particularly foreseen, of disagreeable explanations, or of tacit confessions. Hitherto the precedents have been the other way. The late President was silent for many years as to the letters imputed to him, and, it would seem, deposited in the office of State only the answer which the zeal of the Secretary communicated to the public. Mr. Adams has followed the example with respect to Callender's charge * * * * of advising the extermination of the Tories. Col. M. thinks that honest men would be encouraged by your owning and justifying the letter to Mazzei. I rather suspect it would be a gratification and triumph to their opponents; and that out of the unfixed part of the Community more converts would be gained by the popularity of Gen^l Washington, than by the kind of proof that must be relied on against it.

Wishing to return the "petition, &c.," to your Court, as you recommend, I must be brief on that subject. It is certainly of great importance to set the public opinion right with regard to the functions of grand Juries, and the dangerous abuse of them in the federal Courts; nor could a better occasion occur. If there be any doubts in the case, they must flow from the uncertainty of getting a numerous subscription, or of embarking the Legislature in the business. On these points, the two gentlemen you mean to consult can judge much better than I can do. The Petition, in its tenor, cannot certainly be mended. I have noted with a pencil the passages which, perhaps, may be better guarded against cavil.

* * * * *

TO THOMAS JEFFERSON.

Oct. 20th, 1797.

DEAR SIR,—I received the inclosed pamphlet from Col. Monroe, with a request that it might be returned to you. The publication, under all its characters, is a curious specimen of the ingenious folly of its author. Next to the error of publishing at all, is that of forgetting that simplicity and candour are the only dress which prudence would put on innocence. Here we see every rhetorical artifice employed to excite the spirit of party to prop up his sinking reputation; and whilst the most exaggerated complaints are uttered against the unfair and virulent persecutions of himself, he deals out in every page the most malignant insinuations against others. The one against you is a masterpiece of folly, because its impotence is in exact proportion to its venom. Along with the pamphlet is inclosed a letter, which you will be good enough to have delivered by an early opportunity.

TO JAMES MONROE.

ORANGE, December 17, 1797.

DEAR SIR,—

* * * * *

I have not received a line from Philadelphia on the subject of the speech, or, indeed, on any other. To me no explanation of the phenomenon is necessary, having been on the ground for observing the progressive apostasy from the principles of our Revolution and Governments, which marked the period of your absence. If events should not be unpropitious to the monarchical party, you may prepare yourself for still more wonderful indications of its spirit and views. Those who tolerate at present the fashionable sentiments, will soon be ready to embrace and avow them. The active characters who promoted Mr. Adams to his station, knowing him to be what he is, cannot at bottom have been much averse to his political tenets, and will find in the spirit of party, and in personal attachments and

animosities, sufficient motives to go all lengths with him. Let us hope, however, that the tide of evil is nearly at its flood, and that it will ebb back to the true mark, which it has overpassed.

Mrs. Madison, as well as myself, would be very happy to pass a few days with you and Mrs. Monroe, being not discouraged by the picture you give of your offices. But we are under an engagement to make a visit to our sister, near Richmond, on which she will set out the last of this week. I shall not follow for eight or ten days; and it will give me great pleasure, if I can, in that interval, to ride up; but the cause of my not accompanying her will, I fear, put it out of my power. I expect some workmen, who are to be put into a plan of business which will keep them employed till our return from below. Mrs. Madison offers her love to Mrs. Monroe, in which the family desire to be joined.

Believe me, dear sir, your sincere friend and serv.

TO THOMAS JEFFERSON.

ORANGE, Dec^r 25, 1797.

DEAR SIR,—We have had a great proportion of cold weather since you passed us. The thermometer, however, has not been lower than 10°. It was at this point on the morning of the 21st instant. The drought, also, is equal to the cold. Within the last 31 days the fall of water has been but 1¼ inches only. Of snow there has been none. This cold and dry spell, succeeding the dry fall and late seeding, gives to the wheat fields the worst of appearances.

You will not expect political occurrences from this quarter. The objects of enquiry here are Liston's plot, the envoyship to France, and Monroe's publication. The delay of this last occasions some surprise. I observe that the President has laid hold of the late endemic at the seat of Government as an occasion for getting the prerogative for proroguing the Legislature. Fortunately, the Constitution has provided an important barrier

in this case, by requiring a session at least within every year. But still the power may, in unforeseen emergencies, be made an instrument of party or of usurpation, and, it is to be hoped, will not therefore be granted. I have not examined it in a constitutional view, but that also merits attention. Ambition is so vigilant, and where it has a model always in view, as in the present case, is so prompt in seizing its advantages, that it cannot be too closely watched, or too vigorously checked.

When you do me the favor to write, let your letters leave Philadelphia in the mail of Friday morning. They will then come without any halt.

Adieu.

TO THOMAS JEFFERSON.

ORANGE, JAN 21, 1798.

DEAR SIR,—When your favor of the 3rd instant arrived, I was on a journey to the neighborhood of Richmond, from which I did not return till the 18th. The mail on the day following brought me the packet of newspapers under your cover. Col. Bell has written me that the nails ordered, as stated in my last to you, are all ready for me. I had not requested them to be prepared in parcels, as I shall use them, because I want some for out-houses immediately, and I wished to avoid the necessity of more than one trip.

The attack on Monroe's publication evidently issues from, or is aided by, an official source, and is a proof that the latter bites. I have not yet seen a copy of it, and was astonished to learn in Richmond, where I passed a day, that a single copy only had reached that place, which, from the length of it, not more than two or three persons had read. By them it was said, that if this did not open the eyes of the people, their blindness must be incurable. If a sufficient number of copies do not arrive there before the adjournment of the Assembly, the only opportunity of circulating the information in this State will be lost for a year, that is, till the subject has lost its flavor. The

enormous price, also, was complained of, as a probable obstacle to an extensive circulation.

You will have seen in the newspapers the proceedings on the Amherst Memorial, on the Glebes and Churches, and on the proposition for revising the Constitution. The first was the only test of party strength, and so far deceptive, as it confounds scrupulous Republicans with their adversaries in the votes against a Legislative censure on the Grand Jury.

I did not understand the presentment was vindicated positively by a single member in the Debate. The unfavorable accounts as to our three Plenipo's got to Richmond while I was there, by the way of Norfolk. It seemed to give extreme uneasiness to the warm and well-informed friends of Republicanism, who saw in a war on the side of England the most formidable means put in the hands of her partizans for warping the public mind towards Monarchy. This consideration certainly merits the strictest regard as an argument for peace, as long as we have a fair choice on the question. The Public will have a right to expect, also, from our Executive and the negotiators, the fullest communication of every circumstance that may attend the experiment; if it should miscarry. The British Treaty has placed such difficulties in the way of an adjustment, that nothing but the most cordial dispositions on both sides can overcome them; and such have been the indications on the side of our Executive, even during the negociation, that it will not be easily believed, in case of a rupture, that it was not promoted, if not caused, by our own counsels.

We have had a fine spell of open weather, with plentiful rains at proper intervals. This has been favorable to our winter operations, but otherwise to some of those of nature, [?] particularly in our wheat fields, which continue to present the most unpromising aspect. Accept the most affectionate farewell.

TO JAMES MONROE.

Febr 5, 1798.

DEAR SIR,—The calls of my carpenters, and the fineness of the weather, have induced me to hurry my wagon up for the nails. It will receive the few articles which you have been so good as to offer from the superfluities of your stock, and which circumstances will permit me now to lay in; to wit, Two table cloths for a dining-room of about 18 feet; two, three, or four, as may be convenient, for a more limited scale; four dozen napkins, which will not in the least be objectionable for having been used; and two mattresses. We are so little acquainted with the culinary utensils in detail, that it is difficult to refer to such by name or description as would be within our wants. We conclude it best, therefore, not to interfere with any opportunity you may have of gratifying your other friends, and to reserve our demands on your kindness till we can have the pleasure of seeing you, as well as have it in our power to compare the undisposed-of remains with our probable wants.

I found here a letter from Mr. Jefferson, of the 24th January. The following are extracts: "A letter is certainly received here from Talleyrand, which says our envoys have been heard, that their pretensions are high, that possibly no arrangement may take place, but that there will be no declaration of war by France. It is said that Bournonville has written that he has hopes of an accommodation, (three audiences having then, Nov^r 3, been had,) and to be himself a member of a new diplomatic mission to this country. On the whole, I am entirely suspended as to what is to be expected." "Very acrimonious altercations are going on between the Spanish Minister and the Executive, and at the Natchez something worse than mere altercations, &c." You will recollect the idea in our conversation, that a war with Spain would be courted as a succedaneum for the barren field presented by one with France to the privateering avidity. I inclose the paper mentioned to you, which you will of course be careful of. It is a curious specimen of Jay's regard for instructions in making the British Treaty, as his ad-

dress, or rather petition, to his Majesty, is of that manly and independent spirit which Scipio labors to bestow on him.

Mrs. Madison and the family offer their affectionate respects to Mrs. Monroe.

Yours truly,

Calling to mind the difficulty you may experience from the general failure of the potato crop last year, I beg you to accept by the bearer a couple of bushels, which may furnish the seed for your garden, if nothing more. Mrs. Madison insists on adding for Mrs. Monroe a few pickles and preserves, with half a dozen bottles of gooseberries and a bag of dried cherries, which will not be wanted by us till another season will afford a supply, and which the time of your return home must have deprived her of, as the fruit of the last season. We both wish we could substitute something more worthy of acceptance.

TO THOMAS JEFFERSON.

ORANGE, Feb^y 12, 1798.

DEAR SIR,—The last mail brought neither letters nor papers from Philadelphia. By the preceding one I received your favor of Jan^y 24, and a bundle of the Gazettes down to the 25th, inclusive, with an omission only of that of the 23d, which it may be proper for you to supply in order to keep your set entire.

Your account of the probable posture of the negociation at Paris is less decisively unfavorable than the reports prevailing here. It will be happy if a good issue should result from the crisis. But I have great apprehensions from two sources: 1. The spirit in which the negociation will be conducted on the side of our Executive, if not on the other side also. 2. The real difficulties which the British Treaty has thrown in the way. It is pretty clear that France will not acquiesce under the advantage which that insidious instrument gives to her enemy, and the House of Rep^s, at the last session, admitted that the

condition of the two nations ought to be equalized. How can this now be done? In one of two ways only: either by dissolving the British Treaty, or by stipulating with France that she may plunder us, as we have stipulated that Britain may plunder us.

To the first mode, the objections on the American side are obvious. To the second, will not France refuse so far to sanction the principle that free ships do *not* make goods free, as to enter into a positive stipulation to that effect, chusing rather to equalize her own situation on the principle of retaliation, which indirectly supports instead of surrendering her favorite object? Should this be her course, the U. S. will have no option but to go directly to war in defence of the British Treaty, which was adopted as a defence against war, and in defence of the principle that free ships do *not* make free goods, in opposition both to their own principles and their essential interests, or to go indirectly to war, by using the frigates as convoys, and arming private vessels, of which the owners and mariners will often be British subjects, under American colours; or to some defensive regulation of a commercial nature. The first will not be done, because the people are not yet confided in to tolerate it. The last will not be done, because it will be difficult to frame such a regulation as will not injure Britain, as well as ourselves, more than France. The second expedient I conclude, therefore, will be persisted in; and as there is likely to be a majority ready to back the hostility of the Executive, the best that can be done by the Republicans will be to leave the responsibility on the real authors of whatever evils may ensue.

I am not surprized at the extremity to which the dispute at the Natchez is pushed. I never had a doubt that in proportion as war with France is contemplated, a war with Spain will be provoked by the present administration. The former would not be relished, even by the New England privateers, without the prospect of plunder presented by the latter. A war with Spain would also be a most convenient grave for the misdemeanours of Liston and his partizans.

I returned from Albemarle on Monday last, where I con-

sulted with your nailer on the subject of the sprigs and lathing nails not included in the parcels prepared for me. I found that the cutting machine has never been re-established, and I did not request that their slight kind of nails should be made in the common way. If you mean, however, that the machine shall be set up again, or if it be a part of your plan to make such nails in the common way, there will be time enough for either before I shall want them. I was at Mr. Randolph's, and found all well there, as you will doubtless learn to be the case from himself.

I was astonished to find that even Monroe himself had not yet seen a printed copy of his publication. In the mean time, Scipio's misrepresentations and sophistries are filling the public mind with all the poison which P.'s malice can distil into it. Where the book is not seen first, and an antidote does not quickly follow from the same centre which gives circulation to the poison, innocence and truth cannot have fair play.

Present my friendly respects to Mr. Giles, who, I hear, has gone on to Philadelphia; also to Mr. Tazewell and Mr. Dawson. I have been sorry to hear of the ill health of the former. As I perceive by the votes in the Senate that he has resumed his seat, I hope he is well again.

Yours always and affectionately.

TO THOMAS JEFFERSON.

Febr. 1798.

DEAR SIR,—Since my last I have received yours of Feb^r 8, with a continuation of the Gazettes down to that date, with the exception only, mentioned already, of the Gazette of Jan^r 23. I am glad to find the public opinion to be taking the turn you describe on the subject of arming. For the public opinion alone can now save us from the rash measures of our hot-headed Executive—it being evident from some late votes of the House of Rep^s, particularly in the choice of managers for the Impeach-

ment, that a majority there, as well as in the Senate, are ready to go as far as the controul of their constituents will permit.

There never was, perhaps, a greater contrast between two characters than between those of the present President and his predecessor; although it is the boast and prop of the present that he treads in the steps of his predecessor. The one, cool, considerate, and cautious; the other, headlong, and kindled into flame by every spark that lights on his passions: the one, ever scrutinizing into the public opinion, and ready to follow, where he could not lead it; the other, insulting it by the most adverse sentiments and pursuits. Washington a hero in the field, yet overweighing every danger in the Cabinet: Adams without a single pretension to the character of a soldier, a perfect Quixotte as a statesman. The former chief magistrate pursuing peace every where with sincerity, though mistaking the means: the latter taking as much pains to get into war as the former took to keep out of it. The contrast might be pursued into a variety of other particulars—the policy of the one in shunning connections with the arrangements of Europe, of the other in holding out the United States as a make-weight in the Balances of power; the avowed exultation of Washington in the progress of liberty every where, and his eulogy on the Revolution and people of France, posterior even to the bloody reign and fate of Robespierre; the open denunciations by Adams of the smallest disturbance of the ancient discipline, order, and tranquillity of despotism, &c., &c., &c.

The affair of Lyon and Griswold is bad enough every way, but worst of all in becoming a topic of tedious and disgraceful debates in Congress. There certainly could be no necessity for removing it from the decision of the parties themselves before that tribunal, and its removal was evidently a sacrifice of the dignity of the latter to the party manœuvre of ruining a man whose popularity and activity were feared. If the state of the House suspended its rules in general, it was under no obligation to see any irregularity which did not force itself into public notice; and if Griswold be a man of the sword, he should not have permitted the step to be taken; if not, he does not de-

serve to be avenged by the House. No man ought to reproach another with cowardice who is not ready to give proof of his own courage.

I have taken some pains, but in vain, to find out a person who will engage to carry the mail from Fredericksburg to Charlottesville. When I was in the neighborhood of the latter I suggested the propriety of an effort there for the purpose, but do not know that it will be more successful.

Our winter has continued without snow, and rather dry, and our wheat fields wear the most discouraging aspect.

Adieu.

TO THOMAS JEFFERSON.

March 4, 1798.

DEAR SIR,—

* * * * *

Mr. Tazewell's speech is really an able one in defence of his proposition to associate juries with the Senate in cases of impeachment. His views of the subject are so new to me, that I ought not to decide on them without more examination than I have had time for. My impression has always been that impeachments were somewhat *sui generis*, and excluded the use of Juries. The terms of the amendment to the Constitution are indeed strong, and Mr. T. has given them, as the French say, all their lustre. But it is at least questionable whether an application of that amendment to the case of impeachments would not push his doctrine farther than he himself would be disposed to follow it.

It would seem, also, that the reservation of an ordinary trial by a jury must strongly imply that an impeachment was not to be a trial by jury. As removal and disqualification, the punishments within the impeaching jurisdiction, were *chiefly* intended for offices in the Executive line, would it not also be difficult to exclude Executive influence from the choice of juries? or would juries armed with the impeaching power, and under the influence of an unimpeachable Tribunal, be less formidable than the power as hitherto understood to be modified?

The universality of this power is the most extravagant novelty that has been yet broached, especially coming from a quarter that denies the impeachability of a Senator. Hardy as these innovators are, I cannot believe they will venture yet to hold this inconsistent and insulting language to the public. If the conduct and sentiments of the Senate on some occasions were to be regarded as the natural and permanent fruit of the institution, they ought to produce not only disgust, but despair, in all who are really attached to free Government. But I cannot help ascribing some part of the evil to personal characters, and a great deal of it to the present spirit of the Constituents of the Senate. Whenever the State Legislatures resume the tone natural to them, it will probably be seen that the tone of their Representatives will vary also. If it should not, the inference will then be unavoidable that the present Constitution of the Senate is at war with the public liberty.

If the countervailing act of G. B. does not open the mouths and eyes both of the Eastern Carriers, it will be a political phenomenon without example. In the year 1789, G. B. had about 230, and America 43 thousand of the tonnage in the mutual trade. The encouragements given by Congress, and which G. B. did not dare to countervail till Jay tied our hands from continuing the advantage on the side of America, have brought up the American share to about one-half. The bounties now secured to the British tonnage will pretty certainly reduce our proportion below its original scantiness.* And if the French, as may be expected, should suffer their disgust at the British Treaty to dictate their navigation policy towards us, Jay will have accomplished more than perhaps was ever done by the same personal talents; he will have annihilated the marine of a maritime Country by a single stroke of his pen, and, what is still more extraordinary, received the plaudits of the victims whom he has sacrificed.

I am curious to see how the zealots for expelling Lyon will treat the deliberate riot of Griswold. The whole affair has

* This prevented by the war in Europe and the neutrality of the U. S.—J. M.

been extremely disgraceful; but the dignity of the Body will be wounded, not by the misconduct of individual members, which no public body ought to be answerable for, but by the misconduct of itself, that is, of a majority; and it is to be feared that the majority in this case are ready for every sacrifice to the spirit of party which infatuates them. The greatest sinners among them are Sewall and Harper, who forced the offensive business on the House.

We have had lately $4\frac{1}{2}$ inches of snow. On the 22nd, however, the day on which it was snowing, as you observe in your letter, it was throughout fair here. On the 21st, day and night together, there fell $\frac{5}{8}$ of an inch, and on the night of the 23rd, $\frac{1}{8}$ of an inch of rain.

Yours always and affectionately.

TO THOMAS JEFFERSON.

March 12th, 1798.

DEAR SIR,—

* * * * *

I think the Whigs acted very properly in attending the Birth-night, on the principle of appropriating it to the person, and not to the office of the late President. It is a pity that the non-attendance of the Adamsites is not presented to the public in such a manner, with their names, as to satisfy the real friends of Washington, as well as the people generally, of the true principles and views of those who have been loudest in their hypocritical professions of attachment to him.

The proceedings relative to the Stamp act mark strongly two things: one, that the public feeling is not, as is pretended, in unison with the measures of the Government; the other, that it will, whenever it shews itself, direct immediately the course of the H. of Rep^s, and no doubt, finally, the Senate also. The Eastern votes for the repeal are a demonstration of both these truths.

The enclosed paper contains all the information I possess on

the subject of Mazzei's cargo of books. Notwithstanding the lapse of time, I have never had a single return of sales. Whilst Congress sat in New York, I repeatedly enquired of Rivington, without learning that any had taken place. I beg you to preserve and return the paper.

We have had warm and dry weather for ten days till yesterday, which gave us a fine rain. The wheat fields in general retain their sickly countenance. In many places it is thought impossible to replace the seed, and it seems certain that the ensuing crop will be very short, whatever change for the better may happen in the residue of the season. Great efforts are generally on foot for crops of Tobacco.

TO THOMAS JEFFERSON.

April 2d, 1798.

DEAR SIR,—Since my last, I am in debt for your two favors of the 15th and 22, the Gazettes of the 3, 6, 7, and 8 ult., with a regular continuation to the 22d; two statements from the Treasury Department, and Paine's letter to the French people and armies.

The President's message is only a further development to the public of the violent passions and heretical politics which have been long privately known to govern him. It is to be hoped, however, that the H. of Rep^s will not hastily echo them. At least it may be expected that, before war measures are instituted, they will recollect the principle asserted by 62 vs. 37, in the case of the Treaty, and insist on a full communication of the intelligence on which such measures are recommended. The present is a plainer, if it be not a stronger case; and if there has been sufficient defection to destroy the majority, which was then so great and so decided, it is the worst symptom that has yet appeared in our Councils.

The constitution supposes, what the History of all governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It has, accord-

ingly, with studied care, vested the question of war in the Legislature. But the doctrines lately advanced strike at the root of all these provisions, and will deposit the peace of the Country in that Department which the Constitution distrusts as most ready, without cause, to renounce it. For if the opinion of the President, not the facts and proofs themselves, is to sway the judgment of Congress in declaring war; and if the Pres^t in the recess of Congress create a foreign mission, appoint the Minister, and negotiate a war Treaty, without the possibility of a check, even from the Senate, until the measures present alternatives overruling the freedom of its judgment; if, again, a Treaty, when made, obliges the Legislature to declare war contrary to its judgment, and, in pursuance of the same doctrine, a law declaring war imposes a like moral obligation to grant the requisite supplies until it be formally repealed with the consent of the P. and Senate, it is evident that the people are cheated out of the best ingredients in their Government, the safeguards of peace, which is the greatest of their blessings.

I like both your suggestions in the present crisis. Congress ought clearly to prohibit arming, and the President ought to be brought to declare on what ground he undertook to grant an indirect licence to arm. The first instructions were no otherwise legal than as they were in pursuance of the law of nations, and, consequently, in execution of the law of the land. The revocation of the instructions is a virtual change of the law, and consequently a usurpation by the Executive of a legislative power. It will not avail to say that the law of nations leaves this point undecided, and that every nation is free to decide it for itself. If this be the case, the regulation being a Legislative, not an Executive one, belongs to the former, not the latter authority, and comes expressly within the power, "to define the law of nations," given to Congress by the Constitution. I do not expect, however, that the Constitutional party in the H. of Rep^s is strong enough to do what ought to be done in the present instance.

Your 2^d idea, that an adjournment for the purpose of consulting the constituents on the subject of war, is more practicable,

because it can be effected by that branch alone, if it pleases, and because an opposition to such a measure will be more striking to the public eye. The expedient is the more desirable, as it will be utterly impossible to call forth the sense of the people generally before the season will be over, especially as the towns, &c., where there can be most despatch in such an operation, are on the wrong side; and it is to be feared that a partial expression of the public voice may be misconstrued or miscalled an evidence in favor of the War party. On what do you ground the idea that a declaration of war requires $\frac{2}{3}$ ^{ds} of the Legislature? The force of your remark, however, is not diminished by this mistake; for it remains true, that measures are taking, or may be taken by the Executive, that will end in war, contrary to the wish of the Body which alone can declare it.

TO THOMAS JEFFERSON.

April 15, 1798.

DEAR SIR,—My last answered yours of the 21st, since which I received on Friday last your three favors of the 29 ult., of April 5 and 6. I have no reason to suspect that any of your letters have miscarried, or been opened by the way. I am less able to say whether mine have all reached you, as I have generally written them in haste, and neglected to keep a note of their dates. I will thank you to mention in your acknowledgment of this whether you received one from me inclosing a letter to F. A. Muhlenberg, and whether he certainly received it. It related to a case of humanity, and required an answer, which has never come to hand.

The effect of the President's speech in France is less to be wondered at, than the speech itself, with other follies of a like tendency, is to be deplored. Still, the mode and degree of resisting them is rather meeting folly with folly than consulting the true dignity and interest which ought to prescribe such cases. The conduct of Talleyrand is so extraordinary as to be scarcely credible. I do not allude to its depravity, which, however

heinous, is not without examples. Its unparalleled stupidity is what fills one with astonishment.

Is it possible that a man of sagacity, as he is admitted to be, who has lived long enough in this Country to understand the nature of our Government; who could not be unaware of the impossibility of secrecy, and the improbability of success, in pursuing his propositions thro' the necessary forms; who must have suspected the Executive rather of a wish to seize pretexts for widening the breach between the two Republics, than to make use of any means, however objectionable, to reconcile their differences; who must have been equally suspicious of the probable inclination of some one or other of the Envoys; is it possible that such a man, under such circumstances, could have committed both his character and safety by such a proposition? If the evidence be not perfectly conclusive, of which I cannot judge, the decision ought to be against the evidence, rather than on the side of the infatuation. It is easy to foresee, however, the zeal and plausibility with which this part of the despatches will be inculcated, not only for the general purpose of enforcing the war measures of the Executive, but for the particular purpose of diverting the public attention from the other more important part, which shews the speech and conduct of the President to be now the great obstacle to accommodation.

This interesting fact must, nevertheless, finally take possession of thinking minds, and strengthen the suspicion, that whilst the Executive were pursuing ostensible plans of reconciliation, and giving instructions which might wear that tendency, the success of them was indirectly counterworked by every irritation and disgust for which opportunities could be found in official speeches and messages, answers to private addresses, harangues in Congress, and the vilest insults and calumnies of newspapers under the patronage of Government.

The readiness with which the papers were communicated, and the quarter proposing the call for them, would be entitled to praise, if a mass of other circumstances did not force a belief that the view in both was more to inflame than to inform the public mind. It is not improbable that the influence of the

first impressions in checking the rising spirit in N. England, and bearing up the party of Jay in N. York, whose re-election is brought into danger by the pestilent consequences experienced from his Treaty, had considerable share in the motive.

The negative declaration proposed by Mr. Sprigg is liable to so many specious objections, that I shall be surprised if a willing majority does not take advantage of them. In ordinary cases, the mode of proceeding is certainly ineligible; but it seems equally obvious that cases may arise for which that is the proper one. Three of these occur where there does not appear any room to doubt on the subject: 1. Where nothing less than a declaration of pacific intentions from the Department entrusted with the power of war will quiet the apprehensions of the constituent body, or remove an uncertainty which subjects one part of them to the speculating arts of another. 2. Where it may be a necessary antidote to the hostile measures or language of the Executive Department. If war sentiments be delivered in a speech to Congress which admits of a direct answer, and the sentiments of Congress be against war, it is not doubted that the counter sentiments might and ought to be expressed in the answer. Where an extra message delivers like sentiments, and custom does not permit a like explanation of the sentiments of the Legislature, there does not appear any equivalent mode of making it, except that of an abstract vote. 3. Where public measures or appearances may mislead another nation into distrust of the real object of them, the error ought to be corrected; and in our Government, where the question of war or peace lies with Congress, a satisfactory explanation cannot issue from any other Department.

In Governments where the power of deciding on war is an Executive prerogative, it is not unusual for explanations of this kind to be given, either on the demands of foreign nations, or in order to prevent their improper suspicions. Should a demand of this sort be at any time made on our Gov^t, the answer must proceed, if thro' an Executive functionary, from the war prerogative, that is, from Congress; and if an answer could be given on demand, a declaration without a demand may cer-

tainly be made with equal propriety, if there be equal occasion for it.

The discovery of Mr. A.'s dislike to the City of Washington will cause strong emotions. What sort of conscience is that which feels an obligation on the Gov^t to remove thither, and a liberty to quit it the next day? The objection to the magnificence of the President's House belongs to a man of very different principles from those of Mr. A. The increase of expense, therefore, without a probable increase of salary in proportion, must be the real ground of objection.

I have looked over the two papers which you consider as so threatening in their tendency. They do not, I own, appear to me exactly in the same light; nor am I by any means satisfied that they are from the pen you ascribe them to. If they are, there certainly has been a disguise aimed at in many features of the style. I differ still more from you as to the source from which an antidote, if necessary, ought to come. But waiving every thing of that sort, there is really a crowd and weight of *indispensable* occupations on my time, which it would be very tedious to explain, but which I pledge myself will justify me in leaving such tasks to others, not only commanding more time for them, but in every respect more favorably situated for executing them with advantage and effect. And it is with no small pleasure I observe that some pens are employed which promise the public all the lights with respect to their affairs which can be conveyed to them thro' the channels of the press.

It is now become certain that not half crops of wheat can be made. Many will not get back more than their seed, and some not even that. We have lately had a severe spell of N. E. rain, which, in this neighborhood, swept off at least 15 per cent. of the cattle; and from accounts in different directions, it appears to have been equally fatal. We are at present in the midst of a cold N. W. spell, which menaces the fruit. The tops of the blue mountains are tinged with snow, and the thermometer this morning was at 31°. It does not appear, however, that the mischief is yet done. The coming night, if no sudden change takes place, must, I think, be fatal.

If Mr. Bailey has not yet taken up his note, be so good as to have the enclosed forwarded to him.

TO THOMAS JEFFERSON.

April 22d, 1798.

DEAR SIR,—My last was on the 15th, and acknowledged your preceding letters. I have since received that of the 12th, under the same cover with the Gazettes; and the instructions and despatches under a separate cover. The interruptions of company, added to the call of business, have not left me time as yet to read over the whole of those papers. A glance at them, with the extracts given of their contents, fully account for the state of astonishment produced in the public mind. And yet the circumstance that ought to astonish most, perhaps, is the publication of them by the Executive and Senate.

Whatever probability there may be of individual corruption within the pale of the French Gov^t, the evidence is certainly very insufficient to support such an attack on its reputation in the face of the world, even if we could separate the measure from its inevitable effect in blasting every chance of accommodation, if it should reach France before terms shall be finally settled. After this stroke in the politics of those two branches of our Government, no one who has not surrendered his reason can believe them sincere in wishing to avoid extremities with the French Republic; to say nothing of the internal views to which they mean also to turn this extraordinary manœuvre.

There has not been time for any impressions on the public sentiment in this quarter, which the Despatches are calculated to make. The first will, no doubt, pretty much correspond with those made elsewhere. But the final impressions will depend on the further and more authentic developments, which cannot be far behind, and which by this time may be arrived where you are. I find that in several places the people have turned out with their protests against the war measures urged by the Executive. Whether the proceeding will be general, I cannot

pretend to decide. In this County, a petition is to be handed about, which will, I presume, be pretty fully signed, if sufficiently circulated; unless the disaffected few among us should be emboldened by the present crisis to circulate along with it the impressions emanating from the Despatches, which may stop the hands of wavering or cautious people.

TO THOMAS JEFFERSON.

April 29, 1798.

DEAR SIR,—My last was on the 22d. Yours received by the last mail was of the 19th inst. The despatches have not yet come sufficiently to the knowledge of the bulk of the people to decide the impression which is to result from them. As far as I can infer from the language of the few who have read the newspapers, there will be a general agreement as to the improper views of our own Executive party, whatever difference of opinion there may be as to the purity of the French councils. Indeed, the reflexion of others, as well as my own, traces so many absurdities and improbabilities in many of the details, that the injustice seems equal to the temerity of publishing such a libel on the French Government. Col. Monroe lodged with me last night on his way to the District Court at Fred^s. He considers the transaction as evidently a swindling experiment, and thinks the result will bring as much derision on the Envoys as mischief on the Country. I am sorry to learn that the Naval bill is likely to be carried, and particularly that any of our friends should, by their leaving Congress, be accessory to it. The public sentiment here is unquestionably opposed to every measure that may increase the danger of War. Petitions, expressive of it, will be signed by all to whom they are presented, with such exceptions only as may be guessed at. It appears, however, that the crisis is over for their effect on Congress, if there were a disposition there to listen to them.

I take the liberty of subjoining a list of a few articles not to be got out of Philadelphia, and so important to my present ob-

ject that I break through every restraint from adding to the trouble, of which you have more than enough. I hope the commission may be facilitated by your previous acquaintance with the places at which they are to be had, and that you will be able to make use of the time of others chiefly for the purpose. If J. Bringhurst should be in the way, he will readily relieve you from all attention to the details. I wish them to be forwarded to "Fredericksburg, to the care of Robert Dunbar, Esq., at Falmouth." The enclosed draught will be a fund for the purchase.

Adieu. Affectionately.

TO THOMAS JEFFERSON.

May 5, 1798.

DEAR SIR,—I have to thank you for your favor of the 26th ult. My last was of the 29th. The success of the war party in turning the Despatches to their inflammatory views is a mortifying item against the enlightened character of our citizens. The analysis of the Despatches by Sidney cannot fail to be an effectual antidote, if any appeal to sober reflection can prevail against occurrences which are constantly addressing their imaginations and feelings. The talents of this writer make it lucky that the task has not been taken up by other hands. I am glad to find, in general, that everything that good sense and accurate information can supply is abundantly exhibited by the newspapers to the view of the public. It is to be regretted that these papers are so limited in their circulation, as well as that the mixture of indiscretions in some of them should contribute to that effect. It is to be hoped, however, that any arbitrary attacks on the freedom of the press will find virtue enough remaining in the public mind to make them recoil on the wicked authors. No other check to desperate projects seems now to be left. The sanguinary faction ought not, however, to adopt the spirit of Robespierre, without recollecting

the shortness of his triumphs and the perpetuity of his infamy. The contrivance of Jay for reproducing Hamilton into office and notice suggests, no doubt, a variety of conjectures. If the contrivance is to be ascribed chiefly to Jay, it probably originated in the alarm into which the consequences of the Treaty have thrown its author, and the new demand for the services of its champion. Events have so clearly demonstrated the great objects of that Treaty to have been to draw us into a quarrel with the enemies of G. B., and to sacrifice our navigation to hers, that it will require greater efforts than ever to skreen the instrument and author much longer from the odium due to them. The late acts of the B. Par^t would, before this, have unmasked the character of the Treaty, even to the people of N. England, if adventitious circumstances had not furnished its partizans with fresh dust for their eyes. A tax on land, with a loss of market for its produce, will put their credulity and blindness to a test that may be more dreadful to the Deluders.

We have had a dry spell latterly, which, succeeding the effects of the frost, will affect every species of crop that depends on the favor of the season. I write to Mr. Dawson by this post for a small balance, between thirty and forty dollars, which I beg you to receive. You will further oblige me by having my brother William's name subscribed to Carey's paper, and paying the necessary advance; the paper to be sent to Orange Ct. House.

TO THOMAS JEFFERSON.

May 13, 1798.

DEAR SIR,—I have received your favor of the 3d Inst. My last acknowledged your preceding one. The successful use of the Despatches in kindling a flame among the people, and of the flame in extending taxes, armies, and prerogative, are solemn lessons, which I hope will have their proper effect when the infatuation of the moment is over. The management of foreign relations appears to be the most susceptible of abuse of all the

trusts committed to a Government, because they can be concealed or disclosed, or disclosed in such parts and at such times as will best suit particular views; and because the body of the people are less capable of judging, and are more under the influence of prejudices, on that branch of their affairs, than of any other. Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad. The credit given to Mr. Adams for a spirit of conciliation towards France is wonderful, when we advert to the history of his irritations, from the first name in the Envoyship, down to his last answer to the addressers. If he finds it thus easy to play on the prepossessions of the people for their own Gov^t against a foreign, we ought not to be disappointed if the same game should have equal success in the hands of the Directory.

We have had little or no rain for a month, and the evil has been increased by much windy and cold weather. The thermometer yesterday morning was at 38°, and the frost such as to kill the leaves of tender trees in low situations. I hope now you will soon be released from the thorny seat in which you are placed, and that I shall not be disappointed of the pleasure of seeing you on your way. You must so arrange your time as to be able to ride a mile, while with me, to see a threshing-machine I have lately built on Martin's plan. It is worked and attended by five or six hands at most, and I think promises more for general use than all the other modifications. I shall not describe it, because your own inspection will so soon give you a more perfect idea of it.

Yours always and affectionately.

I received no paper by last mail but Fenno's. I hope the bridle is not yet put on the press.

TO THOMAS JEFFERSON.

May 20, 1798.

DEAR SIR,— * * * * *

The Alien bill proposed in the Senate is a monster that must forever disgrace its parents.* I should not have supposed it possible that such an one could have been engendered in either House, and still persuade myself that it cannot possibly be fathered by both. It is truly to be deplored that a standing army should be let in upon us by the absence of a few sound votes. It may, however, all be for the best. These addresses to the feelings of the people from their enemies may have more effect in opening their eyes than all the arguments addressed to their understandings by their friends. The Pres^t, also, seems to be co-operating for the same purpose. Every answer he gives to his addressers unmasks more and more his principles and views. His language to the young men at Phil^a is the most abominable and degrading that could fall from the lips of the first magistrate of an independent people, and particularly from a Revolutionary patriot. It throws some light on his meaning when he remarked to me, "that there was not a single principle the same in the American and French Revolutions;" and on my alluding to the contrary sentiment of his predecessor, expressed to Adê^t on the presentment of the Colours, added, "that it was false, let who would express it." The abolition of Royalty was, it seems, not one of his Revolutionary principles. Whether he always made this profession is best known to those who knew him in the year 1776. The turn of the elections in N. Y. is a proof that the late occurrences have increased the noise only, and not the number of the Tory party. Besides the intrinsic

* Quere: As to the difference between the tenor of the bill here referred to and the bill as subsequently modified? Mr. Jefferson says in a succeeding letter of 24th, "the Alien bill of the Senate still hangs before them. Some of its features have been moderated, which has so much disgusted its warmest friends that some of them have declared they will vote against it, so that I think it possible they may reject it." And in his letter of the 31st he says, "it has been considerably mollified, particularly by a proviso saving the rights of Treaties."

value of the acquisition, it will encourage the hopes and exertions in other States. You will see by the newspapers the turn which a Town-meeting took in Fredericks^s. I forgot to acknowledge the pamphlet containing the last Despatch from the Envoys, received with your letter of the 10th. It is evidently more in the Forensic than Diplomatic style, and more likely in some of its reasonings to satisfy an American Jury than the French Government. The defence of the provision article is the most shallow that has appeared on that subject. In some instances the reasoning is good, but so tedious and tautologous as to insult the understanding, as well as patience, of the Directory, if really intended for them, and not for the partial ear of the American public.

The want of rain begins to be severely felt, and every appearance indicates a continuance of it. Since the 10th of April there has fallen but one inch of water, except a very partial shower of less than $\frac{1}{2}$ an inch.

Adieu. Affectionately.

TO THOMAS JEFFERSON.

May 27, 1798.

DEAR SIR,—I have duly received yours of the 17th, accompanied by the Direct tax bill, which I have not yet been able to run thro'. Everything, I perceive, is carried as the war party chuse. They will of course be the more responsible for consequences. The disposition to continue the Session is a proof that the operation of the irritating proceedings here on those of France is expected to furnish fresh fuel for the popular flame, and to favor the success of the Executive projects in the Legislature. It is to be deplored that we have no authentic and impartial channel thro' which the true state of things in Europe, particularly in France, can reach the public mind of this Country. The present temper of the Envoys cannot fail to discolour all that passes thro' them; and if this were not the case, the ob-

vious policy of the Executive is a complete bar to the disclosure of all other than inflammatory communications.

The inclosed accurate and authentic view of that "stupendous fabric of human wisdom," which Mr. A. idolizes so much, deserves, I think, the public attention at the present moment. At the request of Callender, I promised several years ago to send it to him, but never could lay my hand on it till a few days ago, when it fell in my way without being sought for. If you have an opportunity, and think it worth while, you can let the public have a sight of it; and, for the reason just mentioned, I could wish, if there be no objection, that it might pass thro' his hands. As the paper is of some value, it may be well to preserve it, in case it should not be republished, or in case a part only should be so.

There have been pretty extensive, but not universal rains since my last. This neighbourhood has been but barely touched by them. I have not heard from yours.

Adieu. Affectionately.

TO THOMAS JEFFERSON.

June 3, 1798.

DEAR SIR,—Friday's mail brought me your favour of May 24. The letter from S. Bourne had previously reached us thro' a Fred^s paper. It is corroborated, I find, by several accounts from different sources. These rays in the prospect will, if I can judge from the sensations in this quarter, have an effect on the people very different from that which appears in the public councils. Whilst it was expected that the unrelenting temper of France would bring on war, the mask of peace was worn by the war party. Now that a contrary appearance on the side of France is intimated, the mask is dropped, and the lie openly given to their own professions by pressing measures which must force France into war. I own I am not made very sanguine by the reported amendment in the posture of our negociators, first, be-

cause the account may not be very correct, and next, because there are real difficulties to be overcome, as well as those which the pride of one or other of the parties may create, not to mention the probable arrival of what has passed here before the scene is closed there. But the palpable urgency of the Executive and its partizans to press war in proportion to the apparent chance of avoiding it, ought to open every eye to the hypocrisy which has hitherto deceived so many good people. Should no such consequence take place, it will be a proof of infatuation which does not admit of human remedy. It is said, and there are circumstances which make me believe it, that the hot-headed proceedings of Mr. A. are not well relished in the cool climate of Mount Vernon. This, I think, may fairly be inferred from the contrast of characters and conduct; but if it has been expressed, it must have been within a very confidential circle.

Since my last, there has been a sequel of fine and extensive rains. We have had a tolerable, though not an equal or sufficient share of them. Your neighbourhood, I fancy, has fared better.

If Barnes has not sent off the glass, pullies, &c., please to order as much of the proper chord as will be wanted for the latter.

Very affectionately yours.

TO JAMES MONROE.

June 9th, 1798.

DEAR SIR,—Your favor of yesterday was duly delivered by your servant; and I herewith enclose the copies you request of the papers formerly transmitted to me. The originals I shall forward to Mr. D., as you suggest. I send, also, your letter to Van Staphorst, and his answer, which I found with the other papers, and which may possibly be of use now or hereafter in refreshing your memory, or otherwise. The other papers enclosed in your letter are also returned, as you desire.

The base attack of Addison I had neither seen nor heard of. Doct^r Edwards' letter and the two certificates added to your book meet it in all its points. The publication of the two former must place the vile calumniator in a light that must make him odious to honest men, whatever effect they may have on himself or his unprincipled abettors. It may deserve consideration how far the unnecessary passages of a personal nature in Doctor E.'s letter ought to go to the press. I mean the offensive allusion to Vanity, &c., and the mention of the names of Whitesides, &c. You are, however, the better judge on these points, and will no doubt suggest to Mr. D. what you decide to be done.

The sortie of Mr. Adams presents, as you observe, more difficult questions. On one hand, silence may beget misconstructions from opposite quarters. On the other, it is not easy to find an unobjectionable, and at the same time adequate mode of repelling the aggression. A *repetition* of your demand for the reasons of your recall does not appear eligible after what has passed on that subject, though it must be owned the ground taken by Pickering is materially changed by the language of Mr. Adams. Any summons of a personal nature on Mr. Adams is, I think, forbidden by the considerations you have glanced at. Nor is it, perhaps, unworthy of consideration, that in the present composition and spirit of the two Houses anything like an occasion may be seized for wreaking party revenge through the forms of the Constitution. It is even possible that the fury of the moment may have suggested the unwarrantable attack as a snare that might answer the purpose. Whatever difficulties might obstruct such a proceeding, they would probably be got over by the same spirit which is overleaping so many others.

If the case admits of any formal interposition on your part, it would seem to be in the way of a temperate and dignified animadversion, published with your name to it. In such a publication there would be room for such ideas relative to yourself as justice to yourself might render eligible, and also for such relative to Mr. Adams as prudence would permit. This is an idea, however, that has perhaps rather grown out of the diffi-

culties of the case than is recommended by its own merit. You will be able to decide on it with more deliberation than I have bestowed on it.

The course recommended by Mr. Jefferson certainly ought not to be hastily relinquished. The reflections you make on it have great weight, to which ought to be added the private sacrifice it would involve. But as I am persuaded that, in a general view, your taking a station in Congress would have a promising tendency, and as the present paroxysm may pass off with as great a rapidity as it has been brought on, I cannot but think it advisable to keep a hold on the disposition of Mr. C. to open the way to you, if on final consideration it should be judged proper to make use of it.

Your letter found me engaged in some business with persons who are to return here this morning for its completion, as well as in despatching a servant with letters, papers, &c., to my father, who is beyond the Ridge. He has consequently been detained longer than I wished, as I presume you mean to write to Pennsylvania by the ensuing post; and I have been more hurried, at the same time, in the answer, than I would have chosen. Our sincerest offers of respect to Mrs. Monroe.

Adieu.

TO THOMAS JEFFERSON.

June 10th, 1798.

DEAR SIR,—I have duly received your favor of the 31st ult., and am glad to find mine are as regularly received as yours. The law for capturing French privateers may certainly be deemed a formal commencement of hostilities, and renders all hope of peace vain, unless a progress in amicable arrangements at Paris, not to be expected, should have secured it against the designs of our Gov^t. If the Bill suspending commerce with the French Dominions passes, as it doubtless will, the French Gov^t will be confirmed in their suspicion, begotten by the British

Treaty, of our coalition in the project of starving their people; and the effect of the measure will be to feed the English at the expense of the farmers of this Country. Already flour is down, I hear, at 4 dollars a barrel.

How far the views of the Government will be answered by annihilating the ability to pay a land tax at the very moment of imposing it, will be best explained by the experiment. Looking beyond the present moment, it may be questioned whether the interest of G. B. will be as much advanced by the sacrifice of our trade with her enemies as may be intended. The use of her manufactures here depends on our means of payment, and then on the sale of our produce to the markets of her enemies. There is too much passion, it seems, in our councils, to calculate consequences of any sort. The only hope is, that its violence, by defeating itself, may save the Country.

The answers of Mr. Adams to his addressers form the most grotesque scene in the tragi-comedy acting by the Gov^t. They present not only the grossest contradictions to the maxims, measures, and language of his predecessor, and the real principles and interests of his constituents, but to himself. He is verifying completely the last feature in the character drawn of him by Dr. Franklin, however his title may stand to the two first, "Always an honest man, often a wise one, but sometimes wholly out of his senses."

I thank you for the offspring of the Senatorial Muse, which shall be taken care of. It is truly an unique. It is not even prose run mad.

Monroe is much at a loss what course to take in consequence of the wicked assault on him by Mr. A., and I am as much so as to the advice that ought to be given him. It deserves consideration, perhaps, that if the least occasion be furnished for reviving Governmental attention to him, the spirit of party revenge may be wreaked thro' the forms of the Constitution. A majority in the H. of R. and $\frac{2}{3}$ of the Senate seem to be ripe for everything. A temperate and dignified animadversion on the proceeding, published with his name, as an appeal to the candor and justice of his fellow-citizens against the wanton and un-

manly treatment, might, perhaps, be of use. But it would be difficult to execute it in a manner to do justice to himself, and inflict it on his adversary, without clashing with the temper of the moment. Hoping for the pleasure of congratulating you soon on your release from your painful situation, I close with the most affectionate assurance that I am, yours, &c.

TO THOMAS JEFFERSON.

Decr 29, 1798.

DEAR SIR,—I enclose a draught on General Moylan, out of which you will be pleased to pay yourself the price of the nails, £48 11s. 3d., Va. currency, to let Barnes have as much as will discharge the balance I owe him, and to let what may remain lie till I write to you again.

The President's speech corresponds pretty much with the idea of it which was preconceived. It is the old song, with no other variation of the tune than the spirit of the moment was thought to exact. It is evident, also, that he rises in his pitch as the echoes of the Senate and House of Representatives embolden him, and particularly that he seizes with avidity that of the latter flattering his vigilance and firmness against illusory attempts on him, without noticing, as he was equally invited, the allusion to his pacific professions.* The Senate, as usual, perform their part with alacrity in counteracting peace by dextrous provocations to the pride and irritability of the French Government. It is pretty clear that their answer was cooked in the same shop with the speech.

* * * * *

I have not seen the result of the discussions at Richmond on the Alien and Sedition laws. It is to be feared their zeal may forget some considerations which ought to temper their proceedings. Have you ever considered thoroughly the distinction

* The President's speech to Congress of the 8th December, 1798, and his replies to the answers of the Senate and House of Representatives on the same occasion, are here referred to.

between the power of the *State* and that of the *Legislature*, on questions relating to the federal pact? On the supposition that the former is clearly the ultimate Judge of infractions, it does not follow that the latter is the legitimate organ; especially as a Convention was the organ by which the compact was made. This was a reason of great weight for using general expressions that would leave to other States a choice of all the modes possible of concurring in the substance, and would shield the General Assembly against the charge of usurpation in the very act of protesting against the usurpations of Congress.

I have not forgotten my promise of M'Gehee's prices, but could not conveniently copy them for the present mail.

Always affectionately yours.

TO THOMAS JEFFERSON.

Jan^y 12, 1799.

DEAR SIR,—According to a promise in my last, I enclose a copy of the rates at which M'Gehee works. I enclose, also, a few observations on a subject which we have frequently talked of, which are submitted to your entire disposal, in whole or in part, under the sole reserve of the name of the author. In Gordon's History, Vol. IV, p. 399, 400, is a transaction that may, perhaps, be properly referred to in the debate on the alien bill. Among other names is that of Sedgwick, to a protest against a bill subjecting to banishment, without trial by jury. It does not appear clearly whether the exiles were under the character of aliens or Citizens. If under the former, the case is in point.

* * * * *

Our post had not arrived at the usual hour on Wednesday, and I have not since heard from the office. We are, consequently, without any late intelligence of your proceedings. I have been disappointed in seeing no step taken in relation to Lyon. He is clearly within privilege, and it ought to be claimed for him. In the case of Wilkes, the Judges were unanimously

of opinion that a libel did not take away his privilege, altho' it is there less definite than with us. The House of Commons voted differently; but it was the vote of a faction, and, therefore, of less weight than the other authority.

TO THOMAS JEFFERSON.

Feb^r 8, 1799.

DEAR SIR,—I did not receive your last favor of the 16th ultimo till the mail after it was due, with the further delay of its coming by the way of Charlottesville.

* * * * *

I have had a glance at Gerry's communications and Pickering's Report on it. It is impossible for any man of candor not to see in the former an anxious desire on the part of France for accommodation, mixed with the feelings which Gerry satisfactorily explains. The latter, * * * * * taken in combination with preceding transactions, is a link that fits the chain. The President could not do less in his speech than allow France an option of peace; nor his minister do more than to insult and exasperate her, if possible, into a refusal of it.

* * * * *

TO THOMAS JEFFERSON.

RICHMOND, Dec^r 29, 1799.

DEAR SIR,—My promise to write to you before your leaving Albemarle was defeated by a dysenteric attack, which laid me up for about a week, and which left me in a state of debility not yet thoroughly removed. My recovery has been much retarded by the job of preparing a vindication of the Resolutions of last Session against the replies of the other States, and the sophistries from other quarters. The Committee made their report a few days ago, which is now in the press, and stands the order of the day for Thursday next. A set of Resolutions proposed

by Mr. Giles, instructing the Senators to urge the repeal of the unconstitutional acts, the disbanding of the army, and a proper arrangement of the militia, are also in the press, and stand the order of the same day for the same Committee. It is supposed that both these papers, the latter, perhaps, with some modifications, will go through the House of Delegates. The Senate, owing to inattention and casualties, is so composed as to render the event there not a little uncertain. If an election to fill the vacancy of Mr. H. Nelson, who lately resigned, should send Mr. Andrews, in preference to his competitor, Mr. Saunders, I am told that the parties will be precisely in equilibrio, excepting only one or two, whom circumstances now and then on particular questions transfer from the wrong to the right side. It is hoped that this contingent fund of votes will be applicable to the vindication. On other important questions, there is much less expectation from it. There is a report here that the Legislature of N. Carolina, now in session, have voted the Resolutions of Virginia under their table. The report is highly improbable, and I do not believe it. But it is impossible to calculate the progress of delusion, especially in a State where it is said to be under systematic management, and where there is so little either of system or exertion opposed to it. We had a narrow escape yesterday from an increase of pay to the members, which would have been particularly unseasonable and injurious, both within and without the State. It was rejected on the third reading by a small majority, and was so much a favorite with the distant members particularly, that I fear it has left them in rather an ill humour.

The late course of foreign events has probably made the same impression everywhere. If it should not render France less anxious to meet our advances, its good effects will be felt every way. If our Executive and their Envoys be sincere in their pacific objects, it will, perhaps, supply by their increased anxiety what may be lost on the other side. But there can be little confidence, after what has been seen, that the negociation would be influenced by this temper of the Envoys, instead of that which perverted it in the hands of their predecessors. This possibility

of failure in the diplomatic experiment will present the most specious obstacle to an immediate discharge of the army. It would be useful for the Assembly to know how this matter is viewed where you are. Mr. Dawson will be good enough to write me on the subject. I intended to have written to him by this mail, but my time has been taken from me till the closing of the mail is approaching.

TO THOMAS JEFFERSON.

RICHMOND, JAN^y 4, 1800.

DEAR SIR,—My last covered a copy of the Report on the Resolutions of last year. I now enclose a copy of certain resolutions moved by Mr. Giles, to which he means to add an instruction on the subject of the intercourse law, which has been so injurious to the price of Tobacco. It is not improbable that the Resolutions, when taken up, may undergo some mollifications in the spirit and air of them. The Report has been under debate for two days. The attacks on it have turned chiefly on our alleged inconsistency between the comment now made and the arguments of the last session; and on the right of the Legislature to interfere in any manner with denunciations of the measures of the Gen^l Gov^t. The first attack has been parried by an amendment admitting that different constructions may have been entertained of the term "States," as "parties," &c., but that the sense relied on in the report must be concurred in by all. It is, in fact, concurred in by both parties. On examination of the Debates of the last session, it appears that both were equally inaccurate and inconsistent in the grounds formerly taken by them. The attack on the right of the Legislature to interfere by declaration of opinion will form a material point in the discussion. It is not yet known how far the opposition to the Report will be carried into detail. The part relating to the Common Law, it is said, will certainly be combated. You will perceive, from this view of the matter, that it is not possible to guess how long we shall be employed on it.

There will, in the event, be a considerable majority for the Report in the House of Delegates, and a pretty sure one in the Senate. Can you send me a copy of Priestley's letters last published?

TO THOMAS JEFFERSON.

Jan^y 9, 1800.

DEAR SIR,—The question on the Report printed was decided by 60 for and 40 against it, the day before yesterday, after a debate of five days. Yesterday and to-day have been spent on Mr. Giles' propositions, which, with some softenings, will probably pass by nearly the same vote. The Senate is in rather a better state than was expected. The Debate turned almost wholly on the right of the Legislature to protest. The Constitutionality of the Alien and Sedition acts, and of the Common Law, was waived. It was said that the last question would be discussed under Mr. Giles' propositions; but as yet nothing has been urged in its favour. It is probable, however, that the intention has not been laid aside. I thank you for the pamphlets.

TO THOMAS JEFFERSON.

RICHMOND, Jan^y 12, 1800.

DEAR SIR,—My last informed you of the result of the debates on the justifying Report of the Select Committee. I am now able to add that of Mr. Giles's resolutions. The question on the whole was decided in the affirmative by a little upwards of a hundred against less than fifty. The vote was rather stronger on some of the particular resolutions, for example, the instruction for disbanding the army. The Alien, Sedition, and Tobacco instructions passed without a count or a division. That relating to the Common Law passed unanimously, with an amendment qualifying it in the words of the paragraph in the Justifying Report, under which certain defined parts of the Common Law are admitted to be the law of the U. S. This amendment was moved by the minority, on the idea that it covers the doc-

trine they contend for. On our side, it is considered as a guarded exposition of the powers expressed in the Constⁿ, and those necessary and proper to carry them into execution. I am not able to say in what manner they misconstrue the definition, unless they apply the term "adopt" to the "Court," which would be equally absurd and unconstitutional. The judges themselves will hardly contend that they can *adopt* a law, that is, make that law which was before not law. The difference in the majority on the Report and the Resolutions was occasioned chiefly by the pledge given against the former by the members who voted against the Resolutions of last year. The resolutions also underwent some improvements, which reconciled many to them who were not satisfied with their first tone and form. It is understood that the present assembly is rather stronger on the republican side than the last one, and that a few favorable changes have taken place in the course of the Session. It is proposed to introduce to-morrow a bill for a general ticket in chusing the next Electors. I expect to leave this in a week, so that your subsequent favors will find me in Orange.

TO THOMAS JEFFERSON.

RICHMOND, Jan^y 18, 1800.

DEAR SIR,—Since my last, the Senate have agreed to the *Report* and the *Resolution* by 15 to 6. To the latter, they made an amendment to the definition of the portion of Common Law in force in the U. S., by inserting the words "by Congress" after the word "adopted," in order to repel the misconstruction which led the minority to concur in that particular resolution as it passed the House of Delegates. The amendment was agreed to by 82 to 40. The plan of a Gen^l Ticket was so novel that a great number who wished it shrunk from the vote, and others, apprehending that their Constituents would be still more startled at it, voted against it, so that it passed by a majority of 5 votes only. The event in the Senate is rather doubtful, tho' it is expected to get thro'. As the avowed object of it is

to give Virginia *fair play*, I think, if passed into a law, it will, with proper explanations, become popular. I expect to get away about the middle of the week. The Assembly will rise, perhaps, at the end of it, tho' possibly not so soon. I forgot to tell you that a renewed effort to raise the pay of the members to 3 Dolls. has succeeded; a measure wrong in principle, and which will be hurtful in its operation.

TO THOMAS JEFFERSON.

ORANGE, Feb 14, 1800.

DEAR SIR,—My last to you was from Richmond; your last to me is just received, covering the Bill for drawing Jurors by lot. The plan proposed by the Bill is a great improvement on the regulation in force here. I cannot say whether it may have the same merit every where. This subject was not wholly forgotten during our late session. A Bill was even prepared on it by one of our State Judges. But subjects deemed more immediately interesting diminished so much the attention of some whose agency in carrying it thro' was essential, that the Bill was never introduced.

We see by the late papers that a new scene is presented on the French Theatre, which leaves the *denôuement* more a problem than ever. The characters and professions of some of the leading actors furnish a hope that monarchy may not be their object, but melancholy evidence appears that the destiny of the Revolution is transferred from the Civil to the military authority. Whether the lesson will have the proper effect here in turning the public attention to the danger of military usurpations, or of intrigues between political and military leaders, is more than I can say. A stronger one was, perhaps, never given, nor to a Country more in a situation to profit by it.

We have had, for two weeks and more, snow on the ground from 15 to 20 inches deep, which has blockaded every body within his own doors.

Adieu.

I was a subscriber for Trumbull's prints, which, I find, are now in America. Can you tell me when and how I am to get them, and what is to be paid in addition to the payments at subscribing? I wish to know, also, whether they are to be delivered in frames.

TO THOMAS JEFFERSON.

March 15, 1800.

DEAR SIR,—Since my last, I have been favored with the following inclosures: the Bill relating to Electors, Ramsay's Oration, the Report on Ways and Means, a motion by Bingham, and the resolution for excluding the Judges from other offices.

It is not to be denied that the Constitution might have been properly more full in prescribing the election of President and Vice President; but the remedy is an amendment to the Constitution, and not a Legislative interference. It is evident that this interference ought to be, and was meant to be, as little permitted as possible; it being a principle of the Constitution that the two Departments should be independent of each other, and dependent on their Constituents only. Should the spirit of the Bill be followed up, it is impossible to say how far the choice of the Executive may be drawn out of the constitutional hands and subjected to the management of the Legislature. The danger is the greater, as the Chief Magistrate for the time being may be bribed into the usurpations by so shaping them as to favor his re-election. If this licentiousness in constructive perversions of the Constitution continue to increase, we shall soon have to look into our code of laws, and not the charter of the people, for the form, as well as the powers of our Government. Indeed, such an unbridled spirit of construction as has gone forth in sundry instances would bid defiance to any possible parchment securities against usurpation.

I understand that the general ticket law is represented at Phil^a as generally unpopular. I have no reason to believe this to be the fact. On the contrary, I learn that the information

collected at Richmond on this subject is satisfactory to the friends of the law.

The ground has been covered for six weeks with snow, and there is still a remnant of it. It has given a very unusual backwardness to all the preparations for the ensuing crops, but we hope for some amends from its influence on the winter grain.

TO THOMAS JEFFERSON.

April 4, 1800.

DEAR SIR,—Your favor by Mr. Trist was duly handed to me, since which I have received the report on imports under your cover, and yesterday your favour of the 25 ult., accompanied with the pamphlet and Mr. Nicholson's motion on the Electoral Bill, which appears to be so fair and pertinent, that a rejection of it in favor of any other modification proposed must fix a new brand on the Authors. The spirit manifested in the Senate steadily, and in the other House occasionally, however mischievous in its immediate effects, cannot fail, I think, to aid the progress of reflection and change among the people. In this view our public malady may work its own cure, and ultimately rescue the republican principle from the imputation brought on it by the degeneracy of the public councils. Such a demonstration of the rectitude and efficacy of popular sentiment will be the more precious, as the late defection of France has left America the only Theatre on which true liberty can have a fair trial. We are all extremely anxious here to learn the event of the election in New York, on which so much depends. I have nothing to add to what I have already said on the prospect with us. I have no reason whatever to doubt all the success that was expected.

If it should fall in your way, you will oblige me by inquiring whether there be known in Philadelphia any composition for enrusting brick that will effectually stand the weather; and particularly what is thought of common plaster, thickly painted with white lead and overspread with sand. I wish to give some

such dressing to the columns of my portico, and to lessen as much as possible the risk of the experiment.

Affectionately yours.

TO THOMAS JEFFERSON.

April 20, 1800.

DEAR SIR,—Since my last, I have been favored with yours by Christo^r M^cPherson. It brought me the first agreeable information of the prospect held out by our Envoys. The posture of Europe, tho' dreadful to humanity in general, will, I trust, enforce the disposition of France to come to a proper adjustment with us. And notwithstanding the group of daring experiments presented by our public Councils, I also trust that they will not venture on either a direct refusal, or a palpable evasion of this result. Still, however, the situation of the party bent on war is such, that every stratagem ought to be suspected that may afford a chance of prolonging their ascendancy. The horrors which they evidently feel at the approach of the Electoral epoch are a sufficient warning of the desperate game by which they will be apt to characterize the interval. In my next I shall be able to give you some partial information of the temper of the people here, as it will be shewn by our State Election, which takes place on the 23 inst. I find that considerable exertion is used to raise prejudices against the measures of the last session of Assembly, especially the novel mode of appointing Electors. I am not possessed, however, of any evidence of their success that deserves attention.

I sincerely wish Mr. Dupont may fulfil his promise to you, and that I may come in for a participation of the visit. I beg you to make him sensible of the particular pleasure I shall feel in an opportunity of testifying to him, at my own house, the high esteem I entertain for his genius and virtues.

* * * * *

TO JAMES MONROE.

ORANGE, May 23, 1800.

DEAR SIR,—I received your favor of the 15th from Albemarle a few days ago. I shall not be surprised at an experiment in this State, at this moment, of its republican sensibility, by putting in force the sedition act; and entirely approve your idea of the policy by which the measure ought to be turned against its author. Nothing seems necessary now to rectify the public opinion and reform the administration, but a steady adherence to the principles of prudence, which have so far succeeded in both. And it would be doubly unwise to depart from this course at a moment when the party which has done the mischief is so industriously co-operating in its own destruction. The late ungracious vote for disbanding the army will probably extinguish the project, if it existed, of making the camp at Warwick an auxiliary to the Judicial department. For the sake of propriety, I am extremely glad that so obnoxious a step has been precluded. In any other view, an opponent of the administration would have no reason to regret so odious a perversion of military force.

TO JAMES MONROE.

1800.

DEAR SIR,—I now inclose a letter left here by Mr. Alston. It will communicate all that I could repeat from one to me from Col. Burr and Mr. Gelston. The latter is uneasy lest the Southern States should not be true to their duty. I hope he will be sensible that there was no occasion for it. It seems important that all proper measures should emanate from Richmond for guarding against a division of the Republican votes, by which one of the Republican Candidates may be lost. It would be superfluous to suggest to you the mischief resulting from the least ground of reproach, and particularly to Virginia, on this head.

TO THOMAS JEFFERSON.

Sep^r., 1800.

DEAR SIR,—The silence which prevails as to the negociations of our Envoys, is not less surprising to my view than to yours. We may be assured, however, that nothing of a sort to be turned to the party objects on the anvil has been received, unless, indeed, the publication should be delayed for a moment deemed more critically advantageous. As we are left to mere conjectures, the following have occurred to me. The long continuance of the Envoys at Paris of itself indicates that difficulties of some sort or other have sprung up, or been created. As the French Government seems to have provided for the future security of our commerce by repealing the decrees under which it had been violated, and as the ultimatum of the Executive, explained by former instructions, permitted a waiver at least of claims for past spoliations, it would seem that no insuperable obstacles would be likely to arise on these articles. In looking for other solutions, my attentions have fallen on the articles contained in the Treaty of 1778, relating—1. To free ships freeing their Cargoes. 2. To the permissions granted to prizes. 3. To convoys. That a difficulty may have happened on the first is rendered not improbable by the late transaction with Prussia; the 2^d is suggested by the circumstances under which the stipulation was sought and obtained by G. B.; and the 3^d, by the late occurrences and combinations in Europe. Should any one or more of these conjectures be just, the explanation will also coincide with the reports from different quarters, which speak of the Treaty of '78 as at the bottom of the impediments; and if so, it seems more likely that they would be found in such parts of it as have been alluded to, than in the guaranty which cannot be needful to France, and which her pride would be more ready to reject than to claim.

TO THOMAS JEFFERSON.

October 21, 1800.

DEAR SIR,—This will be handed to you by Mr. Alston, of S. Carolina, who proposes to call at Monticello on his return from a Northern tour. He will probably be made known to you by other introductions; but those which he has brought to me, as well as a short acquaintance with him, make me feel an obligation to add mine. He appears to be intelligent, sound in his principles, and polished in his manners. Coming fresh from New York, through Pennsylvania and Maryland, he will be able to furnish many details in late occurrences. The fact of most importance mentioned by him, and which is confirmed by letters I have from Burr and Gelston, is, that the vote of Rhode Island will be assuredly on the right side. The latter gentleman expresses much anxiety and betrays some jealousy with respect to the *integrity* of the Southern States in keeping the former one in view for the secondary station. I hope the event will skreen all the parties, particularly Virginia, from any imputation on this subject; though I am not without fears that the requisite concert may not sufficiently pervade the several States. You have no doubt seen the late Paris statement, as well as the comment on it by *Observer*, who is manifestly Hamilton. The two papers throw a blaze of light on the proceedings of our administration, and must, I think, co-operate with other causes in opening thoroughly the eyes of the people.

TO JAMES MONROE.

Nov^r 10, 1800.

DEAR SIR,—I received yours of the 6th instant by Mr. Erwin, whom I have found to justify the recommendations he brought me. He appears to be intelligent, well informed, sound in his principles, and agreeable in his manners. He has not yet touched on the subject to which you allude, and I have not been led to start a conversation on it. At the desire of Mr. Jeffer-

son, I returned the inclosed letters which you sent to him. Part of one of them would be useful to the public, if it could be communicated without impropriety. The substance of it, perhaps, might be thrown into an unexceptionable form, and produce reflections suitable to the crisis of our affairs with France. I hear, with some surprise and apprehension, that Charleston has chosen a large majority of anti-republican members for the Legislature. Should the country not afford a remedy in that State, and Pennsylvania be kept from voting, the election of President and Vice President will be a nice business. In this region of Country, the elections have exceeded our hopes. In this County, out of more than 350 votes, 7 only were on the wrong ticket. I hear that in Frederick, the Jefferson ticket prevailed in the proportion of 3 to 1.

TO JAMES MONROE.

November 10, 1800.

DEAR SIR,—Mr. Erwin proposing to set out in the morning without my again seeing him, I think proper to add to the few lines with which he is already charged, that our interview closed without any allusion to the secondary object of the election. If I had not expected, as intimated by you, that he would bring on the subject, it would, no doubt, have dropped from me. As it is possible he may draw some erroneous inference from my silence, especially as a good deal of free conversation passed on the election generally, I hope you will take occasion to guard against it. You know my sentiments, and I am not averse to a communication of them, as far as you deem eligible. I cannot apprehend any danger of a *surprize* that would throw Mr. Jefferson out of the primary station. I cannot believe that any such is intended, or that a single *republican* vote will abandon him. The worst, therefore, that could possibly happen, would be a tie, that would appeal to the House of Representatives, where the candidates would certainly, I think, be arranged properly, even on the recommendation of the secondary one.

As I do not wish that Mr. Erwin should be under any wrong impressions, which might be as injurious in a public as disagreeable in a private view, in case they should be conveyed to others, I have thought this supplement of sufficient importance to be written after the retirement of Mr. Erwin.

TO THOMAS JEFFERSON.

Nov^r , 1800.

DEAR SIR,—Yours by Mr. Erwin was delivered by him safe, with the two letters inclosed. I forwarded them by him this morning, as you desired, to the Governor.* They confirm, in substance, the state and difficulty of the negociation, as presented by the late statement under the Paris head. The observations on the delays carved out by the Executive, and the favorable moment lost thereby, are interesting, and deserve the public attention, if they could be properly submitted to it. I have suggested the idea to the Governor. The accounts from S. Carolina are rather ominous, but I trust we shall soon be relieved by an overbalance of republicanism in the upper elections. To the most unfavorable suppositions, we can, as yet, oppose the hopes presented by Pennsylvania, and the chance that a competency of votes may be obtained in spite of defections in the former State. I inclose a hand-bill lately published in Maryland, and industriously circulated there and to the Southward. You will probably be surprized at one of the documents included in it. Mr. Duval expresses considerable fears of its tendency, but I cannot view the danger in so serious a light. I am glad to find you do not mean to postpone your journey to Washington later than the 21st, as I wish much to see you on the way, and shall set out for Richmond, if called thither on the electoral errand, as is probable, at least 8 or 9 days before the legal day. The elections, as far as I have learned, are successful beyond expectation. In this County the votes were 340 odd to 7, and

* Mr. Monroe, then Governor of Virginia.

in a number of other Counties in the most commanding majorities. Even in Frederick, I hear the difference was nearly as 3 to 1.

TO JAMES MONROE.

December , 1800.

D^R SIR,—I have received your favor of the 16th. It has not removed the inquietude prevailing in this quarter as to the precise issue of the election. There are reports from different quarters, which seem to be positive, that a difference of several votes has taken place between the two republican candidates, but I cannot trace in them either authenticity or particularity enough to entitle them to confidence.

The project suggested by Col. Newton of a State Bank, as an antidote to the partialities of the National Bank, involves many important considerations. Although, as a dernier resort, much may be urged in its favor, yet I should presume the want of State funds would, at this time, be an insuperable objection; nor, perhaps, ought such an experiment to precede that which is to be made of a change in our national administration, from which a new turn may be given to most of the National measures. In every view, a better judgment could be formed on the subject some time hence than at present.

TO THOMAS JEFFERSON.

ORANGE, Dec^r 20, 1800.

DEAR SIR,—I did not write to you from Richmond, because I was considerably indisposed during my stay there, and because I could communicate to you nothing that would not reach you with equal speed through other channels. Before I left that place, the choice of electors in S. Carolina had been received by the Governor in a letter from Col. Hampton, and was understood by all parties to fix the event of a Republican President. The manner in which the Electors have voted in that

State, in Virginia, Maryland, Pennsylvania, and New York, makes it probable that the Vice President will also be republican. If the States of Georgia, N. Carolina, Tennessee, and Kentucky, should follow these examples, it will even [?] devolve on the House of Representatives to make the discrimination. There can be no danger, I presume, but that in such an event a proper one will be made; but it is more desirable that it should be precluded by the foresight of some of the Electors. Gelston, of New York, assures me that there are two, if not three States, in which something to this effect may be looked for, but he does not name the States. Governor Davie passed through Richmond whilst I was there. I happened not to see him, however, nor did I learn from others what complexion he seemed disposed to give to the business of his mission.

TO THOMAS JEFFERSON.

January 10, 1801.

DEAR SIR,—Mr. Browne having been detained at Fredericksburg for some time, I did not receive your favor of the 19th in time to be conveniently acknowledged by the last mail. The succeeding one of the 26th came to hand on the 7th instant only, a delay that fixes blame on the post office either in Washington or Fredericksburg. In all the letters, and most of the newspapers, which I have lately received through the post office, there is equal ground for complaint.

I find that the vote of Kentucky establishes the tie between the Republican characters, and consequently throws the result into the hands of the House of Representatives. Desperate as some of the adverse party there may be, I can scarcely allow myself to believe that enough will not be found to frustrate the attempt to strangle the election of the people, and smuggle into the Chief Magistracy the choice of a faction. It would seem that every individual member who has any standing or stake in society, or any portion of virtue or sober understanding, must revolt at the tendency of such a manœuvre. Is it possible that

Mr. Adams should give his sanction to it, if that should be made a necessary ingredient? or that he would not hold it his duty or his policy, in case the present House should obstinately refuse to give effect to the Constitution, to appoint, which he certainly may do before his office expires, as early a day as possible after that event for the succeeding House to meet and supply the omission? Should he disappoint a just expectation in either instance, it will be an omen, I think, forbidding the steps towards him which you seem to be meditating. I would not wish to discourage any attentions which friendship, prudence, or benevolence, may suggest in his behalf, but I think it not improper to remark that I find * * * * * the follies of his administration, the oblique stroke at his predecessor in the letter to Coxe, and the crooked character of that to T. Pickering, are working powerfully against him. Added to these causes is the pamphlet of Hamilton, which, though its recoil has perhaps more deeply wounded the author than the object it was discharged at, has contributed not a little to overthrow the latter, struggling as he before was in the public esteem.

On the supposition of either event, whether of an interregnum in the Executive, or of a surreptitious intrusion into it, it becomes a question of the first order, what is the course demanded by the crisis? Will it be best to acquiesce in a suspension or usurpation of the Executive authority till the meeting of Congress in December next, or for Congress to be summoned by a joint proclamation or recommendation of the two characters having a majority of votes for President? My present judgment favors the latter expedient. The prerogative of convening the Legislature must reside in one or other of them, and if both concur, must substantially include the requisite will. The intentions of the people would undoubtedly be pursued. And if, in reference to the Constitution, the proceeding be not strictly regular, the irregularity will be less in form than any other adequate to the emergency, and will lie in form only, rather than substance; whereas the other remedies proposed are substantial violations of the will of the people, of the scope of the Constitution, and of the public order and interest. It is to be

hoped, however, that all such questions will be precluded by a proper decision of nine States in the House of Representatives.

I observe that the French Convention is represented as highly obnoxious to the Senate. I should not have supposed that the opposition would be hinged on the article surrendering public vessels. As the stipulation is mutual, it certainly spares our pride sufficiently to leave us free to calculate our interest, and on this point there cannot be a difference of opinion. I was less surprized at the obstacle discovered in the British Treaty; the latter of which, combined with the repeal of the French Treaty, beget a suspicion that, in some quarters at least, the present posture of things has been long anticipated. It is certain, however, that the Convention leaves G. Britain on a better footing than the British Treaty placed her, and it is remarkable that Ellsworth, Davie, and Murray, should have concurred in the arrangement, if it have any real interference with bona fide engagements to G. Britain. It may be recollected that the privilege given to British prizes was not purchased, like that to French prizes, by any peculiar services to us; and never had any other pretext than the alledged policy of putting the two great rival nations of Europe as nearly as possible on an equal footing. Notwithstanding this pretext for the measure, Hamilton, in his late pamphlet, acknowledges the error of it. It would be truly extraordinary, if a measure intended for this equalizing purpose should be construable into an insuperable barrier to the equality proposed. It is of vast moment, both in a domestic and foreign view, that the Senate should come to a right decision. The public mind is already sore and jealous of that body, and particularly so of the insidious and mischievous policy of the British Treaty. It is strongly averse, also, to war; and would feel abhorrence of an unjust or unnecessary war with any nation. It is much to be wished that these facts may not be disregarded in the question before the Senate. If there be anything fairly inadmissible in the Convention, it would be better to follow the example of a qualified ratification, than rush into a provoking rejection. If there be anything likely, however unjustly, to beget complaints or discon-

tents on the part of Great Britain, early and conciliatory explanations ought not to be omitted. However difficult our situation has been made, justice and prudence will, it is hoped, steer us through it peacefully. In some respects, the task is facilitated at the present moment. France has sufficiently manifested her friendly disposition, and, what is more, seems to be duly impressed with the interest she has in being at peace with us. Great Britain, however, intoxicated with her maritime ascendancy, is more dependent every day on our commerce for her resources, must for a considerable length of time look in a great degree to this Country for bread for herself, and absolutely for all the necessaries for her islands. The prospect of a Northern Confederacy of Neutrals cannot fail, in several views, to inspire caution and management towards the United States, especially as, in the event of war or interruption of commerce with the Baltic, the essential article of naval stores can be sought here only. Besides these cogent motives to peace and moderation, her subjects will not fail to remind her of the great pecuniary pledge they have in this Country, and which, under any interruption of peace or commerce with it, must fall under great embarrassments, if nothing worse. As I have not restrained my pen from this hasty effusion, I will add for your consideration one other remark on the subject. Should it be found that Great Britain means to oppose pretensions drawn from her Treaty to any part of the late one with France, may she not be diverted from it by the idea of driving us into the necessity of soothing France by stipulations to take effect at the expiration of the Treaty with Great Britain, and that would be a bar to the renewal of the latter? Or, in case the pretensions of Great Britain should defeat the Treaty now before the Senate, might not such an expedient be made a plaister for the wound given to France?

My health still suffers from several complaints, and I am much afraid that any changes that may take place are not likely to be for the better. The age and very declining state of my father are making, also, daily claims on my attention, and from appearances it may not be long before these claims may acquire

their full force. All these circumstances mingle themselves very seriously with one of the eventual arrangements contemplated. It is not my purpose, however, to retract what has passed in conversation between us on that head. But I cannot see the necessity, and I extremely doubt the propriety, should the contest in hand issue as is most probable, of my anticipating a relinquishment of my home. I cannot but think and feel that there will be an awkwardness, to use the softest term, in appearing on the political Theatre before I could be considered as regularly called to it, and even before the commencement of the authority from which the call would proceed. Were any solid advantage at stake, this scruple might be the less applicable; but it does not occur that the difference of not very many days can be at all material. As little can I admit that the circumstance of my participation in the Executive business could have any such effect on either the majority or minority as has occurred; or, if a partiality in any particular friends could be gratified by a knowledge of such an arrangement, that the end would not be as well attained by its being otherwise made known to them that it was to take place, as by its being announced by my appearance on the spot. I only add that I am sensible of the obligation of respecting your conclusion, whatever it may finally be, but I cannot but hope that it may be influenced by the considerations which I have taken the liberty to hint.

You may recollect a difficulty suggested in making appointments without a Senate, in case of resignations *prior to March 4*. How have you solved it?

TO THOMAS JEFFERSON.

February 28, 1801.

DEAR SIR,—Your letter of the 1st instant was to have been acknowledged a week ago, but the irregularity of the post, occasioned by high waters, has delayed it to the present opportunity. I have now to acknowledge your two subsequent ones

of the 12th and 19th. In compliance with the last, I had proposed to leave home in a few days, so as to be with you shortly after the 4th of March. A melancholy occurrence has arrested this intention. My father's health for several weeks latterly seemed to revive, and we had hopes that the approach of milder seasons would still further contribute to keep him with us. A few days past, however, he became sensibly worse, and yesterday morning, rather suddenly, though very gently, the flame of life went out. It is impossible for me now to speak of my movements with precision. Although the exact degree of agency devolving on me remains to be known, a crowd of indispensable attentions must necessarily be due from me. In this posture of things, I can only say that I shall wait the return of the post after this reaches, by which I hope to learn whether your intended continuance at Washington will admit, and the state of things will require, my being there before you leave it. By this information I shall be governed, unless imperiously controuled by circumstances here.

The conduct of Mr. Adams is not such as was to have been wished, or, perhaps, expected. Instead of smoothing the path for his successor, he plays into the hands of those who are endeavoring to strew it with as many difficulties as possible; and with this view, does not manifest a very squeamish regard to the Constitution. Will not his appointments to offices, not vacant actually at the time, even if afterwards vacated by acceptances of the translations, be null?

The result of the contest in the House of Representatives was generally looked for in this quarter. It was thought not probable that the phalanx would hold out against the general revolt of its partizans out of doors, and without any military force to abet usurpation. How fortunate that the latter has been withheld! and what a lesson to America and the world is given by the efficacy of the public will, when there is no army to be turned against it!

I observe that a committee is appointed to enquire into the effects of the late fires. This is no doubt proper; but does not, I think, promise much. More is to be expected from the scru-

tinies of honest heads of Departments, aided by the documents and other evidences which they will have time and the best means of examining. I take for granted one of the first steps of the new administration will be to institute returns, particularly in the navy and war departments, of the precise state in which every circumstance involved in them comes into the new hands. This will answer the double purpose of enabling the public to do justice both to the authors of past errors and abuses, and the authors of future reforms.

I received a few days ago the inclosed letter from Mr. Page. Although there are parts of it which might well be omitted in the transmission to you, yet the length of the proper extracts tempts me to shun the trouble of making them. In justice to Doctor Tucker, I say with pleasure, that I have always regarded him as a man of the greatest moral and political probity, truly attached to republican principles, of a very ingenious mind, extensive information, and great exactitude in his ideas and habits of business, and, consequently, well fitted for public service. The letter from Callender seems, from its contents, to have been meant for you, though superscribed to me.

TO JAMES MONROE.

May 6th, 1801.

DEAR SIR,—Callender, I find, is under a strange error on the subject of his fine, and in a strange humor in consequence of it. I inclose an open letter for him, which you will please to read and forward. How has the delay in giving effect to the remission of the fine happened? It ought to be known and explained to him. What I state to him as the view of the President I have from the President himself, and therefore cannot not be mistaken in.

TO JAMES MONROE.

WASHINGTON, June 1, 1801.

DEAR SIR,—I have received your favor of the 23d ult. Callender made his appearance here some days ago, in the same temper which is described in your letter. He seems implacable towards the principal object of his complaints, and not to be satisfied in any respect without an office. It has been my lot to bear the burden of receiving and repelling his claims. What feelings may have been excited by my plain dealing with him, I cannot say; but am inclined to think he has been brought by it to some reflections which will be useful to him. It is impossible, however, to reason concerning a man whose imagination and passions have been so fermented. Do you know, too, that, besides his other passions, he is under the tyranny of that of *love*? Strange as it may appear, this came out under a charge of *secrecy*, in a way that renders the fact unquestionable. The object of his flame is in Richmond. I did not ask her name, but presume her to be young, beautiful, in his eyes at least, and in a sphere above him. He has flattered himself, and probably been flattered by others, into a persuasion that the emoluments and reputation of a post office would obtain her in marriage. Of these recommendations, however, he is sent back in despair. With respect to the fine, even, I fear that delays, if nothing more, may still torment him, and lead him to torment others. The case stands thus: Randolph had sent on, but not settled his accounts, in which there was a credit to the United States for the amount of the fine. In settling the accounts the credit is struck out, and the comptroller has notified him that the 200 dollars are to be paid to Callender. Whether he will do it without a suit, is the question. If he will not, and the result can be anticipated in any way, it will be fortunate, as Callender's irritation, produced by his wants, is whetted constantly by his suspicion that the difficulties, if not intended, are the offspring of indifference in those who have interposed in his behalf. I cannot but hope that the late Marshal will see the propriety of not opposing the order of the Treasury Department.

There was certainly no pretext for his refusal at all to refund the money, as I understand his own statement leaves him a debtor of about 1,660 dollars, and that of the Treasury Department at 2,500 dollars to the United States.

You see by the papers that our Mediterranean trade is in jeopardy, if not attacked, and that the arrears of stipulated remittances are urged as the ground of complaint. Whether this be or be not more than a pretext, it is certainly extraordinary that the arrears should have been suffered so to accumulate. From Europe, in general, we hear little more than what you see in print. It is said that Portugal is presented with the alternative of shutting her ports against G. Britain, and receiving a French or Spanish garrison, or of being annexed and guaranteed as a province to Spain. The legations to that Country and Batavia are to be abolished. The letters, &c., for the purpose, to go to Smith and Murray, will be ready for the signature of the President on Monday.

Intelligence has come through several channels which makes it probable that Louisiana has been ceded to France. This is but little wonderful, considering the calculations into which France has been led by the transactions for several years back. You will readily view this subject in all its aspects. If any ideas occur on it that can be of service, favor me with them.

TO JAMES MONROE.

WASHINGTON, July 25, 1801.

DEAR SIR,—The inclosed came last evening in a packet from Bordeaux. By the same conveyance I have a letter from Dawson, of May 27, at Paris. Every appearance assured him that the Convention would be ratified. Letters from King, of May 30 and June 1, represent the British Government as in dispositions equally favorable. They have given peremptory orders to their West India cruisers to abstain from the captures which have been most hurtful to us, and required all letters of Marque to be called in which do not conform to them. Lord Hawks-

bury has also, on an interview invited for the purpose, communicated to Mr. King, by order of his Majesty, that on hearing of the intended expedition to the Mediterranean, orders had been sent to Gibraltar, Minorca, and Malta, for the squadron to be received in the most friendly manner, and supplied with anything wanted from the King's stores, and that this communication was made to Mr. King in order to its being transmitted to the President of the United States. Although the sequel of the conversation disclosed some circumstances, which I shall not state on paper, detracting from the disinterestedness of this proceeding, it shows that the present policy of the British Government treats the U. States with more respect and conciliation than heretofore, notwithstanding the prophetic alarms sounded on this subject against the election of Mr. Jefferson.

TO JAMES MONROE.

WASHINGTON, Oct^r 24, 1801.

DEAR SIR,—We have little news from abroad more than the newspapers give, except that the negociation for settling the difficulties under the 6th article of the British Treaty is in a fair way to issue in a conversion of their vague claims into a round sum, and that some other points in controversy are also likely to be arranged. The Spaniards, in seizing our vessels under the pretext of a blockade at Gibraltar, have excited much agitation among the Merchants, and considerable sensibility in the public at large. The Executive will attend to it, under the joint impression of the particular wrong done by Spain, and of her amicable disposition in general towards the United States.

The election in New Jersey has had a republican issue. That in Pennsylvania entirely so. Every where the progress of the public sentiment mocks the cavils and clamors of the malignant adversaries of the administration.

TO JAMES MONROE.

WASHINGTON, Jan^y 8, 1802.

DEAR SIR,—I have not yet thanked you for the copy of your Message, which I find has attracted attention, and circulates with advantage to yourself, as well as to the public. It is much to be wished that the same manly and enlarged sentiments, and the same just and enlightened policy, might distinguish the addresses of all the Republican Governors, and co-operate with the example set by the President, in affording honorable contrasts to the passionate and apostate harangues which disgraced a certain period in certain quarters.

Will you tell me what is the precise measure and kind of qualifications possessed by your friend, Mr. ——? Has he any knowledge of law? is he any wise familiar with forms? is he practically acquainted with the usages and details of trade? is he ready and clever with his pen, and for a style of writing beyond the ordinary course of business? is his judgment of the solid and correct kind? I ask these questions with a wish that you would answer them in a manner enabling me to take the exact dimensions of the character, and with a further wish that it may not be known they were asked, particularly that it may not reach him or his friends that any correspondence in relation to him has passed between us.

TO JAMES MONROE.

WASHINGTON, Jan^y 19, 1802.

DEAR SIR,—I have this moment received yours of the 14th instant. Mr. Dawson, as you will see, has at length reached his post. I do not learn that any proceeding is instituted for scrutinizing the legality of it. He brought ample despatches from England, but not of very late date. At his departure a cloud lay over the subjects depending between the United States and Great Britain, a sudden and unaccountable tergiversation having shewn itself in the leaders of the latter Cabinet.

TO ——— VAN POLAREN.

VIRGINIA, August 13, 1802.

SIR,—I have received and communicated to the President your letter of the 30th ult^o, giving information of your appointment to another public station, which terminates that which you have held near the United States.

The President receives, with much satisfaction, the assurance that the disposition of the Batavian Republic to cultivate friendship with the United States will suffer no diminution from the mutual recall of their Diplomatic functionaries; and I am charged to say in return, that as the step taken in this case, on the part of the United States, had its origin altogether in considerations of domestic arrangement and economy, your Government may be equally assured of the constancy of the United States in their cordial dispositions towards a nation whose early and welcome proofs of good will strengthen its other titles to their confidence, their esteem, and their cultivation of the friendly relations which subsist between the two Countries.

I have the pleasure to add, that the personal merits exemplified during your residence in the United States have obtained for you the sincere esteem of the President. Be persuaded, Sir, that you will carry with you not less the regards and good wishes which I beg leave to offer you, with the sentiments of great respect and consideration, with which I have the honor to be, your most obedient and humble servt.

TO JAMES MONROE.

WASHINGTON, March 1, 1803.

DEAR SIR,—Since you left us we have no further intelligence from New Orleans, except a letter dated January 20th from the Vice Consular agent there, from which it appears that the letters to the Governor and Intendant from the Spanish Minister here had arrived about the 13th, and had not, on the 20th, pro-

duced the desired change in the state of things. The delay, however, does not seem to have been viewed by the Consul as any proof that the Intendant would not conform to the interposition. The idea continued that he had taken his measures without orders from his Government. There are letters (according to that from the Consul) for the Marquis Yrujo now on the way by land. These will probably shew whether the Intendant will yield or not. The despatch vessel which carried the Marquis's letters is not yet returned. The detention of her beyond the allotted time is favorably interpreted by him, on the presumption that she waits for a satisfactory answer, which the pride of the Intendant postpones as long as possible.

The newspapers will have informed you of the turn given to the proceedings of Congress on the subject of New Orleans, &c. The propositions of Mr. Ross in the Senate, which drove at war thro' a delegation of unconstitutional power to the Executive, were discussed very elaborately, and *with open doors*. The adversaries of them triumphed in the debate, and threw them out by 15 votes against 11. On the motion of Mr. Breckenridge, measures of expenseless or cheap preparation, in the style of those which attended Mr. Jay's mission to G. Britain, have been agreed on in the Senate. It is uncertain whether even these will pass the House of Representatives. If they should, as is, perhaps, not improper, they will not be understood as indicating views that ought to excite suspicions or unfriendly sensations in either of the Governments to which your Mission is addressed. The truth is, that justice and peace prevail not only in the public councils, but in the body of the community; and will continue to do so as long as the conduct of other nations will permit. But France and Spain cannot be too deeply impressed with the necessity of revising their relations to us thro' the Mississippi, if they wish to enjoy our friendship, or preclude a state of things which will be more formidable than any that either of those powers has yet experienced. Some adjustments, such as those which you have to propose, have become indispensable. The whole of what we wish is not too much to

secure permanent harmony between the parties. Something much better than has hitherto been enjoyed by the States is essential to any tolerable degree of it, even for the present.

I enclose you an extract of a letter from Mr. Gallatin, which could not be well incorporated with the instructions. The information it gives may nevertheless be of use, and I take this mode of putting it in your hands.

I understand that a bill is likely to pass granting General La Fayette 12,000 acres of land, as due for military services. We are anxious that a clause may be inserted authorizing the President to locate the tract wherever he pleases. Should this idea succeed, the grant may become of great value, perhaps beyond the contemplation of the Marquis, or his most sanguine friends. Without such a clause, the land may be of little account, and will probably fall short of the lowest expectations.

In the instructions relative to Article VI, you will find an important discretion given on the subject of Beaumarchais's claim. It was suggested by the possibility that the claim may be pressed with an energy beyond its importance in any public view; such a discretion was, therefore, highly expedient, and may possibly be used with desirable effect.

(Extract of a letter from Albert Gallatin, Esq^r., to J. Madison, Esq^r.)

Dated Feb^r 7, 1803.

If West Florida can alone be purchased, it is certainly worth attending to; but in that case, making the river Iberville the boundary, as it was made in the Treaty of 1762, between France and England, the article should be so worded as to give us the whole channel of that river, or at least to permit us to open it, so as to render it navigable in all seasons. At present, the bed is 30 feet above low-water mark for 15 miles, from the Mississippi to Amit river; but I have no doubt that a very small opening would be widened and deepened afterwards by the river. There is no obstruction, the whole being level, or mud, or sand. But supposing even a portage there, the advantage of American

Houses settled in a American *port* would soon give a preference over New Orleans to that port. The seaport may be, perhaps, on the main, between Pearl and Pargacola rivers, but certainly on that Island called "Ship Island," as through the passage between that and the next Island there are more than 20 feet water, and good anchorage close to the shore, which faces the main. A frigate of 36 guns was seen there by E. Jones, (the first Clerk in my office, who is brother of our late Consul at New Orleans, and lived ten years with him in West Florida,) and it is the reason of its bearing that name. Judge Bay says that there is another Island, called Deer Island, close to the entrance of Lake Pontchartrain, which affords the same advantages. That Jones disbelieves; but the other is certain; and as it is about half way between Mobile and the Lake, as the whole navigation between these two places is locked in by the Islands, and safe even for open boats and canoes, that Island would become the proper seaport for both rivers, Mississippi and Mobile; for you can bring but 9 feet up Mobile Bay, 7 feet over the bar of Lake Pontchartrain, and 15 over the bar at the mouth of the Mississippi. It results from all that, that the possession of West Florida, even without New Orleans island, is extremely important, and that if it can be obtained, it ought expressly to include all the islands within twenty leagues, or such distance as to include those which are marked on the map.

TO JAMES MONROE.

WASHINGTON, April 20, 1803.

DEAR SIR,—You will receive with this all the communications claimed by the actual and eventual posture of our affairs in the hands of yourself and Mr. Livingston. You will find, also, that the Spanish Government has pretty promptly corrected the wrong done by its officer at New Orleans. This event will be a heavy blow to the clamorous for war, and will be very soothing to those immediately interested in the trade of the Missis-

ssippi. The temper manifested by our Western Citizens has been throughout the best that can be conceived. The real injury from the suspension of the deposit was, however, much lessened by the previous destruction of the entire crop of wheat in Kentucky, by the number of sea vessels built on the Ohio, and by throngs of vessels from Atlantic ports to the Mississippi, some of which ascended to the Natchez. The permission, also, to supply the market at New Orleans, and to ship the surplus as Spanish property to Spanish ports, was turned to good account. The trial, therefore, has been much alleviated. Certain it is that the hearts and hopes of the Western people are strongly fixed on the Mississippi for the future boundary. Should no improvement of existing rights be gained, the disappointment will be great. Still, respect for principle and character, aversion to poor rates and taxes, the hope of a speedy conjuncture more favorable, and attachment to the present order of things, will be persuasive exhortations to patience. It is even a doubt with some of the best judges whether the deposit alone would not be waived for a while, rather than it should be the immediate ground of war and an alliance with England. This suggested a particular passage in the official letter now sent you and Mr. Livingston.

The elections in New England are running much against the administration. In Virginia, the result is but very partially known. Brent outvoted Lewis. In general, things continue well in that State.

The affair between the President and J. W. has had a happy eclaircissement. Even this general communication is for your own bosom, as already privy to the affair.

I have received a very friendly letter from General La Fayette, which I shall answer as soon as I can get some further information. We are all much distressed by his late accident, and are anxious for every proof to be given him of the affection of this Country. Congress found an occasion of voting about 11 or 12,000 acres of land Northwest of the Ohio, with liberty to locate it any where. This may be made worth now, probably, about 20,000 dollars. In a little time the value must greatly

increase. Whether any thing else can or will be done, you can judge as well as myself. Assure him of my undiminished friendship for him, which he knows to have been perfectly sincere and ardent.

TO JAMES MONROE.

WASHINGTON, May 1, 1803.

MY DEAR SIR,—I commit to your care the inclosed letters and papers for General La Fayette, which are left open for your perusal.

We have just received the message of his Britannic Majesty, which is represented as the signal of a certain rupture with France. From the positions taken by the parties, both diplomatic and military, such an event seems scarcely avoidable. I hope we shall be wise enough to shun their follies, and fortunate enough to turn them by honest means to our just interests. You will probably have arrived very critically for the purpose.

The order from Spain for the restoration of the deposit has had a good effect every where. We are told at the same time, in the very words of the Article, that, in the cession of Louisiana, our rights under the Treaty of '95 are saved. On the 1st of April, Laussat, the Prefect, was at New Orleans, and the late Governor, Casa-Calvo, was expected in a few days from the Havanna, to deliver possession to the French. Whether this measure will be delayed for the arrival of the Cap^t. General, or what may result to it from other causes, can be better understood with you than here. Laussat professes to be kindly disposed, and undertakes to affirm that the French Government had nothing to do in the arrest of the deposit by the Spanish officer, and that if he had been there in authority no such thing would have happened. He does not admit that he has any authority to meddle in any way at present, and gives this answer to Pichon's exhortation. The Intendant had declined in like manner to obey the advice of Yrujo. The last more peremp-

tory interpositions of these Ministers had not arrived, and the importance of them was superseded by the orders from Spain. The attention here is much alive to the transfer of the country to France, and it becomes her, if she wishes to be on cordial terms with us, to proceed in every step with strict justice and exemplary frankness.

The elections in New York, as far as known, have issued as heretofore. In Virginia, there will certainly be two, and possibly three members of the anti-party. In New England, the tide has run strongly in that channel, but under impulses temporary and artificial. In general, our prospects are bright. Excepting the case of Louisiana, there is scarcely a cloud in them. Remove that, and the possibility of our being embarrassed by the war of others, and our Country will be what has been so often applied to another, the admiration and envy of the world.

I am on the point of setting out to Virginia, whence I shall return in two or three weeks. In this hurry, I can only add for myself and family affectionate respects to you and yours.

TO JAMES MONROE.

WASHINGTON, July 30, 1803.

DEAR SIR,—I received your favor of — by Mr. Hughes, the bearer of the public despatches from you and Mr. Livingston. The purchase of Louisiana in its full extent, tho' not contemplated, is received with warm, and, in a manner, universal approbation. The uses to which it may be turned render it a truly noble acquisition. Under pendent management it may be made to do much good, as well as to prevent much evil. By lessening the military establishment otherwise requisite or countenanced, it will answer the double purpose of saving expence and favoring liberty. This is a point of view in which the Treaty will be particularly grateful to a most respectable description of our Citizens. It will be of great importance, also, to take the regulation and settlement of that Territory out of other

hands into those of the U. S., who will be able to manage both for the general interest and conveniency. By securing, also, the exclusive jurisdiction of the Mississippi to the mouth, a source of much perplexity and collision is effectually cut off. The communications of your colleague hither have fully betrayed the feelings excited by your message, and that he was precipitating the business soon after your arrival, without respect to the measure of the government, to yourself, or to the advantage to be expected from the presence and co-operation of the more immediate depository of the objects and sensibilities of his Country. It is highly probable that if the appeal to the French Government had been less hackneyed by the ordinary minister, and been made under the solemnity of a joint and extraordinary embassy, the impression would have been greater and the gain better.

What course will be taken by his friends here remains to be seen. You will find in the Gazettes a letter from Paris, understood to be from Swan, indorsing a copy of his memorial, representing it as the primary cause of the cession, praising the patriotism which undertook so great a service without authority, and throwing your agency out of any real merit, while, by good fortune, it snatched the ostensible merit. This letter, with the memorial, has been published in all our papers; some of them making comments favorable to Mr. Livingston, others doing justice to you, others ascribing the result wholly to the impending rupture. Another letter from Paris has been published, which makes him *Magnus Apollo*. The publication of the memorial is so improper, and in reference to the writer invites such strictures, that from him is not to be presumed. The passages against England have not escaped the lash. It would not be very wonderful if they were to be noticed formally or informally by the British Legation here.

My public letter will show the light in which the purchase of all Louisiana is viewed, and the manner in which it was thought proper to touch the policy of Mr. Livingston, in complaining that the communication did not authorize the measure, notwithstanding the information given that he was negotiating

for more than the East side of the Mississippi. The pecuniary arrangements are much disrelished, particularly by Mr. Gallatin. The irredeemability of the stock, which gives it value above par, the preference of the conditions to the true object in the cash payment, and the barring of a priority among them, are errors most regarded. The claims of the different creditors rest on principles as different.

Governor Mercer has taken the field as a candidate for the State Legislature, against four with whom he has been on the same party. The inclosed print will give you an idea of the violence of the contest, and of the personalities growing out of it. His object is to set the State to rights on certain points. He expects to accomplish it by a skilful management of parties. It is difficult to calculate the precise result of this project, either as it relates to the public or to himself. It is probable that he will sink under it, or that he will throw the State off its centre, and possible that both may happen.

I have received no letter from you or Mr. Livingston since the arrival of Mr. Hughes, and consequently know nothing of your subsequent movements. The public letters by this conveyance were written under an ignorance whether you would be found at Paris, London, or Madrid. I observe a paragraph from an English paper says you had left Paris for Madrid, which I presume to be founded in fact. I hope you will give the proper cue to Spain, and carry all our points with her. Avoid the error committed with France with respect to the Creditors.

TO THOMAS PAINE.

ORANGE COURT-HOUSE, VIRGINIA, August 20, 1803.

DEAR SIR,—Your letter of the 6th having arrived at Washington after I had left it, no answer could be given through the gentleman who was charged with it. The report to which it refers, that the British Government had cautioned ours not to pay the money for Louisiana, for that they meant to take pos-

session of it, is utterly destitute of foundation. The British Government has, on the contrary, expressed its satisfaction with the cession, and, although the terms of it might not at the time be particularly known, yet as a price was to be presumed, and as the bargain was made bona fide, and even communicated prior to the commencement of hostilities, there can be no pretext whatever for complaint, nor is there the least ground for supposing that it will take place.

TO JAMES MONROE.

WASHINGTON, Oct. 10, 1803.

DEAR SIR,—Finding that Mr. Purveyance is within reach of a few lines, I add them to what he is already charged with, to observe that Yrujo has written another remonstrance against our acquisition of Louisiana, alleging as a further objection, that France, by not obtaining the stipulated acknowledgments of the King of Etruria from the Courts of Petersburg and London, had a defective title herself to the Cession. Nothing can be more absurd than these cavils on the part of Spain, unless it should be her using in support of them force against our taking possession. This she will scarcely attempt, if not backed by France, which we hope is impossible. I am writing on this subject to Livingston and Pinckney. I have already done so to Yrujo, giving him to understand that we shall not withhold any means that may be rendered necessary to secure our object. Pichon is perfectly well disposed, is offended with the Spanish Minister, and, if left under the orders he now has, will co-operate zealously, with an honest view to the honor and obligations of his own Country. On our part, I trust every thing that the crisis demands will be done, and that we shall speedily be in possession of the valuable object which the Treaty with France has gained for us. Baring is here, but having not yet called on me I have had no opportunity of paying him civilities, or obtaining explanations from him. I wait anxiously for your next. Your last was of Aug. 15. I hope you have been favorably

received, and will bring the British Government more and more to understand their own interests, as well as our rights. Insist on instructions to *all* their naval officers to abstain from impressments and to respect our jurisdictional rights. Incidents are daily occurring which, otherwise, may overcome the calculating policy of the present Executive, and provoke the public temper into an irresistible impetus on the public Councils. Mr. King says, that if he could have remained a little longer, the British Government might possibly have been brought into a contract guarding against this evil; but that the business is to be effected at that Court by the United States, not so well by formal notes and official discussions as by the frankness and familiarity of explanatory and expostulatory observations in private discourse. I give you this in confidence, as a hint that may be useful. Mr. Purveyance had seized your wishes before I returned hither, and I did not know till this moment that he had not sailed. I write in great haste to secure the present mail, which is the only one that promises a conveyance by him. He will give you much public and all private information.

TO BARBE MARBOIS.

DEPT OF STATE, NOV^r 4, 1803.

SIR,—I received your favor of the 21st prairial, with a pleasure which is redoubled by the consideration that I am able, in acknowledging it, to inform you of the formal approbation of the late Treaty, and by every branch of our Government. The event establishes, I hope forever, perfect harmony between the two Countries. It is the more likely to do so, as it is founded in a policy, coeval with their political relations, of removing as much as possible all sources of jealousy and collision. The frankness and uprightness which marked the progress of this transaction are truly honorable to all concerned in it; and it is an agreeable circumstance that, in the exchange of ratifications, it was closed in the same spirit of mu-

tual confidence, Mr. Pichon inferring, doubtless with the truest reason, that an unqualified exchange, under actual circumstances, would best accord with the real views of his Government.

It remains now to compleat the work by an honest execution of the mutual stipulations. On our part, the sequel will certainly correspond with the good faith and prompt arrangements thus far pursued; and full reliance is placed on the reciprocal disposition of your Government, of which so many proofs have been seen.

The interposition of Spain is an incident not more unexpected than it is unreasonable. It is to be wished that it may terminate without any serious consequences, even to herself. Whatever turn it may take, the honour of the French Government guaranties the object at which our measures are pointed; and the interest of France will equally lie in making the fruits of these measures hers, as well as ours.

I partake, Sir, in all the satisfaction which you feel at an event which awakens recollections, both of a public and private nature, so agreeable to both of us; and I pray you to be assured that I observe with sincere pleasure, in the share you have contributed to it, those enlarged views and honorable principles which confirm the high esteem and distinguished consideration with which I remain, D^r sir, your friend and Serv^t.

TO MR. MARBOIS, (BUT NOT SENT.)

D^R SIR,—I have duly received the volume relating to the Equestrian Statue of Henry 4th, with one of the Medals to which it gave rise, for both which I offer you my thanks.

The volume is not only a valuable present to Artists, but is enriched with articles of information which make it interesting to the curious who are not artists. I observe that it justly records your essential agency in this National Monument, and have not overlooked the fine morsel of appropriate sentiment

which it was your lot to address to the reigning Prince, whose name was so closely associated by the occasion with that of his illustrious ancestor.

France is happy in having had a King worthy of the National devotion which the erection of this statue proclaims to the memory of Henry 4. He may be regarded as a model, not only to his hereditary successors under a limited Monarchy, but as one, also, to the other departments of the Government. His personal virtues seem to have furnished that check and balance to his royal prerogative, which are provided by partitions of power among the Constitutional orders of the State.

I hope, Sir, you continue to enjoy the good health of which you make so good a use, and that you will accept this renewed assurance of my distinguished esteem.

TO JAMES MONROE.

WASHINGTON, Dec^r 26, 1803.

DEAR SIR,—I have received, I believe, all your letters, public and private, down to that of October 22d, written merely to say that all continued well. I have taken due care of the communications on the subject of your ———. Everything seems to be well understood on this side the water. I cannot say more now, as I write of necessity without cypher.

Mr. Merry has been with us some time. He appears to be an amiable man in private society, and a candid and agreeable one in public business. A foolish circumstance of etiquette has created some sensibility in Mrs. Merry, and perhaps himself; but they will find so uniform and sincere a disposition in all connected with the Government to cultivate a cordial society with them, and to manifest every proper respect for their characters and station, that if any unfavorable impression has happened, it must be very transient. It would be unfortunate if it were otherwise, because a dissatisfaction, of whatever sort, or however produced, might mingle itself with his general feelings, and, thro' them, with the agency committed to them.

We have had several conversations, both incidental and formal, on the topics most interesting to the two Countries. I have taken pains to make him sensible of the tendency of certain proceedings on the British side, and of their injustice as well as impolicy. I communicated to him a few days ago the intention of the President to explain our views fully to you on these topics, and to authorize you to negotiate such conventional eclairecissements and arrangements as may put an end to every danger to which the harmony between the Countries is now subjected. His ideas appeared to be moderate, and his disposition conciliatory. As he will doubtless communicate to his Government what passed us, I think it proper, in order to place you on a level of information, to observe briefly, that the plan will be to get rid of impressments altogether on the high seas; to define blockades and contraband according to the last Treaty between Great Britain and Russia; to regulate visits and searches of our vessels, according to the Treaty of 1786 between Great Britain and France; to put aside the doctrine, that a Colonial trade, not allowed in time of peace, is unlawful in time of war; and, in return, to agree to a mutual surrender of deserters from ships and from garrisons, and to a legislative provision against exporting articles enumerated as contraband to places within the jurisdiction of an enemy. This will be the outline, excepting a few minor propositions. The subject is now before the Cabinet, and it will not be long before it will be forwarded to you in its details. It is much to be desired that something may be done to consolidate the good understanding between the two nations, and I really believe that there is nothing aimed at by us that is not for the true interest of both parties. I am not without hopes that Mr. Merry sees the business in a good degree in the same light; and that his representations will co-operate with your reasonings on it. I am glad to learn that in Europe violations of our maritime rights are so much mitigated in comparison with the former war. It is a good omen. In the American seas, however, the scene is very different, and I fear is growing worse and worse. Impressments and other outrages on our flag are multiplying, and the depredations, under pretext

of blockades, are going on in rivalry with all the extravagances of the last war. I will send herewith, if I can, certain documents, both as to impressments and blockades, which will explain the justice of these remarks, and satisfy you, as they ought to do the British Government, that the friendship and patience of this country are put to a severe trial. A bill has been brought in Congress with a view to some remedy. It proposes to forbid the use of our pilots, our ports, and our supplies and hospitalities, to any ship of war which shall be proved and proclaimed to have impressed or otherwise insulted those on board our vessels. Whether it will be pursued into a law is uncertain; but if it should not, the forbearance will proceed merely from a hope that a remedy to the evil is contemplated by negociations. The public mind is rising to a state of high sensibility, and no other consideration than such a hope would, I am persuaded, suspend the effect of it on the Legislative Councils. It is to be wished that the introduction of the Bill may not be misconstrued into any unfriendly disposition towards Great Britain. I have every reason to believe that the supposed necessity of it is deeply regretted, and that a just accommodation of all differences with Great Britain will give the most sincere and general satisfaction. Louisiana was delivered by the Spanish authorities at New Orleans to Laussat, on the 30th of November. Our Commissioners, Claiborne and Wilkinson, with their troops, were at Fort Adams, on their way to receive the transfer to the United States. All difficulties are, therefore, at an end in that quarter. Nothing appears to have passed in relation to West Florida, or the boundaries in general. It is understood that Spain does not include any territory East of the Mississippi, except the island of New Orleans, in the idea of Louisiana. It will be an easy matter to take possession according to our idea. The mode alone can beget a question.

TO JAMES MONROE.

WASHINGTON, JANU 18, 1804.

DEAR SIR,—I write you by Mr. Baring, who will also take charge of full instructions on the subject of a Convention with Great Britain for putting an end to impressments, &c. It is of great importance to the harmony of the two Countries that the project should not entirely fail. There is not time to forward by this opportunity instructions relative to Madrid. They will probably soon follow. In the mean time, you will collect from a letter which the President writes his present views with respect to that mission. I refer to the same source, also, for other things, of which a repetition is unnecessary, particularly the arrangement as to Louisiana.

Your outfit in going to London is of course. There will be a difficulty in varying the provision made beyond the annual allowance as Minister Extraordinary to Paris, it being fixed and recorded. Should you proceed to Madrid, it is probable that your expences will be defrayed, according to the several examples in point and the apparent reasonableness of it. As soon as the instructions to proceed issue, a draught may, I presume, be authorized, which will be better than the mode you suggest of leaving the advance made you here for settlement on your return.

I informed you in my last that I had received all your private letters down to Oct. 22, including the documents relating to the joint negociation, &c., with France, and that every thing seemed to be sufficiently understood here to make you easy. The letter of 22 March from T. ———, that of April 10th to you, and the extract from Col. M.'s journal, completely establish the essential points.

Mr. Merry has said nothing yet about S^t Domingo, altho' it is understood to be now in the hands of the negroes, and has been in that train clearly and certainly for some time past. I learn, from what I take to be a sure source, that Great Britain will not aim at a monopoly of the trade there, and will also, by an arrangement with the negroes, shut the sea against them,

in order to keep Jamaica safe. If she pursues this course, we shall be relieved from difficulties on that side. And it is to be hoped that France will see that she has no motive to throw the commerce and the attachments of the negroes into the exclusive possession of England, by prohibitions against other nations.

Mr. Merry expressed in strong terms the dissatisfaction of his government at the Memorial. He was told that the sentiments of this Government were truly expressed in the friendly assurances given by it, and that no authority had been given to express others. It was added that the memorial was not official, nor meant for the public eye, and very probably had been shaped into arguments most likely to favor the object of it, without adverting to the incidental tendency of mine. In a word, that the view taken of the subject was such as was deemed most likely to influence the policy of France, rather than to exhibit the opinions or feelings of the writer. He seemed to be content with this disavowal, and signified his confidence that his Government would be so likewise.

The inclosed paper has an address to Mr. Merry, which shows the importance to Great Britain of a stipulation to surrender her deserting seamen. She cannot expect this to be either stipulated or practised whilst impressments go on. On the contrary, she must expect other States to follow the example of Virginia, which will throw the whole trade between the two Countries, in time of war at least, into American vessels.

TO R. R. LIVINGSTON.

WASHINGTON, Febr 7, 1804.

DEAR SIR,—The public letters which you will receive by this conveyance acknowledge all the letters received from you since the date of those last written to you, except your correspondence with Mr. Monroe. This I have thought proper to acknowledge in a private letter, because I have not placed it on the files of the office. You left me free to consider the letters

which passed between you as private, and I have not yet decided that it can be of use to dispose of them as of a public nature. Should it, on further consideration, be deemed proper to view them in this light, they can at any time be deposited in the office; whereas if now deposited, and a further consideration should oppose this use of them, the step would be irrevocable. It is much to be desired, on various grounds, that the mutual sensibilities which betray themselves in the correspondence should have no greater publicity than may be inevitable, and that no insuperable obstacles should be thrown in the way of that oblivion of disagreeable incidents which cannot but be favoured by your mutual respect and liberality.

Congress have been long in session, but have passed but few acts, and appear to move very slowly. They dwell with particular tediousness on the Bill providing a Government for Louisiana. The newspapers I herewith send will give you an account of their latest proceedings. I beg leave to refer to the same source for other public occurrences. I communicated to Gen^l Armstrong yesterday the present opportunity, namely, that of a young gentleman who goes in the vessel carrying the French Louisiana stock, and he said he would have a letter for you at the office in time for it. If it comes, it will be inclosed herewith.

You will find in the public letter the reasons for not heretofore forwarding a letter of leave, and of the intention to forward one only on the receipt of your determination to make use of it. It was not wished to take any step which might be misinterpreted as an instruction for your return; and it was conceived that the letter you possess could, if your return was resolved on, without impropriety be made use of. The date alone suggests any difficulty, and that admits so easy an explanation, as scarcely to be regarded as one. You will, I am persuaded, be sensible that the footing on which the matter has been put was that deemed most consistent with the delicacy and friendship entertained for you, and which seemed best to reconcile a due respect for your personal inclinations with the respect due to the interest the public has in your diplomatic services.

TO JAMES MONROE.

WASHINGTON, Feb^y 16, 1804.

DEAR SIR,—In a private letter by Mr. Baring I gave you a detail of what had passed here on the subject of etiquette. I had hoped that no farther jars would have ensued, as I still hope that the good sense of the British Government respecting the right of the government here to fix its routes of intercourse, and the sentiments and manners of the country to which they ought to be adapted, will give the proper instructions for preventing like incidents in future. In the mean time, a fresh circumstance has taken place, which calls for explanation.

The President, desirous of keeping open for cordial civilities whatever channels the scruples of Mr. Merry might not have closed, asked me what these were understood to be, and particularly whether he would come and take friendly and familiar dinners with him. I undertook to feel his pulse thro' some hand that would do it with the least impropriety. From the information obtained, I inferred that an invitation would be readily accepted, and with the less doubt, as he had dined with me, (his lady declining,) after the offence originally taken. The invitation was accordingly sent, and terminated in the note from him to me and my answer herewith inclosed. I need not comment on this display of diplomatic superstition, truly extraordinary in this age and in this country. We are willing to refer it to the personal character of a man accustomed to see importance in such trifles, and over cautious against displeasing his Government by surrendering the minutest of his or its pretensions. What we apprehend is, that with these causes may be mingled a jealousy of our disposition towards England, and that the mortifications which he has inflicted on himself are to be set down to that account. In fact, it is known that this jealousy, particularly since the final adjustment with France, exists, or is affected in a high degree, and will doubtless give its colour to the correspondence of the legation with its government. To apply an antidote to this poison will require your vigilant and prudent attention. It can scarcely be believed that the British

Government will not at once see the folly committed by its representative, especially in the last scene of the farce, and that it will set him right in that respect. But it may listen with a different ear to the suggestions that the United States, having now less need of the friendship of Britain, may be yielding to a latent enmity towards her. The best of all proofs to the contrary would be the confidential communications you possess, if it were not an improper condescension to disclose them for such a purpose. Next to that is the tenor of our measures, and the dictates of our obvious policy; on an appeal to both of which you may find the strongest assurances that the Government of the United States is sincerely and anxiously disposed to cultivate harmony between the two nations. The President wishes to lose no opportunity and spare no pains that may be necessary to satisfy the British administration on this head, and to prevent or efface any different impressions which may be transmitted from hence.

I collect that the cavil at the *pêle mêle* here established turns much on the alledged degradation of ministers and envoys to a level with *Chargés D’Affaires*. The truth is, and I have so told Mr. Merry, that this is not the idea; that the President did not mean to decide anything as to their comparative grades or importance; that these would be estimated as heretofore; that among themselves they might fix their own ceremonies, and that even at the President’s table they might seat themselves in any subordination they pleased. All he meant was, that no seats were to be designated for them, nor the order in which they might happen to set to be any criterion of the respect paid to their respective commissions or Countries. On public occasions, such as an Inaugural speech, &c., the heads of department, with foreign ministers, and others, invited on the part of the Government, would be in the same *pêle mêle* within the space assigned them. It may not be amiss to recollect that under the old Congress, as I understand, and even in the ceremonies attending the introduction of the new Government, the foreign ministers were placed according to the order in which their Governments acknowledged by Treaties the Independence of

the United States. In this point of view, the *pêle mèle* is favorable both to Great Britain and to Spain.

I have, I believe, already told you that the President has discountenanced the handing first to the table the wife of a Head of Department, applying the general rule of *pêle mèle* to that, as to other cases.

The Marquis d'Yrujo joined with Merry in refusing an invitation from the President, and has, throughout, made a common cause with him, not, however, approving all the grounds taken by the latter. His case is, indeed, different, and not a little awkward, having acquiesced for nearly three years in the practice against which he now revolts. Pichon, being a *Chargé* only, was not invited into the pretensions of the two Plenipotentiaries. He blames their contumacy; but I find he has reported the affair to his government, which is not likely to patronize the cause of Merry and Yrujo.

Thornton has also declined an invitation from the President. This shews that he unites, without necessity, with Merry. He has latterly expressed much jealousy of our views, founded on little and unmeaning circumstances.

The manners of Mrs. ——— disgust both sexes and all parties.

Note and Answer referred to in p. 195.

Mr. Merry has the honor to present his respects to Mr. Madison.

He has just had that of receiving a note from the President of the United States, of which the following is a copy:

Thomas Jefferson asks the favor of Mr. Merry to dinner with a small party of friends on Monday, the 13th, at half past 3.

February 9th, 1804.

Superscribed, Mr. MERRY.

It so happens that Mr. Merry has engaged some company to dine with him on that day. Under other circumstances, however, he would have informed himself whether it is the usage,

as is the case in most countries, for private engagements of every kind to give way to invitations from the Chief Magistrate of the United States; and if such were the usage, he would not have failed to have alleged it as a just apology for not receiving the company he has invited. But after the communication which Mr. Merry had the honor to receive from Mr. Madison on the 12th of last month, respecting the alteration which the President of the United States had thought proper should take place in regard to the treatment to be observed by the Executive government towards foreign ministers from those usages which had been established by his predecessors, and after the reply which Mr. Merry had the honor to make to that notice, stating, that notwithstanding all his anxiety to cultivate the most intimate and cordial intercourse with every of the government, he could not take upon himself to acquiesce in that alteration, on account of its serious nature, which he would, therefore, report to his own government, and wait for their instructions upon it; it is necessary that he should have the honor of observing to Mr. Madison that, combining the terms of the invitation above mentioned with the circumstances which have preceded it, Mr. Merry can only understand it to be addressed to him in his private capacity, and not as his Britannic Majesty's Minister to the United States. Now, however anxious he may be, as he certainly is, to give effect to the claim above expressed, of conciliating, personally and privately, the good opinion and esteem of Mr. Jefferson, he hopes that the latter will feel how improper it would be on his part to sacrifice to that desire the duty which he owes to his Sovereign, and, consequently, how impossible it is for him to lay aside the consideration of his public character.

If Mr. Merry should be mistaken as to the meaning of Mr. Jefferson's note, and it should prove that the invitation is designed for him in his public capacity, he trusts that Mr. Jefferson will feel equally that it must be out of his power to accept it, without receiving previously, through the channel of the Secretary of State, the necessary formal assurances of the President's determination to observe towards him those usages of

distinction which have heretofore been shewn by the executive government of the United States to the persons who have been accredited to them as his Majesty's Ministers.

Mr. Merry has the honor to request of Mr. Madison to lay this explanation before the President, and to accompany it with the strongest assurances of his highest respect and consideration.

WASHINGTON, February 9th, 1804.

Mr. Madison presents his compliments to Mr. Merry. He has communicated to the President Mr. Merry's note of this morning, and has the honor to remark to him that the President's invitation, being in the style used by him in like cases, had no reference to the points of form which will deprive him of the pleasure of Mr. Merry's company at dinner on Monday next.

Mr. Madison tenders to Mr. Merry his distinguished consideration.

WASHINGTON, February 9th, 1804.

TO GOVERNOR CLAIBORNE.

(Private and confidential.)

WASHINGTON, February 20, 1804.

DEAR SIR,—It being understood that Morales means to settle himself at New Orleans, and that his temper and his treasures, his connections and his views, may render him a mischievous member of the society, his removal to some other part of the United States, where he would be unimportant and harmless, would be agreeable to the President. Perhaps it may be in your power to bring this about, without violating any principle which ought to be respected on such an occasion. It may have weight with him merely to know that his continuance in Louisiana attracts the notice of the Government, and that he would be perfectly secure in other situations, where his wealth could be engaged with more advantage. The case, however, is left to your own judgment, both in its merits and its arrangement.

I have the honor to be, Sir, with great respect and esteem,
y^r mo. ob^t.

TO JAMES MONROE.

WASHINGTON, March 8th, 1804.

DEAR SIR,—Since my last, which went by duplicates, and will, therefore, I hope, have been received, yours of Nov. 25, which, like this, is private, has come to hand. Your public letter accompanying it is answered publicly by this opportunity.

It is very agreeable to find the British Ministers so candidly acknowledging the justice of our general conduct towards their nation, and the fairness, particularly, of our Treaty obtaining Louisiana. If, as they admit, the sole ground of complaint against us was the memorial of Mr. Livingston, there remains no longer a single exception to be taken, an explanation having been given to Mr. Merry which he thought would be satisfactory to his government.

The Bill in the Senate on the impressment of seamen, of which you have been apprized, was a few days ago postponed generally, with reasons assigned, which were meant to render such an issue conciliatory, without renouncing the right, or the eventual necessity of some such remedy. The British functionaries here consider all that has passed on this subject as the effect of concert between the Executive and leading members of the Legislature, and as meant to operate on the apprehensions of England without the appearance of provoking a collision with her. In general, the idea of such an understanding between the Executive and Congress prevails among the Foreign Agents, more especially on their first coming, and it is not easy to correct the error. You know that a mutual independence exists, precluding a responsibility on either side for the separate measures of the other. Nothing is more common, in fact, than for those who in general form the majority in Congress to divide

among themselves on questions in which it is known that the Executive have taken an interest. In the case of the two Bills concerning impressments, they were introduced under the general impulse of the Country, and the personal or local sentiments of the movers, and the destiny of them is to be referred to a like explanation. This country wishes for justice, and thinks it has efficacious means in its own hands. It wishes, at the same time, not to resort, without absolute necessity, to any means that may interrupt harmony, or even wear an unfriendly aspect. This is certainly the sentiment of the Executive, in common with the other branches of the Government, and with the nation. Among more general considerations favoring this temperate and solid policy, it merits attention, that as the present administration in Great Britain appears more liberal and cordial towards the United States than any preceding one, as the administration here is certainly more so towards Great Britain than was then anticipated, and as no formal experiment has been made since the commencement of the present war to adjust by negotiation the question of impressments, it is proper to make a fair experiment in that form, before redress be pursued in any other. I have not learnt whether the Bill in the House of Representatives has yet been postponed. That it will be, is probable; and if it should not, the sense expressed by the Senate will be a bar to its passage into a law.

In a conversation with Mr. Merry on these bills, he intimated the danger of their being considered in Great Britain as leading to a state of violence, if passed into laws; and if postponed, as still leaving a menace more likely to excite pride than compliance. Without admitting the first inference, the second was easily repelled by an appeal to the operative negotiation of Mr. Jay, notwithstanding the strong posture taken by Congress at the moment, and the existence of an embargo, well understood to be levelled against British misconduct.

My public letter answers your enquiry relating to the East and West India trade. The case of French prisoners taken in American vessels cannot be more affected by the Treaty than that of French property so taken, and must depend on the same

principles of public law. If not in military service, the capture of them was wrong, and right requires that they should be discharged. It will be well, at the same time, to avoid interference in such cases, as far as will consist with the obligation and power of the United States.

Your trip to Madrid has become a perplexing subject. The present moment is not favorable to it, and the other object presented to your view by the President's letter becomes every moment more pressing for such services as yours. Whilst you hold yourself ready, therefore, for a trip into Spain, in case events should prescribe it, you will hold yourself still more so for taking a station at New Orleans, whither it is more than probable you will be summoned to repair the instant your negotiations at London shall be closed. In several views, the situation of the ceded territory is critically interesting. Should you go to Spain, it will evidently reconcile private with public economy, and both with the comfort of your family, to place them in the asylum you contemplate, and thereby stop the whole expence of your London establishment. As to the modifications of outfit, I can add nothing to what I have heretofore said. To be prepared for every turn which the settlement of your allowance may take, your expences cannot be too exactly noted and vouched.

When I communicate finally your destination, I will communicate, also, the sentiments of the President as to the person into whose hands you are to deposit your papers, &c. In the mean time, authorize no particular expectation in any one. The President retains his favorable opinion of Erving; but it is of importance to respect his standing with the British Ministry, and also not to flatter pretensions beyond his standing in this country, to which his present grade is thought to be commensurate. Perhaps it will be found best to name no Chargé, and waive the necessary business with him as consul, making the proper commission and request to Lord Hawkesbury.

TO GOVERNOR CLAIBORNE.

VIRGINIA, August 28, 1804.

SIR,—I have received your favor of the 12 and 14 of July.

The continuance and conduct of the Spanish officers at New Orleans justly excite attention. In every view, it is desirable that these foreigners should be no longer in a situation to affront the authority of the United States, or to mingle, by their intrigues, in the affairs of your territory. The first of October will be an epoch which may be used for letting it be understood that their stay, so much beyond the right and the occasion for it, is not seen with approbation. The mode and measure of the intimation are left by the President to your discreet judgment. With Morales there may be less need of very delicate management; especially if he perseveres in retaining a title which, having belonged to a Spanish officer purely provincial, in Louisiana, seems to arraign the present jurisdiction of the United States.

You will soon receive from Mr. Granger blank commissions for offices within his Department. The President wishes you to sound the Marquis de Casa Calvo on the subject of a link of the chain of post offices within the contested territory, and, by friendly explanations, to obtain his concurrence in making such an establishment for mutual convenience by mutual consent; with an understanding, or, if preferred, an express declaration, that the measure is neither to strengthen nor weaken the rights of either nation. Should a post office within the limits possessed by Spain not be acquiesced in, it is thought best that it be waived for the present, leaving to the mail a mere passage, to which it may be presumed no opposition will be made.

By the last communications from Madrid, of June 12, it appears that the Spanish Government had imbibed the discontent expressed by the Marquis d'Yrujo at the act of Congress authorising a revenue district on the waters of the Mobile, &c., and that it manifested a backwardness to ratify the Convention, which had been ratified here in the very terms in which it

was concluded on there. A knowledge of this ill humor may be useful in the course of your transactions, particularly those with the Spanish Functionaries.

TO GOVERNOR CLAIBORNE.

VIRGINIA, August 30, 1804.

SIR,—The President having thought proper to avail the United States of the continuance of your services, by appointing you Governor of the Territory of Orleans, in pursuance of the late act of Congress for erecting Louisiana into two territories, and providing for the temporary government thereof, I have the pleasure of enclosing the commission for that purpose, with a commission providing for the administration to you of the oath of office required.

I enclose, also, a commission for the Secretary of the Territory of Orleans, commissions for the members of the Legislative Council, — for two Judges of the Superior Court of the said Territory, a commission for the Judge of the District Court of Orleans District, and for the Attorney and Marshal of the said District; all which commissions I request the favor of you to cause to be respectively delivered.

With sentiments of great respect and consideration.

N. B. All the commissions sent dated August 30, 1804, except that to Kerby, which is dated August 29. ~~See~~ One of the Judges of the Superior Court not sent, and to be filled hereafter.

TO MONSIEUR PICHON.

VIRGINIA, Sept 3, 1804.

SIR,—I have received and laid before the President your letter of August 25, accompanied by a copy of the *Senatus Consultum*, giving a new form to the Government of France, and a

copy of a letter from the Minister of Exterior Relations to Mr. Livingston, with an extract of a letter to you, relating to that important event.

Previous to the departure of Gen^l Armstrong, appointed to succeed Mr. Livingston in the Representation of the United States at Paris, it having been sufficiently ascertained, without being formally notified, that a change had taken place in the form of the French Government, provision was made for the case by blanks in his letters of credence, which he was instructed to fill up, on consultation with the Minister of foreign Relations, in such manner as would adapt them to the new formulary.

This precaution, calculated to avoid inconvenient delays which might be occasioned by the succession of a New Minister from the United States in the crisis of a change in the Government to which he is sent, will have the effect, at the same time, of manifesting the readiness of the United States to respect the right of every Nation to give to its Government the form deemed most correspondent with its situation and its happiness, and the desire of the President to maintain, on the part of the United States, all the confidence and friendly relations with the Government of France, under its new form, which so happily prevail between the two nations.

The President learns with satisfaction that, during the interval preceding the introduction of new diplomatic instruments, a continuance in the accustomed form of all the communications useful to the harmony and interest of the two Countries is particularly authorised by his Imperial Majesty, the Emperor of the French. You will not doubt, Sir, that a like regulation on the part of the United States is prescribed not more by their principles than by their friendly dispositions.

TO MR. MERRY, BRITISH PLENIPOTENTIARY.

VIRGINIA, Sept^r 3, 1804.

SIR,—I had the honor to receive on the 25th of August your letter, with its inclosures, of the 15th of that month, which has been laid before the President.

The several communications and representations to which it is a reply, had for their object to obtain your interposition towards repairing and controuling the irregularities practised by British ships of war in the harbour of New York, and on the adjoining coasts. The resort was produced by a confidence that proceedings so contrary to public and local law, so irritating in their tendency, and so much at variance with the sentiments which your Government is believed to entertain towards the United States, would have received from you all the discountenance which they seemed to merit. Finding from the tenor of your letter, and it is found with much regret, that, instead of the expected result, charges, supported by regular proof against the British Commanders, are considered as answered by the denials of the parties; that not only the authority to impress British subjects from American vessels on the high seas is maintained, but a positive sanction is, moreover, given to the impressment of British subjects (which includes the decision of questions of allegiance) from British vessels within the acknowledged Sovereignty of the United States, with an implied sanction to the extraordinary pretension of a British Naval Commander, the Captain of the Cambrian, to a dominion of his Ship over a certain space around it, even when lying in an American port; that the continuance of enemy Ships in one of our ports, a continuance which may be prolonged indefinitely at the pleasure of an adequate force, is alledged as a sufficient vindication of the use which continues to be made of the port by British Ships, and of their proceedings in its vicinity to which that use is made subservient: finding, in a word, that the view which you have been pleased to take of the complaints addressed to you appears to be calculated rather to fortify than to restrain the British Commanders in the course which they are pursuing;

it is not perceived that any advantage is promised by the further discussion which might result from entering into the particular comments of which some of your observations are susceptible. It is deemed more proper to indulge the expectation that the subject will be seen by the Councils of his Britannic Majesty in a light more satisfactory to the United States, and more correspondent with the disposition to cherish all the friendly relations which so happily exist between the two Nations, and which are so strongly recommended by their mutual interests.

The irregularities charged on the French Ships of War now at New York were first notified to the Government by your representations on that head. You may assure yourself, Sir, that they will be enquired into with that attention which the United States owe not only to their own jurisdiction, but to their neutral position, to which they will always be as ready to pay respect themselves as to insist on it from others.

TO JOHN TYLER.

WASHINGTON, Nov^r 3d, 1804.

SIR,—In the year 1801, Governor Monroe placed in my hands three hundred Dollars, to be applied, when called for, to the payment in France for a Sword (as well as I recollect) voted by the State of Virginia to General Campbell. The money was lodged in the Bank of Columbia, in Georgetown. Having never been called for, it escaped my attention, till I was three days ago reminded of it by lighting on the receipt given by the Bank. With a view to remit it without delay, I have drawn the money from its depository, and now inclose it in halves of three bills, of 100 dollars each. The other halves will be sent by another mail.

TO JAMES MONROE.

WASHINGTON, NOV. 9, 1804.

DEAR SIR,—Besides your public letters, I have received your series of private ones down to August 24th. From the tenor of the latest of both, I infer that your negotiations with the British Government will have issued in proofs merely of a general disposition to be in amity with us, without stipulating the just accommodations claimed by the United States; and that you will of course have set out for Madrid, in order to try the temper of that Court. Thither I shall accordingly address this letter. The public one which it accompanies, with the documents therewith inclosed, and others to be found on Mr. Pinckney's files, furnish all the lights with which we can assist you in pursuing the objects of your mission. You cannot too earnestly press on Spain the necessity of closing all the differences between the two Countries. West Florida is essential to the United States, both as to their revenue on the Mississippi, and to the trade through the Mobile. Spain must also, sooner or later, swallow the claim for French injuries. All she can expect is, to have the pill wrapt up in the least nauseous disguise. I am not sure that all the distinctions and arguments suggested on that subject agree precisely with the principles and merits of the case, which is a complex one, and in some respects turns on questions not clearly defined and settled by public jurists or general usage. But it seems unquestionable that Spain is bound in honor, as an independent nation, and in strict justice also, unless she can prove as well as plead a real _____, to indemnify the sufferers within her jurisdiction. I presume you will be able to understand the subject more distinctly by inquiring into the classes and details of the cases on the spot; and I hope, if France cannot be brought to take side with us on this occasion, and on that of settling the boundaries of Louisiana, that she will not put her weight in the adverse scale. The South American claims will also claim your critical attention. The Convention of 1802 leaves so much to construction and opinion, that some further provision will be necessary, even if that in-

strument should go into effect. In a new Convention, it may be blended with a provision for wrongs subsequent to that date. In a communication of _____ to Mr. P. _____, an attempt was made to classify these South American claims, including those for similar irregularities in the Spanish Islands, in order to discriminate and graduate their respective merits. The aid of the claimants was asked, but never obtained. The materials and explanations on the spot may enable you to execute the task with more precision. There is reason to believe that Yrujo has worked against us with all his might, seeking to advance himself by flattering the prejudices of his government, instead of consulting its obligations or its true interest. He behaved so badly as to require the recall signified in my public letter. Pinckney's recall has been asked by the Spanish Government, and a letter of leave goes to him. I suspect he will not return in good humour. I could not permit myself to flatter him, and truth would not permit me to praise him. He is well off in escaping reproof, for his agency has been very faulty, as well as feeble. Should you find him at Madrid, he may, however, give you some clues that may be useful. It is probable that he will be succeeded by Bowdoin, whose character is probably not unknown to you. It is certainly respectable, altho' his talents are considered as moderate. You are aware, I presume, that the Prince of Peace will claim your special attention. Mr. Short inculcates the policy of it. He says that he governs the Court absolutely, and may be managed by his weaknesses, particularly his vanity. Such a resource is not to be neglected. But the main one will lie in a skilful appeal to the fears of Spain, and the interest which France, as well as Spain, has in not favoring a coalition of the United States with Great Britain. The President's message goes to you by this opportunity. The Tableau which it presents cannot fail to strengthen his administration at home, and to increase the weight of the United States abroad. His re-election is certain; so is the success of Clinton as Vice President.

Congress have not yet proceeded beyond the introductory forms. The topics in the message, with some left open at the

last session, particularly the trial of Chase, will give an idea of the range of these deliberations. I ought to have included the memorial from New Orleans, drawn by Edward Livingston, who is laboring to trouble the waters in which he means to fish. The bearers of the memorial have arrived at New York on their way hither. You will have noticed in the newspapers the dreadful mortality among the strangers and new settlers at New Orleans. Among the victims particularly lamented for his personal worth, and the dependents on his exertions, is Mr. Trist. Young Gelston has also been taken off. Governor Claiborne escaped narrowly, but lost, on the same day, his wife and only child.

TO JAMES MONROE.

WASHINGTON, Dec^r 3, 1804.

DEAR SIR,—Captain Dulton goes immediately to Spain with despatches, of which sundry copies have been sent to England, so that you will be sure to get them, whether you should be in the one or the other of those Countries. A letter from Mr. Pinckney just received shews that Spain has laid aside certain reinforcements intended for Florida, &c. Whether this step proceeded from the note he put in, as he supposes, or partly from that and partly from the posture of her affairs in England, it is a proof that she does not wish to quarrel with the United States, and that the moment for your operations may have particularly arrived. We have the fullest confidence in the prudence with which you will make use of such an opportunity, as well as of every other, for the purposes with which you are charged. Mr. Bowdoin is to succeed Mr. Pinckney. It is probable that some little time will elapse before he will be able to embark. Your last letter from London was dated on the 8th of September. By Mr. Graham, I learn that you were there on the 26th, and by a letter from Mr. Purviance to him, of the 21st, it appears that the prospect of your negociation with the British Government was flattering neither as to the time nor the complexion

of its issue. We do not, however, altogether despair of a less unfavorable account in your next letters, which we look for in every mail that arrives.

TO GENERAL TURREAU.

DEPT OF STATE, Ap^l 4, 1805.

SIR,—I have received a translation of a late Edict by Gen^l Ferrand, Commander-in-Chief, and acting as Captain General at S^t Domingo, in which he undertakes to denounce as pirates all persons on board vessels, allies or neutrals, bound to or from any ports in Hispaniola occupied by rebels, or found at the distance of two leagues from any such port; and to declare that they shall be tried and sentenced to death by a Military Commission. Although this document has not yet appeared in any other than an unauthenticated form, and in a translation only, the channel through which it has been transmitted leaves no doubt as to its reality. A copy of it, as transmitted, is annexed.

It would be perfectly superfluous to enter into a particular comment on this extraordinary measure. You well know, Sir, that piracy, being an offence defined by the law of Nations, cannot be varied by any particular Nation, much less by any of its subaltern authorities; that the penalties to which those subject themselves who are found on the high seas in the course of an unlawful trade are also defined by the law of Nations, and equally unalterable by any municipal authority; that the same remark is applicable to the distance from the shore to which the local jurisdiction extends, which is now generally limited to a sea league; and that in no case can the mere circumstance of a vessel's being found within a given distance of a coast, to which, in the course of a lawful and customary trade, vessels on W. India voyages may be constrained to approach, be deemed sufficient evidence that such vessel is actually destined for a port on that coast. Still less can it be requisite to dwell on the enormity of inflicting capital punishment in the cases stated

in the Edict, or the unexampled substitution of a Military trial in place of the tribunal and rules which the law and practice of Nations have universally established.

Persuaded, Sir, that you will view this measure of Gen^l Ferrand in all its violations of public law, and in its tendency, if carried into execution, to threaten the harmony so happily prevailing between our two Nations, and the better to guard which was an object of the regulations lately provided by the Legislature of the U. States, in relation to their intercourse with the W. Indies, I take the liberty of requesting that you will not only make the proper communication on the subject to your Government, but that you will be pleased, with the least possible delay, to address to Gen^l Ferrand the considerations most capable of diverting him from his rash and alarming purposes. Notwithstanding the full reliance which is placed in the indignation with which the Emperor of the French will be inspired by such an outrage on the law of Nations, and such an abuse of the authority confided by him to a distant officer, and in the remedy which he will cause to be applied, a more direct and prompt interposition is rendered particularly necessary by the precipitancy with which the Edict is to be carried into execution, its commencement being postponed no longer than till the 21 of the present month. Assuring myself that this interposition will be afforded with all the readiness and energy with which the occasion requires, and which will comport with your just and discerning appreciation of it, I have the honor to remain, with sentiments of high respect and consideration,

Y^r Mo. Obt Sv^t.

TO R. R. LIVINGSTON.

WASHINGTON, July 5th, 1805.

DEAR SIR,—Your favor of the 29 ult. was duly handed to me by Mr. Townsend. I congratulate Mrs. Livingston and yourself on your safe arrival, and on the shortness of the passage. Your trip up the North River was but a reasonable preliminary

to your visit to Washington, and was advised, also, by the approach of the President's departure, which will take place in 8 or 10 days. Mine will be within a few before or after his. Our return will be the last of September or the first of October, when we shall see you with the greater pleasure, as being more convenient to yourself.

The communications from Gen^l Armstrong are not later than May 4. Those from Madrid are of about the same date. They concur in shewing that Spain struggles much against our demands, and that France has her views in embarrassing, if not defeating, the negociation. What the end will be remains to be seen. Although appearances are not flattering, is there not some room to calculate that when France finds she cannot get her hand into our pocket, and that our disputes with Spain may involve herself, and throw the United States into the British scale, she will, unless events should place her above all such considerations, promote an adjustment of our affairs with her ally? Whether Madrid or Paris be the Theatre, the issue, it would seem, equally depends on the influence, or rather authority, over the Spanish Cabinet.

TO JAMES MONROE.

PHILADELPHIA, Sept^r 24, 1805.

DEAR SIR,—The decision in the admiralty Courts of Great Britain, disallowing the sufficiency of landing and paying duties on Colonial produce of belligerent colonies, re-exported from parts of the United States, to protect the produce against the British cruisers and courts, has spread great alarm among merchants, and has had a grievous effect on the rate of insurance. From the great amount of property afloat subject to this new and shameful depredation, a dreadful sense of distress may ensue to our Commerce. The subject was brought to attention by the case of the Aurora, which gave rise to the observations and instructions contained in my letter of 12th of April last. I omitted in that letter to refer you to a case in Blackstone's re-

ports, where Lord Mansfield says that it was a rule settled by the Lords of appeal, that a transshipment off a neutral port was equivalent to the landing of goods from an enemy's Colony, and that in the case of a landing, there could be *no color* for seizure. As Mr. King's correspondence may not be in London, I think it not amiss to remind you of what passed with the British Government in 1801, in consequence of such seizures as are now sanctioned. A copy of the document transmitted by the Government to the Vice Admiralty Courts, as the law for their guidance, is inclosed. If such a condemnation out of their own mouths has no effect, all reasonings will be lost; and absolute submission, or some other resort in vindication of our neutral rights, will be the only alternative left.

I hope you will have received the instructions above referred to, and that your interposition will have had a good effect. I am engaged in a pretty thorough investigation of the original principle, to which so many shapes are given, namely, that "a trade not open in peace is not lawful in war," and shall furnish you with the result as soon as my researches are digested. If I am not greatly deceived, it will appear that the principle is not only against the law of nations, but one which Great Britain is precluded from assuming by the most conclusive facts and arguments derived from herself. It is wonderful that so much silence has prevailed among the neutral authors on this subject. I find scarcely one that has touched on it, even since the predatory effects have been known to all the world. If you can collect any publications which can aid in detecting and exposing the imposture, be so good as to send them.

TO G. W. ERVING.

WASHINGTON, November 1, 1805.

DEAR SIR,—By Mr. Smith, to whom this is committed, you will receive the public letter in which the course approved by the President is marked out for your conduct at Madrid. The grounds for it are strengthened by the posture of things in Eu-

rope, and by the approach of the session of Congress. The impression made on this country by the proud and perverse conclusion given by Spain to the endeavours of Mr. M—— and Mr. P—— to adjust our differences, ought, if faithfully reported to her, to teach her a lesson salutary at all times, and particularly so at the present moment. She may be sure that she will never better her stipulations with this country by delay. If she calculates on the friend at her elbow, or be jogged by him into follies not altogether her own, she is so far to be pitied or despised as she avails herself of such explanations. But here, again, she receives a lesson from the scene which appears to be opening in Europe against the Imperial career of France. England seems as ready to play the fool with respect to this country as her enemies. She is renewing her depredations on our Commerce in the most ruinous shapes, and has kindled a more general indignation among our Merchants than was ever before expressed. How little do those great Nations in Europe appear, in alternately smiling and frowning on the U. States, not according to any fixed sentiments or interests, but according to the winds and clouds of the moment! It will be the more honorable to the United States if they continue to present a contrast of steady and dignified conduct; doing justice under all circumstances to others, and taking no other advantage of events than to seek it for themselves.

For our domestic news, I refer to the Newspapers which go by Mr. Smith. Congress do not meet till December. Their session will involve important questions and measures relative to the transactions of Europe having unsettled relations to this Country, or committing wrongs against it.

The attention which you have been so good as to pay to sending to us publications useful for the Department of State induces me to request that you will, during your stay at Madrid, procure whatever Books on diplomatic and commercial subjects deserve a place in the office shelves; also, such as may relate to America generally, and particularly the Ordinance, &c., relating to the Indies and Islands belonging to Spain. This

general intimation will readily be applied by your own judgment to the pertinent objects.

TO MR. MERRY, BRITISH PLENIPOTENTIARY.

DEPT OF STATE, JANU, 1806.

SIR,—I have received the letter in which you have done me the honor to communicate, for the information of this Government, that his Britannic Majesty has directed a discontinuance of the Blockade at the entrance of the rivers Elbe and Weser.

Considering communications from your Government on such occasions as made with a view to relieve our Merchants from the uncertainty they might otherwise be under, whether, on arriving at a given port, they would or would not find it in a state of Blockade, and be warned against entering it, the communications are received as friendly marks of attention to the commercial interests of the United States. You will pardon me for remarking, at the same time, that this is the only light in which they can be reconciled with the true principles of blockade, and the unquestionable rights of neutral commerce.

TO JAMES MONROE.

WASHINGTON, JANU 13, 1806.

DEAR SIR,—I wrote you on the 8th instant, inclosing a pamphlet on the principle in question between this Country and Great Britain, and mentioned that it would be communicated by the President, with other documents on the subject. This will not be done, and I have written to recall the letter and pamphlets from the parts to which they were sent. If either of the copies should have gone to sea, and should reach you, be so good as to consider the whole as cancelled, and not to appear in your archives. The letter of this date, which this accompanies, is the substituted communication. I meant to have written you fully, but it is not in my power. With respect to your

return, I hope you will at least postpone it till I can communicate the final sentiments of the President, which will soon be done.

Congress have not yet taken up our British affairs, nor got through our Spanish.

TO GEN^L LA FAYETTE.

WASHINGTON, Feb^y 21, 1806.

MY DEAR SIR,—Your favor of December 8 was duly delivered by Mr. Waddell. The one inclosed for Col. Toussard will be forwarded as soon as possible.

It is with the sincerest regret, my excellent friend, that I find myself unable to give you such an answer as you wish, with respect to a loan here, which would meet your exigencies in the beginning of next year. Col. Toussard conferred with both Mr. Gallatin and myself on that subject, and must have communicated our anxious but unavailing deliberations on the means of effecting such an object. In truth, there is no country, where money exists at all, that is so unproductive of lenders as this. The Banks, as well from the nature of their constitution as from the critical situations into which the sudden jerks in our trade frequently throw them, make no loans, either on landed security, or for more than very short and fixed periods. Nor has Mr. Gallatin even, much less myself, any of that sort of weight with these institutions which could diminish the difficulty. And such is the demand for money to carry on the private enterprizes in commerce, and in landed property, that loans from the few individuals who have the command of money are utterly unattainable. I feel great pain in communicating such unwelcome truths; but as they unfortunately exist, it would be perfidious to suppress them. We must hope, therefore, that the state of things in Europe may be less unpropitious to your arrangements than it is found to be in this quarter.

You already know that Mr. Du Plantier has been charged with the location of your land, and that he will be aided by

Governor Claiborne in the trust. I have only now to add, that I have not yet received from either any information that is worth detailing to you. They are both full of zeal to do the most for you, and it will be reinforced by that of Col. Toussard, who, I hope, will keep you informed directly from the spot of the progress and prospect of the locations. The President writes by Mr. Skipwith, the bearer of this, and will say all that can be said as to one which has been particularly contemplated. I fear, from what Gov^r Claiborne tells me, that nothing can be made of the tract claimed by Marigny. I shall not fail to put him and Mr. Du Plantier on the scent of the cotton land near Point Coupe, to which your attention has been drawn.

As Mr. Skipwith has been a considerable time among us, and proceeds immediately from the focus of our political affairs, I refer to him for every thing, except the affectionate assurance with which I remain your constant and faithful friend.

TO JAMES MONROE.

WASHINGTON, March 10th, 1806.

DEAR SIR,—We are waiting with solicitude for the answer promised you by Lord Mulgrave early in December, and for the effect of the President's message, with the information probably transmitted from British sources here, on the Counsels of that Government. These, I presume, will have been received pretty early in January. The effect of the campaign in Germany may be greater than that of any other cause; but as we cannot foresee the course of events, and know here very imperfectly the real character of those which are passed, we can make little use of that fund of calculation. Our last accounts from the Theatre of the war are those contained in the publications in London on the 17th and 19th of December, which are less fitted to explain than to cloud the operations of the early days in that month.

This is the 4th month since the Session of Congress com-

menced. Very little business, however, has been brought to a conclusion. The two subjects of most striking importance were the posture of things with Spain and Great Britain. That with Spain was the subject of a special and confidential message from the President, which followed on the heels of the general message. It intimated to Congress the ground disclosed through Armstrong for an adjustment of the depending difficulties under the auspices of France, and was expected to have produced, without delay, a provisional appropriation analogous to that which was made for the negociation by you and Livingston. A very unexpected and elaborate opposition, however, to the purchase of an adjustment, tho' securing East as well as West Florida, spun out the question till a few days ago. And a further delay is now taking place in consequence of opposition in the Senate to Armstrong, whom, with Bowdoin, the President has nominated for the commission to treat at Paris. The opposition to Armstrong is occasioned by a very misjudged opinion given by him in the case of the ship New Jersey, and the offence and complaints which it has excited among the merchants and underwriters. As soon as a confirmation shall pass the Senate, the instructions will be forwarded by a vessel now waiting for them; and if the tide of French success should have changed the disposition which existed in September, a satisfactory, or at least an admissible result, may be hoped.

The British case was also the subject of a special message, given in as soon as the Spanish one was finally provided for in the House of Representatives. It was accompanied by sundry documents, including your letter of the 18th October, which was noted as peculiarly confidential, and withdrawn after being read. In this case, also, the delay and deliberations have thus far been unexpectedly tedious, and are likely to continue so. For what has passed in it, I must refer you to a file of papers which will be committed to the bearer, Mr. Prentiss. Whether any and what harmonious result will succeed the discord of opinions and projects coming forward, remains to be seen. The merchants are zealous for an Extraordinary commission for the negociating experiment. In this, they are seconded by those

who are averse to any legislative remedies, and by some, perhaps generally, by those who wish a negociation to be armed with legislative provisions. The President has decided nothing on this point as yet. I shall not fail to communicate his intentions as soon as they are ready for the purpose. You will of course be included in such a commission, unless it should be previously known that you will certainly not be on the ground to act under it. I need not express to you the confidence which your participation will add in the mind of the President. On the other hand, he is too much impressed with the weight which the reasons suggested in your letters may continue to have in urging your return, already so long suspended, to require a further sacrifice of what you owe to yourself and your family.

You will find much in the newspapers with respect to Yrujo and Miranda. The case of the former fully explains itself, and no longer interests the public attention. That of the latter is still a subject of much noise and misrepresentation, and vigorous attempts are made to turn it into a battery against the administration. Miranda had the address to make certain persons at New York, among others Col. W. Smith, the Surveyor, believe that, on his visit to Washington, he had enlisted the Executive into a secret sanction of his project. They fell into the snare; and in their testimony, when examined, rehearsed the representations of Miranda as to what passed between him and the Executive. Hence the outcry against the latter as violating the law of nations against a friendly power. The truth is, that the government proceeded with the most delicate attention to its duty; on one hand keeping in view all its legal obligations to Spain, and on the other, not making themselves, by going beyond them, a party against the people of South America. I do not believe that in any instance a more unexceptionable course was ever pursued by any Government.

We have had a most remarkably mild winter, resembling, with the exception of a very few days of vigorous cold, rather the autumn and Spring than the real season. The wheat has been in a constant state of growing, and is now as much advanced as is usual in the month of April. We have, of course,

a prospect of good crops. The last crop was of good quality, but not a great one, in Virginia at least. That of Tobacco was rather short, and of inferior quality. The price of both articles is at present dull. Wheat sells from a dollar to a dollar and a quarter. Tobacco of the best quality at Richmond at about six dollars. Having not been in Orange for a year and a half, I can say the less of the state of things on your estate, which, I understand, has been farmed out. I shall, if possible, make a visit as soon as Congress adjourn.

The President is just taken with one of his afflicting periodical headaches. We hope, from some symptoms, that it will be less severe than his former ones.

I fear you will have considered me as a delinquent in my correspondence, but it is an appearance I could not possibly avoid. For the last year, especially the last 5 or 6 months, the weight of business has almost broken me down, and robbed me of every leisure for writing to my friends, even where public considerations, as well as private inclination, recommended it. I beg you to be assured that the privation could in no case be more sincerely regretted than it has been in yours; that I feel myself much indebted for the numerous private communications I have received from you; and that, with the united regards of Mrs. M. and myself for you and Mrs. Monroe, I remain, dear sir.

Private.—Triplicate.

LONDON, March 11, 1806.

DEAR SIR,—I have seen Mr. Fox and Mr. Grey to-day, and had long conversations with each on our affairs, and have the pleasure to inform you that the sentiments which they expressed were of the most conciliating character. I cannot say that our affairs will be arranged to our satisfaction, but I have the utmost confidence that it will be the case. I ask'd Mr. Fox if he had read my notes, &c.? He said he had. Cannot we agree? He saw no reason to suppose the contrary. If you were to insist on the principle of the late decisions, you would embroil

yourself with Russia. Yes, said he, and with other powers. He seemed to admit that the ground of the Russian Convention could not be opposed by G. Britain. But he added that he was not authorized to state that by any decision of the Cabinet. I have no doubt, however, that the Cabinet will be brought into it. He assured me that the business should be concluded as soon as possible, and certainly at no distant day. With Mr. Grey I conferred principally on the impressment of seamen, tho' I took occasion to give a sketch of the other; on which latter he was reserved, as I supposed, because it was not in his department. He informed me that great abuses were committed in granting protections, of which he gave me some examples, that were most shameful. He expressed, however, a very sincere desire to remedy the evil complained of on both sides, which he seemed to think a practicable thing. On the whole, I have great confidence in the opinion expressed above. The 13 Jan^r is the last letter which I have from you. The pamphlet is received, and will, I think, be republished here. I think it may be useful to have a sufficient number of copies struck to be put into the hands of the Ministry, and circulated among the members of Parliament. I hope that as soon as it is known that the Ministry here has changed, our proceedings will assume a conciliating tone, and that it may even be understood that the more liberal and just character of the present one, which inspires confidence in the adoption of a system of just measures, is the cause of it. I am satisfied that such a change on our part would produce the happiest effect. Should everything fail, we shall be where we were, after giving a new proof of our disposition to conciliate. I write you in haste this private letter, to be sent by different conveyances.

I am, dear sir, your friend and serv^t.

P. S. Lord Selkirk is appointed to succeed Mr. Merry.

TO JAMES MONROE.

WASHINGTON, May 17, 1806.

DEAR SIR,—Your last favor was of March 11. The language of Mr. Fox and Mr. Grey raises very favorable prospects; but I am aware of the difficulties that may occur in settling details, as well as in defining general principles. Other members of the Cabinet may also not concur in the liberal dispositions of those gentlemen. This goes by Mr. Pinkney, who is charged with the joint commission, and instructions commensurate with its objects. The commercial one will doubtless be felt by you in all its delicacy. I need not suggest the expediency of guarding against the particular vices of that of 1794, or against others which might result from inattention. I hope the outline furnished you will be a safe guide, and that, as far as any practical information may be required in aid of your and Mr. Pinkney's general acquaintance with the course and character of our commercial relations to G. Britain, you will be able to obtain it from mercantile sources on the spot. Perhaps Mr. Jas. Maury, who must be well acquainted with the commerce between G. Britain and this Country, may be consulted with advantage on modifications which may be proposed by the adroitness of the British Government on commercial and navigation points. Mr. Pinkney has read over our correspondences with France and Spain, as well as with G. Britain; and understands particularly the objects committed to Mr. Armstrong and Mr. Bowdoin. To his information I must refer you. It will be happy, if, notwithstanding all the delays and difficulties which have so unexpectedly occurred, a final adjustment of everything should take place with Spain. According to our latest accounts, there is reason to believe that if no delay had arisen, the negociations would have come on at a most favorable moment. Much will now depend on the prospect of a peace or a continuance of war between G. Britain and those powers. The complexion, if not the issue, of your negociations will doubtless feel a like influence. Mr. Pinkney and the newspapers will best explain the state of our internal affairs. The Republicans, having lost the

cement given to their union by the rivalship of the Federal party, have fallen in many places into schisms, of which the latter are taking advantage. It is to be hoped, however, that as new danger arises, it will heal the breaches which have been permitted by a state of security.

TO JAMES MONROE.

WASHINGTON, June 4, 1806.

DEAR SIR,—With this you will receive a duplicate of the despatches taken with him by Mr. Pinkney, who sailed from Baltimore fourteen days ago; as, also, a supplemental instruction to you and him on the subject of the Indian trade, together with some other documents, particularly copies of Mr. Merry's communication and my answer on the notified blockade of the 4 German rivers. Mr. Merry communicated verbally, at the same time, the contents of a letter to him from Mr. Fox, dated April 7, in which Mr. Fox apologized for the delay in Treating with you on the subject in controversy; expressed the good will of the King towards the United States, and his wish for the establishment of friendship on solid and lasting foundations; and gave assurances that not a day would be unnecessarily lost in proceeding to the work. As a like communication has probably been made to you, we expect daily to hear from you on the subject.

In the instruction to yourself relating to the convention of limits, it was signified as necessary to guard against a constructive relinquishment on our part of the Island of Grandmenan. I have not been able to investigate fully the several questions concerning that object. But although, in some respects, the possession of it is desirable to the United States, I doubt the propriety, under all circumstances, of suffering our claim to the Island to defeat or retard the definitive adjustment, if in other respects satisfactory. It will be well, at the same time, to go a prudent length in maintaining our claim, and, if possible, to avoid shutting the door against future discussion of it.

I find, by the last accounts from Boston, that the Republicans have at length succeeded in getting a majority in each branch of the Legislature. In the Senate the majority is a bare one; in the House of Representatives it amounts to about fifty. Governor Strong has a hundred or two votes more than Mr. Sullivan. But it is not certain that, for want of a Constitutional majority, the election will not devolve on the Legislature. In New York the Federalists have also rather lost ground; but a violent schism exists between those of their opponents who adhere to Governor Lewis and those headed by the Clintonian family. The proportional relation between these parties does not appear to be ascertained. In general, the politics of that State are but imperfectly understood out of it.

TO PIERREPONT EDWARDS.

WASHINGTON, August 4, 1806.

SIR,—I have received your two favors of the 30 and 31 ultimo, and am much obliged by the kind and confidential communications made in them.

We were not inattentive to the suggestions that an improper acquittal of Smith and Ogden was to be apprehended from the course which was indicated. But it was impossible to apply a remedy without establishing a precedent objectionable in itself, and which might be turned to a more mischievous account than the case apprehended. We were aware, also, fully, of the policy in summoning the testimony from Washington; but it was thought best, on the whole, and in a permanent view, to meet it in the mode pursued, rather than to abandon our public duties, and exhibit the Heads of Departments as the sport of party management, and appearing in court, not for the sake of evidence, which it was known was irrelevant, and, therefore, could not be received, but rather to be examined as so many culprits.

It were certainly to be wished that a fair state of the transaction, as far as the interviews of Miranda with the Executive are connected with it, could be laid before the public. It would

prove, I believe, that the conduct of the latter was precisely such as became the guardians of the laws, and as was required by justice, honor, and sound policy. There is a real difficulty, however, in making such a disclosure without encountering obvious objections of different kinds, some of them apparently insuperable in their nature. The disclosure, therefore, must be left to time, which alone will do full justice to all parties. For the present, the public must be left to its candid inferences from the circumstances before it; and I cannot but believe that these will, everywhere, except the immediate theatre of the illusions, be such as they ought; nor do I think that even there the illusions will long resist the force of some of the facts brought out on the trial. It is against all experience that evidence, law, and argument, can long be borne down by such means as have been employed against them.

A MEMOIR,
CONTAINING AN
EXAMINATION OF THE BRITISH DOCTRINE,
WHICH SUBJECTS TO CAPTURE
A NEUTRAL TRADE
NOT OPEN
IN TIME OF PEACE.

EXAMINATION OF THE BRITISH DOCTRINE

WHICH SUBJECTS TO CAPTURE

A NEUTRAL TRADE NOT OPEN IN TIME OF PEACE.

IN times of peace among all nations, their commercial intercourse is under no other restrictions than what may be imposed by their respective laws, or their mutual compacts. No one or more nations can justly control the commerce between any two or more of the others.

When war happens between any two or more nations, a question arises, in what respect it can affect the commerce of nations not engaged in the war?

Between the nations not engaged in the war, it is evident that the commerce cannot be affected at all by a war between others.

As a nation not engaged in the war remains in the same relations of amity and of commercial pursuits, with each of the belligerent nations, as existed prior to the war, it would seem that the war could not affect the intercourse between the neutral and either of the belligerent nations; and that the neutral nation might treat and trade with either, or both the belligerent nations, with the same freedom as if no war had arisen between them. This, as the general rule, is sufficiently established.

But inasmuch as the trade of a neutral nation with a belligerent nation might, in certain special cases, affect the safety of its antagonist, usage, founded on the principle of necessity, has admitted a few exceptions to the general rule.

Thus, all instruments of war, going into the hands of one

belligerent nation, may be intercepted, on the high seas, by its adversary.

In like manner, a neutral trade with a place actually besieged is liable to be interrupted by the besiegers.

It is maintained also on one side, though strongly contested on the other, that the property of a nation at war, in a neutral ship, may be seized and condemned by the enemy of that nation.

To these exceptions, Great Britain has undertaken to add another, as important as it is new. She asserts a right to intercept the trade of neutrals with her enemies, in all cases, where the trade, as it respects the ship, the cargo, or even the individual port of destination, was not as free before the war, as it is made during the war.

In applying this doctrine, the British government and courts have not, as yet, extended it beyond the trade of neutrals on the coasts, and with the colonies of enemies. But it is manifest, that this limitation is founded in considerations of expediency only; and that the doctrine is necessarily applicable to every other branch of neutral commerce with a belligerent nation, which was not open to the same nation in time of peace. It might indeed with equal reason be extended farther. It might be applied to the case of a trade legally permitted to foreign nations in time of peace, but not *actually* carried on by them in time of peace; because in time of peace actually carried on by the nation itself; and which is taken up by foreign nations in time of war only, in consequence of the war, which, by increasing the risk or by finding other employment for the vessels and seamen of the nation itself, invites neutral traders into the deserted channels. In both cases, the neutral intervention may be said to result from the pressure of the war; and in both cases, the effect is the same to the belligerent; since in both, neutrals carry on for him, a trade auxiliary to his prosperity and his revenue, which he could no longer carry on for himself; and which at the same time, by liberating his naval faculties for the purposes of war, enables him to carry on the war, with more vigor and effect. These inferences cannot be impaired by any

sound distinction, between a trade of foreigners with colonies, and a trade of foreigners with the ports of the mother country. Colonies, more especially when they are altogether subject to the same authority which governs the parent state, are integral parts of the same dominion or empire. A trade, therefore, between a colonial port and a port of the parent or principal State, is precisely of the same nature with a trade between one and another port of the latter: and a trade between a colony and a foreign port is, in like manner, precisely the same with the trade between a foreign port and the parent country; which is only a more considerable, as a colony may be a less considerable, part of the same country or empire. Previous to the late political union of Ireland with Great Britain, the relation between those two islands was strictly analogous to the relation between Great Britain and the West Indies. Was any difference ever entertained between a coasting trade from a British to a British port, and a trade from a British to an Irish port? or between a trade from a foreign port to an Irish port, and a trade from a foreign to a British port? In the nature of things, and in the eye of foreign nations, the cases were the same. If any difference existed, it was merely circumstantial, such as may be incident to all cases essentially the same; or merely municipal, such as may result from those regulations of trade, which all sovereigns have an acknowledged right to make. It would not be unfair, therefore, in examining the doctrine asserted by Great Britain, to view it in the whole extent of which it is susceptible. But the latitude in which it is avowed, and carried into operation, sufficiently demands the serious attention of all nations; but more than any, that of the United States, whose commerce more than any is the victim to this belligerent pretension. To prepare the way for this examination, several remarks are to be premised.

First. The general rule being, that the trade between a neutral and belligerent nation is as free as if the latter were at peace with all nations, and the cases in which it is not as free being exceptions to the general rule, the exceptions, according

to a received maxim of interpretation, are to be taken strictly, against those claiming the benefit of the exceptions, and favorably for those claiming the benefit of the general rule.

Secondly. The exceptions being founded on a principle of necessity, in opposition to ordinary right, the necessity ought to be evident and urgent. In proportion as the necessity may be doubtful, and still more, in proportion as the sacrifice of neutral interests would exceed the advantage to the belligerent, the exception fails.

Thirdly. The progress of the law of nations, under the influence of science and humanity, is mitigating the evils of war, and diminishing the motives to it, by favoring the rights of those remaining at peace, rather than of those who enter into war. Not only are the laws of war tempered between the parties at war, but much also in relation to those at peace.

Repeating then, that every belligerent right to controul neutral commerce must, as an exception to the general freedom of commerce, be positively and strictly proved, and the more strictly, as the exceptions are in a course of restriction rather than extension, the question is ready for examination, whether it be a part of the law of nations, that a trade ordinarily shut in time of peace, and opened to neutrals in time of war, on account of the war, is liable, as much as a trade in contraband of war or with a blockaded port, to capture and condemnation.

It will not be overlooked, that the principle, as thus laid down, does not extend to any of the cases, where a new trade, though opened during a war, is not opened *on account* of the war, but on considerations which would produce the same measure, if no war existed: from which follows another important observation, that taking into view the probable occurrence of such considerations, the still greater probability of a mixture of such with considerations derived from the war, the impossibility of distinguishing the proportion of these different ingredients in the mixture, with the evident disadvantage of rendering more complicated, instead of simplifying, a rule of conduct between independent nations, to be expounded and enforced by

one of the parties themselves, it would seem to require no great effort of candor, to acknowledge the powerful objection in practice, to such a principle, were it really embraced by the most specious theory.

But without dwelling on this view of the subject, however just in itself, the principle in question will be tried:

FIRST—by the writings most generally received as the depositaries and oracles of the law of nations;

SECONDLY—by the evidence of treaties;

THIRDLY—by the judgment of nations, other than Great Britain;

FOURTHLY—by the conduct of Great Britain herself;

FIFTHLY—by the reasoning employed in favor of the principle.

First. The written authorities on this subject.

It cannot be necessary to examine the historical fragments which have been gleaned by modern authors, as evidence of the usage and tenets of the civilized nations of antiquity. The great change which has taken place in the state of manners, in the maxims of war, and in the course of commerce, make it pretty certain, that either nothing would be found relating to the question, or nothing sufficiently applicable, to deserve attention in deciding it. There is but little hazard in saying, that in none of the learned collections, is a single fact presented, which countenances the British pretension; or even shews, that a single ancient nation asserted or acted on it.

On a cursory review of the naval laws of Rhodes, of Oleron, of Wisbuy, and of the Hanse Towns, they appear to be perfectly barren of information. They are confined to subjects within the law-merchant, taking no notice of questions between nations; and are no further binding on particular nations, than [as] they may be respectively adopted into their municipal codes.

The ancient compilation under the title of *Consolato del Mare*, a work of great authority with British jurists, has two chapters which treat particularly of captures and recaptures. They do not, however, touch any cases but those where either

the ship or the cargo, in whole or in part, might be enemy's property; and consequently are inapplicable to the case under examination.*

Descending to more modern times, the first authority which offers itself, is the work of Albericus Gentilis.

He was the immediate precursor of Grotius, and has the merit of preparing the way for the great work supplied by the genius and erudition of the latter. Gentilis being so soon eclipsed by a superior authority, is but little known beyond a few occasional citations, which, as far as they may not coincide with the doctrines of Grotius, are, for the most part, superseded by them.

Grotius is not unjustly considered, as in some respects, the father of the modern code of nations. Great, however, as his authority deservedly may be, it yields, in a variety of instances, to that of later jurists; who, to all the lights furnished by this luminary, have added those derived from their own sources, and from the improvements made in the intercourse and happiness of nations.

On the relations between belligerent and neutral nations, Grotius has but a single, and that a short chapter, (B. III, Ch. 17,) with three short sections, Ch. 1, sec. 5, of the same book with a note, and B. II, Ch. 2, sec. 10, and B. III, Ch. 6, sec. 6, with a note.† The chapter begins with the following paragraph:

“It may seem needless for us to treat of those that are not engaged in war, when *it is manifest that the right of war cannot*

* Azuni has given a very learned account of these ancient compilations, particularly of the *Consolato del Mare*, which he considers as a work of the Pisans, during the period of their maritime prosperity.

† The extracts in the text are from the English edition and translation of Grotius, which is in general loose, and sometimes erroneous. It was inserted before there was an opportunity of comparing it with the original.

“*Supervacuum videri posset agere nos de his, qui extra bellum sunt positi, quando in hos satis constat nullum esse jus bellicum. Sed quia occasione belli multa in eos, finitimos præsertim, patrari solent prætexta necessitate, repetendum hic breviter quod diximus alibi, necessitatem ut jus aliquod det in rem alienam,*

affect them: but because upon occasion of war, many things are done against them *on pretence of necessity*; it may be proper here briefly to repeat what we have already mentioned* before, that the necessity must be *really extreme*, to give any right to another's goods: that it is requisite that the proprietor be not himself in the like necessity. When real necessity urges us to take, we should then take no more than what it requires; that is, if the bare keeping of it be enough, we ought to leave the use of it to the proprietor; and if the use be necessary, we ought not to consume it; and if we cannot help consuming it, we ought to return the full value of it."

Having illustrated this exemption of neutral property from the effect of war between others, with the sole exception of cases of extreme necessity, by a train of examples, he proceeds to lay down the duty of neutrals towards the belligerent parties, as follows:

"On the other side it is the duty of those who are not engaged in the war, to sit still and do nothing that may strengthen him that prosecutes *an ill cause* or to hinder the motions of him that *hath justice* on his side, as we have said before. [Ch. 1, of this B., sec. 5.] But in a *dubious cause* to behave themselves alike to both parties; as in suffering them to pass through their country, in supplying them with provisions, and in not relieving the besieged." In illustration of the impartiality here enjoined, a number of instances are specified in the sequel of the chapter and the notes.

The 5th section of chapter 1, above referred to, makes up the whole of what Grotius teaches on this branch of the subject. As it is more definite and particular than the other extracts, the insertion of it, though of greater length, will be proper.

summam esse debere: requiri præterea ut ipso domino par necessitas non subsit: etiam ubi de necessitate constat, non ultra sumendum quam exigit: id est, si custodia sufficiat, non sumendum usum; si usus, non sumendum abusus: si abusus sit opus, restituendum tamen rei pretium."

* B. II, Ch. 2, sec. 10, in which the same precise sentiment is contained as is here repeated.

*“Here also there uses to arise another question, what we may lawfully do to those who are not our enemies, nor are willing to be thought so, and yet supply our enemies with certain things. There have been formerly, and still are great disputes about this matter, some contending for the rigors [†of the laws] of war, and others for a freedom of commerce. “But first we must distinguish between the things themselves. For there are some things which are of use only in war, as arms, &c. Some that are of no use in war, as those that serve only for pleasure; and lastly, there are some things that are useful both in peace and war, as money, provisions, ships, and naval stores. Concerning the first (things useful only in war) it is true what Amalasuintha said to the Emperor Justinian, he is to be reputed as siding with the enemy, who supplies him with things necessary for war. As to the second sort of

* “Sed et questio incidere solet, quid liceat in eos qui hostes non sunt, aut dici non sunt, sed hostibus res aliquas subministrant. Nam et olim et nuper de ea re acriter certatum scimus, cum alii belli rigorem, alii commerciorum libertatem defenderent. Primum distinguendum inter res ipsas. Sunt enim quæ in bello tantum usum habent, ut arma: sunt quæ in bello nullum habent usum, at quæ voluptati inserviunt; sunt quæ et in bello et extra bellum usum habent, ut pecuniæ, commeatus, naves, et quæ navibus adsunt. In primo genere verum est dictum Amalasuinthæ ad Justinianum, in hostium esse partibus qui ad bellum necessaria hosti administrat. Secundum genus querulam non habet.”

“In tertio illo genere usus ancipitis, distinguendus erit belli status. Nam si tueri me non possum nisi quæ mittuntur intercipiam, necessitas, ut alibi exposuimus, jus dabit, sed sub onere restitutionis, nisi causa alia accedat. Quod si juris mei executionem rerum subvectio impenderit, idque scire potuerit qui advexit, ut si oppidum obsessum tenebam, si portus clausos, et jam deditio aut pax expectabatur, tenebitur ille mihi de damno culpa dato, ut qui debitorem carceri exemit, aut fugam ejus in meam fraudem instruxit: et ad damni dati modum res quoque ejus capi, et dominium earum debiti consequendi causa quæri poterit. Si damnum nondum dederit, sed dari voluerit, jus erit rerum retentione eum cogere ut de futuro caveat obsidibus, pignoribus aut alio modo. Quod si preterea evidentissima sit hostis mei in me injustitia, et ille eum in bello iniquissimo confirmet, jam non tantum civiliter tenebitur de damno, sed et criminaliter, ut is qui judici imminenti reum manifestum eximit: atque eo nomine licebit in eum statueri quod delicto convenit, secundum ea quæ de pœnis diximus; quare intra eum modum etiam spoliari poterit.”

† The original is “belli rigorem,” *rigor of war*.

“ things [for pleasure only, of which sort he gives examples from Seneca] there is no just cause of complaint.

“ As to the third sort of things, that are useful at all times, we must distinguish the present state of the war. For if I cannot *defend myself* without interrupting those things that are sent to my enemy, *necessity** (as I said before) will give me a good right to them, but upon condition of restitution, unless I have just cause to the contrary. But if the supply sent hinder the execution of my designs, and the sender might have known as much; as if I have besieged a town or blocked up a port, and thereupon I quickly expect a surrender, or a peace, that sender is obliged to make me satisfaction for the damage that I suffer upon his account, as much as he that shall take a prisoner out of custody that was committed for a just debt, or helps him to make his escape, in order to cheat me; and proportionably to my loss I may seize on his goods and take them as my own, for recovering what he owes me. If he did not actually do me any damage, but only designed it, then

* The note here of Barbeyrac, himself a respectable authority, is interesting both as it corroborates the liberal spirit of Grotius in favor of neutral commerce, and as it explains the ideas not only of Barbeyrac but of Cocceius, another respectable jurist, in relation to blockades. The note is as follows, see p. 519, note 5: “ Our author [Grotius] here supposes the case of being reduced to the last extremity; and then his decision is well founded, whatever Mr. Cocceius says, *Dissert. de Jur. Bel. in Amicos*, sect. 12, wherein he only criticises our author in regard to what he advances elsewhere, *that in case of necessity, the effects become common*. It is true, it suffices, that at such a time the goods of another may be used without even the proprietor’s consent. But as to the following cases, that lawyer has reason, in my opinion, to say, § 15, 17, that provided that in furnishing corn, for instance, to an enemy besieged and pressed by another, it is not done with design to deliver him from that unhappy extremity, and the party is ready to sell the same goods also to the other enemy, the *state of neutrality and liberty of commerce* leave the besieger no room for complaint. I add, that there is the more reason for this, if the seller had been accustomed to traffic in the same goods with the besieged before the war.” This last remark of Barbeyrac, as meant by him, is just. The primary duty of a neutral is impartiality; and the circumstance of an antecedent and habitual trade to the same place, would be the strongest, though not the only evidence, that the continuance of it, proceeded from the ordinary motives of mercantile gain, and not from an unlawful partiality towards one of the nations at war.

“ have I a right, by detaining those supplies, to oblige him to
 “ give me security for the future, by pledges, hostages, or the
 “ like. But further, if the wrongs, done to me by the enemy,
 “ be openly unjust, and he, by those supplies, puts him in a con-
 “ dition to maintain his unjust war, then shall he not only be
 “ obliged to repair my loss, but also be treated as a criminal,
 “ as one that rescues a notorious convict out of the hands of
 “ justice; and in this case it shall be lawful for me to deal with
 “ him agreeably to his offence, according to those rules which
 “ we have set down for punishments; and for that purpose I
 “ may deprive him even of his goods.”

The following extracts explain the principles of Grotius on the cases, where the property of an enemy is found in a neutral ship, or neutral property in a belligerent ship.

In a note to B. III, Ch. 1, sec. 5, Grotius cites the *Consolato del Mare* for the doctrine that enemy's property might be taken in neutral ships, but that the ship of an enemy did not affect the neutral cargo, nor the cargo of an enemy, the neutral ship. The residue of this long note recites and disapproves the attempts of Great Britain, France and other nations, to prohibit altogether the trade of neutrals with their enemies.

*B. III, Ch. 6, sec. 6: “Wherefore the common saying, that goods found in our enemies' ships are reputed theirs, is not so to be understood, as if it were a constant and invariable law of the right of nations; but a maxim, the sense of which amounts only to this, that it is commonly presumed, in such a case, the whole belongs to one and the same master; a presumption, however, which, by evident proofs to the contrary, may be taken off. And so it was formerly adjudged in Holland, in a full assembly of the sovereign court during the war with the Hanse Towns in 1333, and from thence hath passed into a law.”

* *Quare quod dici solet, hostiles censeri res in hostium navibus repertas, non ita accipi debet quasi certa sit juris gentium lex, sed ut præsumptionem quandam indicet, quæ tamen validis in contrarium probationibus possit elidi. Atque ita in Hollandia nostra jam olim, anno scilicet 1338, flagrante cum Ansiaticis bello, frequenti senatu judicatum, et ex judicato in legem transiisse comperi.*

In a note to this section, Grotius adds:* “Neither do the ships of friends become lawful prize on the account of the enemies’ goods; unless it is done by the consent of the owner of the ship;” referring in this case to the authority of several writers, and the practice of several nations.

The spirit of these passages, taken altogether, can leave no doubt, as to the side on which the authority of Grotius is to be placed.

In the first place he expressly limits the general right of war against the property of neutrals, to cases of that evident and *extreme necessity*, which must always make a law for itself whenever it exists, but which can never be applied to the cases falling within the belligerent claim asserted by Great Britain.

In the next place he particularly limits to the case of a necessity of self-defence, the right of intercepting neutral supplies, even to a blockaded or besieged place; and makes it a condition, moreover, that a surrender of the place, or a peace, be quickly expected as the effect of the blockade.

In the third place it is to be observed, that as in these passages, Grotius has taken express notice of the several questions of contraband, of blockades, and of the carriage of enemy’s property, which formed all his exceptions to the freedom of neutral commerce; his silence with respect to the British exception is an abundant proof, that this last had either never been then asserted, or that he considered it so manifestly groundless as not to merit notice.

This is, in fact, the material inference to be drawn from the review here taken of this celebrated jurist: and for the sake of this inference principally, the review has been made thus full and minute; for it must be admitted, that in general his ideas are much less precise and satisfactory than those which are to be found in succeeding authorities. In distinguishing wars, by their justice or injustice, on which neutrals have no right to decide; in not distinguishing between supplies, as they may be

* Sed neque amicorum naves in prædam veniunt ob res hostiles, nisi ex consensu id factum sit dominorum navis.

sold only or sent; or as they may be sent by a government, or by private persons; nor sufficiently distinguishing between the right of a belligerent to prevent supplies by intercepting them, and the right to do so, by punishing the offenders; he gives a proof that his work is more to be admired for the novelty and magnitude of the undertaking, than for the accuracy of its doctrines and definitions.

Pufendorf, who may next be consulted, contents himself with a simple reference to Grotius on the question—"How they are to be dealt with, who supply the enemy with what he wants."

In a note by Barbeyrac on this reference to Grotius, he himself refers to a letter from Pufendorf to Groningius, as conveying the judgment of Pufendorf with respect to the question "whether we may hinder neutral nations from trading during the war with the enemy." Groningius, it seems, having consulted Pufendorf on a treatise he had planned upon "free navigation," received the following answer; which, having undergone much discussion, and as found in the English translation, seeming to glance at the British principle of intercepting a commerce opened to neutrals in time of war, is copied at full length, and receives an attention which would not otherwise be bestowed on it:

"The work, sir, that you have in view, relating to the *liberty of navigation*, excites my curiosity. It is a curious subject, and what no person as yet, that I know of, has particularly handled. I very much however fear, if I may judge from your letter, that you will find people who will dispute your notions. The question is, certainly, one of those which have not yet been settled upon any clear or undeniable principles; so as to afford a general rule to mankind. In all the examples brought upon this subject, there is a mixture of *right* and *fact*. Each nation usually allows or forbids the maritime commerce of neutral people with its enemy, either according as it is its interest to preserve the friendship of those people, or it finds itself strong enough to obtain from them what it requires. For example, the English and Dutch may say, without absurdity, that it is lawful for them to do all the ill they can to the French, with whom they

are at war; and consequently to employ the method the most proper to weaken them, which is to traverse and ruin their trade. They say it is not reasonable that neutral nations should enrich themselves at their expence; and by engrossing to themselves a commerce which the English and Dutch want, furnish the French with money to continue the war. This seems the rather just, because England and Holland commonly favor the trade of neutral nations, by suffering them to transport and sell in foreign markets merchandizes of their own growth and manufacture. In short, they say that they are willing to *leave them the trade they usually carry on in time of peace; but they cannot see them take advantage of the war, to extend their commerce to the prejudice of England and Holland.* But as this matter of trade and navigation does not so much depend upon rules founded on a general law, as upon conventions made between particular nations; so in order to form a solid judgment of the point in question, we ought previously to examine what treaties subsist between the northern crowns and England and Holland; and whether these last powers have offered the former just and reasonable conditions. On the other hand, nevertheless, if the northern princes can *maintain their trade with France, by sending strong convoys with their fleets, I see nothing to blame in it, provided their vessels do not carry contraband goods.* The laws of humanity and equity between nations do not extend so far as to require, *without any apparent necessity,* that one people should give up its profit in favor of another. But as the avarice of merchants is so great that for the smallest gain they make no scruple of exceeding the just bounds of commerce; so nations that are at war may certainly visit neutral ships, and, if they find prohibited goods on board, have a full right to confiscate them. Besides I am no way surprised that the northern crowns have a greater regard to the general interest of Europe, than to the complaints of some greedy merchants who care not how matters go, provided they can satisfy their thirst of gain. These princes wisely judge that it is not at all convenient for them to take precipitate measures, while other nations unite all their forces to reduce within bounds an insolent and exorbitant

power, which threatens Europe with slavery, and the Protestant religion with destruction. This being the interest of the northern crowns, it is neither just nor necessary, that for a present advantage, they should interrupt so salutary a design, especially as they are at no expence in the affair and run no hazard," &c.

Without knowing more of the plan of "free navigation" espoused by Groningius, it is not easy to understand precisely the sentiments of Pufendorf on the subject. It deserves to be remarked, however, that, in the argument on the belligerent side, he states not what *he thought*, but what *they said*. On the neutral side he expresses his own opinion: "On the other hand, nevertheless, if the northern princes can maintain their trade by sending strong convoys with their fleets, *I see* nothing to blame in it, provided their vessels do not carry *contraband goods*."

But what is most material to be observed is, that the expression, "that they (the belligerent nations) *are willing to leave them* (the neutrals) *the trade they usually carry on in time of peace; but that they cannot see them take advantage of the war to extend their commerce to the prejudice of England and Holland*," cannot possibly refer to the British distinction between a trade usually permitted in peace, and a trade permitted only in war. Such a construction, by no means countenanced either by the general tenor of the letter, or the commercial history of the period, is absolutely precluded by the preceding sentence. "They say, qu'il n'est pas just que les peuples neutres s'enrichissent à leurs depens, et en attirant â eux un commerce *interrompu pour l'Angleterre et la Holland*, fournissent à la France des secours, &c." The *English translation* of this sentence is equivocal, if not false. The true meaning of it is, that it was not deemed just that neutrals should enrich themselves by entering into a commerce interrupted, for England and Holland, by the war. The commerce in question, therefore, was not a commerce opened to neutrals during the war; but a commerce which England and Holland had carried on with France previous to the war, which the war had shut against them, and

which they did not like to see transferred to commercial competitors remaining at peace.*

Pufendorf, then, not derogating in this explanation of his sentiments, from his reference to Grotius for the law of nations concerning neutral rights and duties, but rather strengthening the neutral rights asserted by Grotius, must be placed in the same scale in which Grotius has been placed.

Bynkershoeck is the authority next in order of time. He treats the subject of belligerent and neutral relations with more attention, and explains his ideas with more precision, than any of his predecessors.

His 9th chapter is professedly on the question,† “what neutrals may or may not do, during a war between other nations.” After stating, hypothetically, an unlimited claim, on the neutral side, to trade with belligerents, in every thing, as if there was no war; rejecting the distinction made by Grotius between a just and unjust war; and urging the duty of impartiality towards those engaged in it, he proceeds to observe,‡ “that the enemies

* It is not amiss to remark, that the sentiments in this letter, so far as they favor the rights of neutral commerce, have the greater weight, as the writer, though a Saxon by birth, was a privy counsellor to the Elector of Brandenburg, and that the letter was written at Berlin, whilst Prussia was of the belligerent party against France.—Ompheda, p. 270.

Sir William Scott, supposing him to have been a Swede, endeavored, in the case of the Swedish convoy, to draw from that circumstance a peculiar emphasis to the concluding part of the letter, which, by grounding a prohibition of all trade with France on the extraordinary nature of the war, seemed to favor one of the grounds of which the Judge was willing to avail himself in his decision of that case. It is a little singular, however, that in consulting this document, he should have overlooked an express recognition by this illustrious authority, not three sentences preceding his quotation, of the neutral right to protect a trade *by force of convoy*; which was the precise question to be decided in the case.

† De his [non hostibus,] quæritur quid facere vel non facere possunt, inter duos hostes.

‡ Amicorum nostrorum hostes bifariam considerandos esse, vel ut amicos nostros, vel ut amicorum nostrorum hostes. Si ut amicos consideres, recte nobis iis adesse liceret, ope, consilio, eosque juvare, milite auxiliari, armis, et quibus cunque aliis, quibus in bello opus habent. Quatenus autem amicorum nostrorum hostes sunt, id nobis facere non licet, quia sic alterum alteri in bello præferremus, quod vetat æqualitas amicitiae, cui in primis studendum est. Prestat cum utroque amicitiam conservare, quam alteri in bello favere, et sic alterius

“ of our friends are to be viewed in a two-fold character; either
 “ as our friends, or the enemies of our friends. If you consider
 “ them as friends, it would be lawful to aid them with our counsel,
 “ and to succor them with military forces, with arms, and
 “ with all other things whatsoever useful in war. But, inasmuch
 “ as they are the enemies of our friends, that cannot lawfully be
 “ done by us; because we should, in so doing, prefer one to
 “ another in the war, contrary to the equality of friendship,
 “ which is of primary obligation. It is better to preserve friendship
 “ with both, than, by favoring one in the war, to renounce
 “ tacitly the friendship of the other.

“ And, indeed, what I have just said is taught not only by
 “ reason, but also by the usage received among almost all nations.
 “ For although the commerce with the enemy of our friends be free,
 “ it is agreeable to usage, as in the next chapter I shall shew more
 “ at large, that we should assist neither one nor another, with those
 “ things which may furnish and foment the war against our friends.
 “ It is not lawful, therefore, to carry to either, those things which
 “ are needful in making war; as are cannon, arms, and what are of
 “ principal use in war, soldiers; who are also excepted by various
 “ treaties between nations: materials for ships are also sometimes
 “ excepted,

amicitiæ tacite renunciare. Et sane id, quod modo dicebam, non tantum ratio docet, sed et usus inter omnes fere gentes receptus. Quamvis enim libera sint cum amicorum nostrorum hostibus commercia, usu tamen placuit, ut *capite proximo* latius ostendam, ne alterutrum his rebus juvemus, quibus bellum contra amicos nostros instruatur et foveatur. Non licet igitur alterutri advehere ea, quibus in bello gerando opus habet, ut sunt tormenta, arma et quorum præcipuus in bello usus, milites; quin et milites variis gentium pactis excepti sunt; excepta quandoque et navium materia, si quam maxime ea indigeat hostis ad extruendas naves, quibus contra amicos nostros uteretur. Excepta sæpe et cibaria, quando ab amicis nostris obsidione premuntur hostes, aut alias fame laborant. Optimo jure interdictum est, ne quid eorum hostibus subministremus, quia his rebus nos ipsi quodammodo vidiremur amicis nostris bellum facere. Igitur si hostes simpliciter consideremus ut amicos, recte cum iis commercia exercemus, et merces quascunque ad eos mittimus; Si consideremus ut amicorum nostrorum hostes, excipiuntur merces, quibus in bello amicis nostris noceatur, et hæc ratio priorem vincit; quomodocunque enim alteri contra alterum succurramus, bello nos interponimus, quod salva amicitia non licet.

“ where an enemy is in absolute want of them for building ships to be employed against our friends. Provisions even, are often excepted, when an enemy is pressed by the siege of our friends, or is otherwise labouring under the want of food. On the best ground, therefore, are we interdicted to supply any of these things to belligerents; because by these things we should, in a manner, appear to make war ourselves on our friends. If, therefore, we consider belligerents, simply, in the light of friends, we may rightfully carry on commerce with them, and send them merchandizes of whatever kind; if we consider them as the enemies of our friends, merchandizes are to be excepted, which, in war, might annoy our friends; and this consideration prevails over the former one; for in whatever manner we succour one against the other, we take part in the war, which would be incompatible with the preservation of friendship.”

Thus far the doctrine of this jurist cannot be mistaken. He lays it down as a general rule, that the trade of neutrals with the nations at war, provided it be impartial, is as if there were no war; but that certain articles, as instruments of war, form an exception to this general rule; to which he suggests as a further exception, the case of a siege, or of a similar pressure of famine. It cannot be pretended that there is either a single general expression, or particular allusion, that can be tortured into an exception of any trade, merely for the British reason, that it was not open to neutrals before, as well as during, the war.

The residue of the chapter is chiefly employed in discussing the legality and construction of treaties of succour and subsidy, between a nation at peace and nations at war; after which he proceeds to the tenth chapter, in which he treats of the list of contraband, with several questions incident to it. His doctrine here, the same precisely as in the preceding chapter, is laid down in the following words: * “The rule, confirmed almost

* Regula est, pactis fere perpetuis probata, ne non hostes, ad hostes nostros, vehant “*contrabande goederen*.” Si vehant, et deprehendantur, in commissum cadant; exceptis autem his, libere utrimque mercantur, et quaecunque alia ad hostes vehunt impune.

“ invariably by treaties is, that neutrals are not to carry contraband articles to our enemies. If they carry them and are intercepted, they incur a forfeiture. But with the exception of these articles, *they trade freely* both backward and forward; and carry with impunity, *all other articles* whatever to the enemy.”

That under the term contraband, he could mean to class so vague and novel a description of trade, as that which distinguishes between commercial regulations, as existing before the war, and as made in the course of the war, is rendered the more impossible, by the definition given of contraband: * “Hence by contraband, are to be understood, things which in *their actual state* are *adapted to war*; without considering whether apart from war, they may also be of use; there being few instruments of war, which may not be used for other purposes.” For this he gives as a just reason, that † “if you prohibit every material out of which any thing may be formed for warlike use, great would be the catalogue of prohibited articles; since there is scarcely any material, out of which something at least, adapted to war may not be fabricated.”

In the ensuing chapter, he treats of the case of sieges and blockades, as an exception to the freedom of neutral character.

In the 11th chapter, he examines the question, “whether the contraband character of a part of the cargo, can affect the residue of the cargo or the ship;” with several other questions incident to such mixed cases.

Chapter 13th relates to neutral property in the ships of an enemy; which he exempts from confiscation. His positions on this subject shew how much the turn of his judgment must have been adverse to any such restrictions on neutral commerce, as

* Ex his fere intelligo, contrabanda dici, quæ, uti sunt, bello apta esse possunt, nec quicquam interesse an et extra bellum usum præbeant. Paucissima sunt belli instrumenta, quæ non et extra bellum præbeant usum sui.

† Si omnem materiam prohibeas, ex qua quid bello aptari possit, ingens esset catalogus rerum prohibitarum, quia nulla fere materia est, ex qua not saltem aliquid, bello aptum, facile fabricemus.

that instituted by Great Britain.* “According to reason, a right of that sort [to confiscate neutral property in a belligerent vessel] cannot be defended; for why may I not be allowed to use the ship of my friend, though your enemy, in transporting my merchandize? When treaties do not prohibit, I have a right, as I said above, to carry on commerce with your enemy; and if this be lawful, it is also lawful to enter into any contracts whatever with him; to buy, to sell, to let, to hire, &c. Wherefore, if I shall have engaged his ship and his service to transport my effects by sea, it was a transaction on every principle lawful. You, as his enemy, may take his ship; but with what right can you take what belongs to me, that is, to your friend? If, indeed, I prove them to be mine; otherwise I agree with Grotius, that there is some room for presuming things found in the ship of an enemy, to be enemy’s property.”

Finally, in his 14th chapter, he treats the case of enemy’s effects in neutral vessels; deciding with Grotius and others, that the neutrality of the ship does not protect the cargo from capture and condemnation. He consequently makes this case also an exception to the general freedom of neutral commerce, in favor of belligerent privileges.

From this distinct and full view of the sentiments of Bynkershoek, it is clear, that the whole weight of his authority is opposed to the principle advanced by Great Britain. He is the first writer who seems to have entered into a critical and systematic exposition of the law of nations, on the subject of maritime commerce between neutral and belligerent nations; and

* *Ex ratione, utique, ejusmodi jus defendi non poterit; nam cur mihi non liceat uti nave amici mei, quanquam tui hostis, ad transvehendas merces meas? Si pacta non intercedant licet mihi, ut supra dicebam, cum hoste tuo commercia frequentare; quod si liceat, licebit quoque cum eo quoscunque contractus celebrare, emere, vendere, locare, conducere, atque ita porro. Quare, si ejus navem operamque conduxerim, ut res meas trans mare vehat, versatus sum in re omni jure licita. Tibi, qua hosti licebit navem ejus occupare, sed quo jure res meas, id est amici tui, occupabis? Si nempe probem res meas esse; alioquin Grotio adsentior, ex præsumptione quodam pro rebus hostilibus esse habenda quæ in navi hostili inveniuntur.*

the plan which he adopted was well calculated to do justice to the subject. Instead of undertaking, after the example of Grotius and Pufendorf, an entire code of public law, he selected for a more thorough discussion, the particular questions which were deemed most important, and most frequent in the transactions and intercourse of modern nations. Among these, he very properly classed the question of neutral commerce, and bestowed on it, the formal investigation which we have seen. He begins with the general question, how far a war between two nations can affect the rights, particularly the commercial rights, of a nation at peace with both, deciding in favor of neutral nations, that their commerce remains free as a general rule; and in favor of belligerent nations, that in certain cases, exceptions to that general freedom are prescribed by the principle of self-defence. He goes on, then to examine the several cases which had been allowed or claimed, as exceptions. He establishes the belligerent right to intercept articles on the list of contraband. He establishes also the right to controul supplies to places besieged or blockaded. He concurs in the doctrine, that the flag of a friend does not protect the property of an enemy. He discusses the claim, maintained by some, to confiscate the property of a friend under the flag of an enemy, which he disproves. He discusses, moreover, several other minor questions, which were incident to the main subject. He appears, in short, to have taken a comprehensive view of the commercial relations between neutral and belligerent nations; and to have omitted no question, belonging to those relations, which was of sufficient importance to deserve his attention. And yet, it appears, that he has not even glanced at the question, "whether a neutral commerce, in articles not contraband, nor going to a besieged or blockaded place, was unlawful, for the reason that the belligerent party had been induced by the war, to new-model its commercial regulations." Does it not necessarily and undeniably follow, either that no such pretension had, at that period, ever been started, or that it had received no countenance, which could entitle it to notice? It is impossible to conceive

that a question of such magnitude could be otherwise passed over, by a pen which dwelt with such minute attention on questions less nearly allied to the main subject.

The authority of Bynkershoeck, in this case, ought to have the greater weight with Great Britain, because, in other cases, so much weight is claimed for it, by the champions of her favorite doctrines.

The reputation which Vattel enjoys in Great Britain, greater perhaps than he enjoys any where else, requires that he should be particularly consulted on this subject. The work of Vattel unquestionably possesses great merit; not so much, indeed, for the originality of his plan, or his matter, which he admits to have been derived from Wolf; as for the agreeable dress which he has given to the dry treatise of his prototype, and for the liberal spirit which has, in many instances, improved the doctrines of all his predecessors. Vattel is, however, justly charged with failing too much in the merit of a careful discrimination; and sometimes with delivering maxims, which he either could not reconcile, or does not take pains to explain. In the chapter on neutrality (B. III, Ch. 7,) he might perhaps have been more exact in his definitions, and more lucid in the order of his ideas. His meaning, nevertheless, is, on the whole, sufficiently clear, and arranges him beyond all controversy, with Grotius, Pufendorf, and Bynkershoeck, in opposition to the doctrine under consideration.

As the basis of the true doctrine, on the subject of neutral commerce, he lays down these principles:

- That a neutral nation is bound to an exact impartiality;
- That this impartiality relates solely to the war;
- That it includes two obligations: the first forbidding succours in troops, not stipulated before the war, arms, ammunition, or any thing of *direct use* in the war; the second, requiring that in whatever does not relate to the war, one of the parties must not be refused, *on account of its present quarrel*, what is granted to the other. He observes "that this does not trespass on the liberty of the neutral nation, in negotiations, connexions of friendship, or its trade, to govern itself by what is most ad-

vantageous to the State. When this consideration induces it to *preferences in things* of which every one has the free disposal, it only makes use of its right, and is *not chargeable* with partiality. But to refuse any one of these things, to one of the parties, purely as being at war with the other, and for favoring the latter, would be departing from an exact neutrality."

Having laid this foundation, and recommended to nations, intending, as they have a right, to remain neutral, that they should secure their neutrality by treaties for the purpose, he proceeds to state more particularly—

1st. "That whatever a nation does in use of its own rights, and *solely with a view to its own good*, without partiality, without a *design of favoring one power to the prejudice of another*, cannot, in general, be considered as contrary to neutrality; and *becomes such*, only upon *particular occasions*, when it cannot take place without injury to one of the parties, who has then a particular right to oppose it. *Thus*, the besieger has a right to prohibit access to the place besieged. *Exclusively of this kind of cases*, the quarrels of another cannot deprive me of the free disposal of my rights in the pursuit of measures which I judge advantageous to my country." Hence he infers a right to permit, in certain cases, levies of troops to one of the parties, and to deny it to the other, where there may be good reason for the distinction; and where it is the custom, as among the Swiss, to grant levies; and, consequently, where the custom would of itself be a proof that the grant was not the effect of partiality in relation to the war. He asserts, in like manner, for the sovereign, as well as private citizens, in the habit of lending money at interest, the right to lend it to one of the parties at war, "who may possess their confidence, without lending it to the other;" observing, that "whilst it appears that this nation lends out its money purposely for improving it by interest, it is at liberty to dispose of it according to its own discretion, and I have no reason to complain. But if the loan be manifestly for enabling the enemy to attack me, this would be concurring in the war against me." He applies the same remark to the case of troops furnished to an enemy, by the State itself, at its own

expence; and of money lent without interest: adding, at the same time, as a further instance of neutral rights, that if a nation trades in arms, timber, ships, military stores, &c., I cannot take it amiss that it sells such things to my enemy, provided it does not refuse to sell them to me also. It carries on its trade without any design of injuring me, and in continuing it, the same as if I was not engaged in war, that nation gives me no just cause of complaint.

Making, thus, impartiality the test of lawfulness in the conduct of neutrals, and the mere pursuit of their own interest, without a design to injure any of the belligerents, the test of impartiality, he enters more particularly on the discussion of the active trade which neutral nations carry on with those at war.

“It is certain,” he says, “that, as they [neutrals] have no part in my quarrel, they are under no obligation to abandon their trade that they may avoid furnishing my enemy with the means of making war. Should they make it a point* not to sell to me any of these articles, whilst they take measures for transporting great quantities of them to my enemy, with a *manifest intention of favouring him*, such a *partiality* would exclude them from the neutrality they enjoyed. But if they simply pursue their commerce† [suivre tout uniment leur commerce] they do not *thereby declare themselves* against my interest; they only exercise a right, which they are under no obligation of sacrificing to me.”

The *general* freedom of neutral commerce, being thus asserted,

* Si elles affectoient, &c.

† The Translation, “continue their customary trade,” which might be construed to favor the British principle, is evidently erroneous. That which is substituted conveys the true meaning. It is curious that the two authors, Pufendorf and Vattel, who have alone appeared to speak a language any wise favorable to the doctrine in question, should owe the appearance to English mistranslations. It would be uncandid, nevertheless, to insinuate a design in the case; the more so as the translation of Pufendorf was prior to the origin of the British pretension: but the error of translations may have strengthened the pretension which it countenances.

the writer goes on to lay down the exceptions which war makes to it.

“On the other hand, whenever I am at war with a nation, both my safety and welfare prompt me to deprive it as much as possible of every thing which may enable it to resist or hurt me. *Here the law of necessity shews its force.* If this law warrants me on occasion to seize what belongs to another, shall it not likewise warrant me to stop *every thing relative to war*, which neutral nations are carrying to my enemy? Even if I should, by taking such measures, render all these neutral nations my enemies, I had better run the hazard than suffer him who is actually at war to be thus freely supplied to the great increase of his power. It is therefore very proper and very suitable to the law of nations which disapproves of multiplying the causes of war, not to consider those seizures of the goods of neutral nations as acts of hostility. When I have notified to them my declaration of war against such or such a people, if they will afterwards run the risk of supplying them *with things relative to war*, let them not complain if their goods fall into my hands, for I do not declare war against them, because they attempted to carry *such* goods. They suffer indeed by a war in which they have no concern, but it is accidentally. I do not oppose their right, I only make use of my own, and if our rights clash, and reciprocally injure each other, it flows from the effect of inevitable necessity,” &c.

“But that *limits* may be set to these inconveniences; that the commerce of neutral nations may subsist in all the freedom which the laws of war will admit, there are rules to be observed, and on which *Europe seems to be generally agreed.*”

What are the rules which fix these limits?

“The first is carefully to distinguish common goods which have *no relation to war*, from those *peculiarly subservient to it*. In the trade of the former neutral nations are to enjoy *an entire liberty*, the parties at war cannot with any reason deny it, or hinder the importation of such goods into the enemy’s country,” &c. He observes that the goods here referred to, as having re-

lation to war, are those called contraband, of which he gives a description; proceeding thence to shew how far they are subject to confiscation, and to infer from the right of confiscation the right of search on the high seas.

He next mentions, as a limit to the freedom of neutral commerce, that the effects of an enemy found in a neutral ship are subject to capture; deciding otherwise as to neutral effects on board an enemy's ship, which some nations had been in the practice of capturing.

He specifies, as his last limit or exception to the general freedom of neutral commerce, the belligerent right to prohibit all commerce with a place besieged or blockaded; closing the discussion of this particular subject with an emphatic deduction in these words—"A neutral nation continues with the two parties at war, in the *several relations* which *nature* has placed between nations. It is ready to perform towards them both all the duties of humanity reciprocally due from nation to nation. It is *in every thing* not *directly relating to war* to give them *all the assistance in its power*, and of which they may stand in need. But this assistance is to be given with impartiality, that is, in not refusing to one of the parties any thing on account of his being at war with the other. This does not hinder a neutral State having particular connections of friendship and good neighborhood with one of the parties at war, from granting him *in whatever does not relate to military transactions* the preference due to friends: much more may he without giving offence continue to him, for instance in commerce, such indulgencies as have been stipulated in their treaties, &c."

We see then that the authority of Vattel coincides perfectly with the preceding authorities, more especially that of Bynkershoek, in establishing the general freedom of neutral commerce, with the exception of things relating to the war, and in limiting this exception to the several cases of supplying the enemy with military contraband, of trading with places besieged or blockaded, and of carrying enemy's property.

Perhaps this author, not remarkable as already intimated for

well-defined ideas, has in no particular branch of his work left less room for mistaking or perverting his meaning.

It would be improper not to add Martens to the authorities, who ought to be heard on this question. Martens was a professor of law in a Hanoverian University, with a salary from the King of Great Britain as Elector of Hanover, and has distinguished himself by several publications, which demonstrate his critical judgment of the law of nations, and the extent of his researches in order to verify and elucidate it. His SUMMARY of this law is a work which was received by the public with a due portion of that respect which constituted his predecessors authentic depositaries and expositors of the code, by which the society of nations ought to be governed. We find him accordingly on the same shelf already with Grotius, Pufendorf, Bynkershoek, and Vattel. In Great Britain indeed, notwithstanding his being a subject of her sovereign, and a professor under his patronage, the doctrine he teaches on the question whether free ships make free cargoes, has drawn on him the censure of the zealous advocates for the side taken by Great Britain on that question. In opposing, however, a favorite doctrine of that nation, under the relation in which he stood to it, he gave a proof of integrity and independence, which justly inspire the greater esteem for his character, at the same time that they give the greater weight to his opinions. Even there, however, his censors have done justice to his eminent talents, and been ready to avail themselves of his authority in cases where it supported British principles and interests.

On the present subject the authority of Martens is clear and full.

He speaks first of neutral commerce according to the universal law of nations, and next of the modern law of nations with respect to neutral commerce, and its freedom, as acknowledged by the powers of Europe.

The first he lays down as follows: "The right that a nation enjoys in time of peace of selling and carrying all sorts of merchandize to every nation *who chooses to trade* with it, it enjoys

also in time of war, provided that it remains neuter." He admits at the same time that *necessity* may authorize a power at war to hinder the conveyance of *warlike stores* to its enemies, so far as to sequester them till the end of the war, or to take them at their full value for his own use.* He admits again that the power at war may prohibit all commerce with such places "as he is able to keep so blocked up as to prevent any foreigner from entering." But he maintains that "since a belligerent power cannot exercise hostilities in a neutral place, nor confiscate property belonging to neutral subjects, such power ought not to confiscate the goods of an enemy found in a neutral vessel navigating on a free or neutral sea, nor neutral goods found in the vessel of an enemy: provided, however, in both cases that these goods are not warlike stores."

In explaining what he styles the modern law of nations with respect to neutral commerce, and its liberty as *acknowledged* by the powers of Europe, he states it "as generally acknowledged that a neutral power ought not to transport to either of the belligerent powers merchandizes *unequivocally intended* for warlike purposes, that treaties have at some times swelled out this list with articles not evidently and unequivocally intended for such purposes; at others have expressly declared these not to be contraband, and that this last ought to be presumed to be the case between powers having no treaties on the subject."

"With respect to merchandizes which are not contraband" he says, "it is generally acknowledged by the powers of Europe, that neutral powers have a right to transport them to the enemy,† *except* it be to places blockaded, with which all commerce is prohibited."

* This rule corresponds with the sentiments of Grotius.

† Martens in a note observes that "some powers have, *but in vain*, attempted to forbid neutral nations to carry on commerce with their enemies, of which he mentions the instance of the Dutch in 1666, and the joint instance of England and Holland in 1689. In both these instances, it is well known, the attempt was to intercept all trade with France, and not the trade only which was or might be opened by France during the war;" a distinction to which he was invited by the occasion either to have noticed, if he had thought it worthy of notice, as among the *vain attempts* of some powers to forbid neutral commerce, or to have

These two exceptions, namely contraband of war, and the case of blockaded or besieged places, are the only ones which he allows against the freedom of neutral commerce. For with respect to enemy's property in neutral ships, he considers the new principle which identifies the cargo with the vessel, and thereby avoids the disputes and embarrassments arising from the old principle, as having been sufficiently established to take the place of the old one in the law of nations.

The authority of Martens, then, unequivocally and undeniably concurs with that of his great predecessors, in deciding that the commerce between neutral and belligerent nations, with a very few exceptions, is *entirely free*, and that these exceptions do not include any such pretension as that of Great Britain, to prohibit a trade otherwise lawful, merely because it might have been laid open to neutrals in consequence of the war.

It would have been easy to add to the authorities here selected, other respectable jurists within the same period; as well as a phalanx of authorities of later date, both in the South and the North of Europe; but the testimony of Grotius, of Pufendorf, of Bynkershoek, of Vattel, and of Martens, is more than sufficient for the occasion. They are the luminaries and oracles, to whom the appeal is generally made by nations, who prefer an appeal to law, rather than to power; an appeal which is made by no nation more readily than by Great Britain, when she has sufficient confidence in the justice of her cause.

Two feeble objections may be thought to claim attention, on this branch of the investigation.

First. In describing the general freedom of neutral commerce with a nation at war, the writers who have been reviewed, being strangers to the distinction now introduced between the legal regulations of the latter in time of war, and those in time of peace, have sometimes used expressions, which, though they do not favor, do not necessarily exclude, such a distinction.

inserted it in the text as an exception to the freedom of neutral commerce, if he had so viewed it, along with the other exceptions of contraband and blockaded places.

Thus Bynkershoeck, speaking of the neutral trade of the Belgians with the French, who were at war with the Spaniards, says that it was of right, as free as before the war.* The freedom of neutral commerce is laid down, in similar phrases, by other jurists, both before and after Bynkershoeck. Many of the more modern writers, not apprized of the misconstruction which might be attempted on their phraseology, have also described the general freedom of neutral commerce in time of war, by a reference to the freedom which it enjoyed in time of peace.

The obvious and decisive answer to these criticisms is, that the freedom of commerce between two nations in time of peace does not refer to the actual footing on which it happened to be placed by the mutual regulations of the parties, a continuance of which would, on a subject so fluctuating as that of commerce, be often inconvenient, sometimes absurd; but to the right which the parties have to regulate their commerce, from time to time, as their mutual interest may suggest, or, to adopt the language of Vattel, to the relations in which *nature* has placed independent nations.

This construction is not only the most obvious and rational in itself, but is enforced by several additional reflections.

It is most consistent, and sometimes alone consistent, with other passages in the same authors. An example may be seen in Bynkershoeck, Lib. I, Ch. 9, where the expressions "ut ante bellum constabat," and "ut cum pax esset inter eos, &c.," are evidently meant to comprehend every right, as well as the existing state of commerce between the neutral *and belligerent* parties, previous to the war.

As there is no evidence that the distinction was known at the dates of the elder writers, it would be absurd to suppose them alluding to a state of things which had never existed; rather than to a state of things which was familiar in practice. And with respect to the more modern writers, to most of whom the distinction appears to have been equally unknown, the absurd-

* Liberum quarumcunque rerum commercium, quemadmodum, cum nondum bellum esset.—Lib. I, Ch. 10.

ity of the supposition is doubled by its inconsistency with the whole tenor and complexion of their doctrines and reasonings in behalf of neutral rights. Many of them are, in fact, champions for the principles of the armed neutrality; one of which is, that neutrals may trade freely with, and between any of, the ports of an enemy not blockaded.

Finally—As all the writers on the general subject of neutral commerce, discuss the several other exceptions to its rights, which have, at any time, been claimed by belligerent nations, it would be absurd to suppose that an exception, more extensive than any of them, should be pretermitted. Their silence alone, therefore, is an unanswerable proof, that the exception now contended for, could not be known, or could not be recognized by those writers.

A second objection may be, that the practice of opening colonies to neutral trade, had not been introduced, at the dates of these publications, particularly the more early of them.

The fact on which this objection relies, might be disproved by a mass of historical testimony. Two authorities will be sufficient: the first shewing that Spain, represented as the most rigid in her colonial monopoly, began to relax it as early as 1669, even during peace: the second, that France had adopted the same policy, in time of war, as early as the year 1705.

The first is from Long's *History of Jamaica*, vol. 1, p. 598.

“In 1669, Spain, for *want of ships and sailors* of her own, began “openly to hire Dutch shipping to sail *to the Indies*, though “formerly so careful to exclude all foreigners from thence. “And so great was the supply of Dutch manufactures to Spain, “&c., that all the merchandize brought from the Spanish West “Indies was not sufficient to make returns for them; so that “the Dutch carried home the balance in money.” The date of this Spanish relaxation of the colonial monopoly was prior to the work of Pufendorf, which was published in 1672; and two-thirds of a century prior to that of Bynkershoeck, which was published in 1737; and which entered so systematically into the question of neutral rights of commerce.

The other will be found in a Note of Robinson, in his *Appen-*

dix to Vol. 4, page 17, of his Admiralty Reports. It is there stated, with his authority for the fact, that about the year 1705, it being then a time of war, friendly nations were admitted into the trade of the French Colonies, as a better mode of supplying their wants, and getting away their productions, than that of convoys. It is added, that the first vessels thus introduced having been captured, the French minister returned to the old, as the only efficacious, expedient.

The reporter would conclude, from the capture of the neutral vessels, that a neutral trade with colonies was then held to be illegal. But it would be manifestly wrong to resort to an explanation not warranted by any ideas otherwise known to exist at that period; especially when it is so easy to suppose that the capture was directed against the *French property* on board the neutral vessels. That the property was French is the more to be presumed, as the Dutch, the only nation whose capital might have neutralized the property, were parties to the war. Had they indeed been neutral, their treaties with Great Britain would have protected the trade in their vessels, on the two-fold ground that it was lawful to trade, without restriction, with and between the ports of an enemy; and that the freedom of the ship protected the cargo. The true inference on the subject is, that the neutral carriers were Danes, or of some other nation who had no such treaties with Great Britain, and whose capitals did not neutralize the cargoes of French produce.

TREATIES.

All writers on the law of nations, as well didactic as polemic, avail themselves, whenever they can, of the authority of Treaties.

Treaties may be considered under several relations to the law of nations, according to the several questions to be decided by them.

They may be considered as simply repeating or affirming the general law: they may be considered as making exceptions to the general law, which are to be a particular law between the parties themselves: they may be considered as explanatory of the law of nations, on points where its meaning is otherwise obscure or unsettled; in which case they are, first, a law between the parties themselves, and next, a sanction to the general law, according to the reasonableness of the explanation, and the number and character of the parties to it: lastly, Treaties may be considered as constituting a voluntary or positive law of nations.

Whether the stipulations in a treaty are to be considered as an affirmance, or an exception, or an explanation, may sometimes appear on the face of the treaty: sometimes being naked stipulations, their character must be determined by resorting to other evidences of the law of nations. In other words, the question concerning the treaty must be decided by the law, not the question concerning the law by the treaty.*

* In the report by Sir G. Lee, Doctor Paul, Sir D. Ryder, and Mr. Murray, afterwards Lord Mansfield, in the case produced by the Silesia loan, the argument drawn from Treaties, on the question whether free ships make free goods, is not very worthy of the celebrated authors, or of the celebrity of the document. Two treaties, stipulating that free ships do not make free goods, are cited as direct proofs on the negative side of the question; and six, stipulating that free ships do make free goods, as exceptions, proving still more strongly the negative

In the present case, it has been shewn, from the sources generally allowed to be the most authentic, that the law of nations is violated by the principle asserted by Great Britain. It is a just inference, therefore, that every article in treaties contradicting that principle, is an affirmance and direct proof of the general law; and that any stipulation of the principle would, as an exception to the general law, be an indirect proof of it.

But supposing, for a moment, the present case to belong to that class, in which the great oracles of the law of nations are obscure, or at variance among themselves; and in which, moreover, the practice of nations, not being uniform, is an unsatisfactory guide; and consequently, that the evidence of treaties were necessary in order to ascertain the law; still, it will be found that the result of an appeal to that evidence is conclusive against the British pretension. It may be confidently affirmed, that on no point ever drawn into question, the evidence of Treaties was more uniform, more extensive, or more satisfactory.

Nay more; it may be affirmed that the treaties applicable to this case may fairly be considered in their relation to the law of nations last noticed; that is, as *constituting* a law of themselves. If, in any case, Treaties can be sufficiently general, sufficiently uniform, and of sufficient duration, to attest that general and settled concurrence of nations in a principle or rule of conduct among themselves, which amounts to the establishment of a general law; such an effect cannot reasonably be refused to the number and character of the treaties which are applicable to the present case.

That Treaties may amount to a law of nations, follows from

side of the question. It could not have been less fair, to consider the six as declaratory of the law, and the two as exceptions to it. But in either case, the inference presupposes, instead of proving, the point in question. As far as the point was to be considered as not otherwise proved, and as requiring the evidence of treaties to remove the uncertainty, the inference ought to have been reversed. The six witnesses ought to have out-weighed the two, and it was incumbent on the reporters, instead of simply referring to the treaties as a confirmation of their opinion, to have considered them as presenting an ostensible objection, which was to be answered.

the very definition of that law; which consists of those rules of conduct which reason deduces, as consonant to justice and common good, from the nature of the society existing among independent nations; with such definitions and modifications as may be established by general consent.

One evidence of general consent is general usage, which *implies* general consent.

Can treaties which *express* consent be an inferior evidence, where nothing on the face of the treaties, nor in any collateral authority on the law of nations is found to impair the evidence?

Treaties may indeed in one point of view be considered as a higher authority than usage, when they have a generality and continuance, equal to the generality and continuance which give to usage the authority of law; because all treaties involve a usage commensurate with the sphere in which they are obligatory. Whilst usage, therefore, implies consent; treaties imply the usage, at the same time that they express the consent of the parties to them.*

But there is another point of view in which the influence of treaties, those at least of peace and of commerce, in modifying and defining the rules of public law applicable to periods of war, ought, in preference to the influence of mere practice, to be promoted by all governments which respect justice and humanity, and by all jurists who aspire to the authority of commentators on that subject.

The law of nations, as derived from mere usage or practice during those periods, is evidenced for the most part by *ex parte* ordinances, issued by belligerent governments, in the midst of the passions or policy of war; and by judicial decisions, also *ex parte*, and biassed more or less by the same causes, if not by the interest also, which weighty individuals, or perhaps bodies of individuals have, in widening the field of predatory wealth.

* Bynkershoeck derives the law of nations from reason and usage [*ex ratione et usu*] and founds usage on the evidence of treaties and decrees [*pactis et edictis*.] He therefore makes treaties a legitimate source of the law of nations, and constantly adduces them to illustrate and verify his doctrines.—*Quest. Jur. Pub.*, Lib. I, Ch. 10.

Treaties are formed under very different circumstances. Those of peace imply that the hostile passions and pursuits have spent their force, and that a mutual spirit of liberality and accommodation have taken their place: treaties of commerce again are necessarily founded in principles of reciprocal justice and interest, wholly at variance with the violent spirit of war: whilst in the negociation of treaties of both kinds the respective efforts and interests of the parties form those mutual checks, require those mutual concessions, and involve those mutual appeals to a moral standard of right, which are most likely to make both parties converge to a just and reasonable conclusion. Nor is a sense of character without its effect on such occasions. Nations would not stipulate in the face of the world things, which each of them would separately do, in pursuit of its selfish objects.

It will accordingly be found, as might be expected, that the violent and cruel maxims of war, those still remaining, as well as those from time to time exploded, have had their origin and their continuance in the *separate* usages of belligerent nations, not in treaties; whilst on the other hand, it will be found that the reformation of those abuses has been the gradual work of treaties; that the spirit of treaties is, with few, if any exceptions, at all times more just, more rational, and more benevolent, than the spirit of the law derived from practice only; and consequently, that all further meliorations of the code of public law, are to be expected from the former, not the latter source; and consequently, again, that all enlightened friends to the happiness of nations ought to favor the influence of treaties on the great code by which their intercourse is to be regulated.

The authority of every treaty is to be considered as opposed to the principle asserted by Great Britain, where it either stipulates a general freedom of neutral commerce with a specification of exceptions to it, and an omission of this British exception; or where it stipulates not only a neutral right generally to a *free trade* with belligerent nations, but particularly a right to trade freely *to and between the ports* of such nations. These stipulations, by the force of the terms, necessarily comprehend

the coasting and colonial trades, as well as other branches of commerce.

It would be a waste of time to bestow it on the treaties of a remote period, partaking too little of the civilization and spirit of more modern times, to edify them by its examples. It will be sufficient to commence this review with the treaty of Westphalia in 1648, which forms an important epoch in the commercial and political history of Europe, and to remark as the result of some enquiry into antecedent treaties, that they contain nothing which can give the least countenance to the principle under examination.

It will be sufficient also to limit the review of treaties, where Great Britain was not a party, to those of most importance, either for the tenor of the stipulations, or for the particular parties to them, with marginal references to others of analogous import; remarking again generally, that these others are all, either negatively or positively, authorities against Great Britain.

As a more convenient distribution also, the first review will stop with the epoch of the armed neutrality. The relation, which the treaties subsequent to that event have to the subject, will be noticed by itself.

Examples to which Great Britain is not a party.

By a treaty concerning navigation and commerce in 1650, preceded by a particular article on the same subject concluded in 1648, it is stipulated between the United Provinces and Spain, "that the subjects and inhabitants of the United Provinces (and those of Spain reciprocally) may sail and trade with *all freedom* and safety *in all* the kingdoms, States, and countries which are or shall be in peace, amity, or neutrality, with the State of the said United Provinces; and that they shall not be disquieted or molested in this liberty by the ships or subjects of the King of Spain, upon *the account of hostilities* which may exist, or may happen afterwards, between the said King of Spain and the aforesaid kingdoms, countries, and States, or any of them that

may be in amity or neutrality with the said lords the States as above."*

This liberty, in relation to France, was to extend to all sorts of merchandize which might be carried thither before she was at war with Spain; *even contraband of war*,† not proceeding from the States of Spain herself, and capable of being used against the Spanish dominions.

With respect to other countries at peace with the United Provinces, and at war with Spain, the enumerated articles of contraband were not to be carried to them by the United Provinces, but all articles not contraband were to be freely carried, with the exception only of cities and places invested or blockaded.

The Pyrenean treaty, between France and Spain in 1659, established so close a friendship between the two nations, that they were mutually restrained from giving either of them to those attacking the other, any assistance in men, money, or victuals, or with passage through his dominions. Yet it is stipulated in Arts. X—XVI, which are reciprocal, that the French shall have liberty to trade *to all parts whatsoever*, though they should be in war with his Catholic Majesty, excepting Portugal,‡ whilst it continued in the condition it then was in; all merchandize may be transported to other countries in war with Spain, as was allowed *before the said war*, excepting|| such as proceed

* Dumont, Tom. 6, part 1, p. 570.

† This is not a solitary instance of such a stipulation. Another is found in the treaty of 1661, between the United Provinces and Portugal, where it was made a general right of the neutral party to carry contraband to countries at war with the other party. Dum., vol. 6, p. 2, 368. Azuni refers to other instances; a treaty between Edward 4 and the Duke of Burgundy in 1468—England and Portugal 1642 and 1654—Spain and the Hanse Towns 1647.—Azuni, vol. 2, p. 145, of the French translation.

‡ Portugal was at that time engaged in a war with Spain for the establishment of her independence, which was viewed by Spain as a rebellious war, and which France was willing, it seems, so far to regard in the same light as to acquiesce in this exception.

|| This exception might have been made by Spain herself as a municipal regulation.

from the Spanish dominions, and as may be serviceable against Catholic King or his dominions, and contraband goods. By contraband goods are understood all sorts of arms and warlike stores; but corn and all manner of provision and goods, not being arms and warlike stores, are not reputed contraband, and they may be carried to places in war with Spain, excepting to Portugal and blockaded places. The French vessels, passing from the ports of Spain to any port in enmity with that crown, shall not be in any way retarded or molested, after producing their passes, specifying their lading.*

It here appears, that the parties were at liberty, when neutral, to trade to all parts of a belligerent country, not blockaded, and in all merchandizes not contraband.

The expression "as was allowed before the said war," in this and in the preceding examples, clearly falls within the observations made on the like expressions, used by the writers on the law of nations. They are merely a mode of describing the indefinite right to trade, as if no war had arisen, and consequently to enter into any new channels of trade which might be opened to them.

In a treaty in 1662, between France and the United Provinces, it is stipulated, Arts. XXVI, XXVII, &c., that the parties reciprocally are to trade and navigate with all freedom and safety to countries respectively at war with one and at peace with the other, without any exceptions made by the treaty, other than a trade in contraband, or to a place blockaded.†

The treaty between France and the United Provinces, Arts. XXVII—XXIX, as incorporated with the treaty of Breda in 1667, between the latter power and England, declares that the subjects of either party may sail and traffic in *all countries* at *any time*, in peace with one and at war with the other, and this transportation and traffic shall extend to *all articles* not contraband, and to *all places* not blockaded.‡

* Dum., Tom. 6, part 2, page 266.

† Dumont, Tom. 6, part 2, p. 414.

‡ Chalmers' collect. treaties, vol. 1, p. 154. Dumont, Tom. 7, part 1, p. 49.

In a treaty in 1672, between France and Sweden, Arts. XXIII—XXIX, are of corresponding import.*

A treaty in 1675, between Sweden and the United Provinces, contains like stipulations in the three first and following articles.†

A declaration made in 1676, by Spain and the United Provinces, confirming the treaty of 1650, stipulates the right of either party to trade with the enemy of the other, as well directly as between enemy's ports, whether the ports belong to the same or different enemies, contraband goods and places blockaded being excepted.‡

In Art. XIII, &c., of another treaty in 1678, between France and the United Provinces, the same points are again stipulated.∥

The 13th Art. of another treaty in 1679, between Sweden and the United Provinces, contains a like stipulation.§

So again the like stipulation is contained in Art. XIII of another treaty in 1679, between France and the United Provinces.¶

In a treaty in 1701, between Denmark and the United Provinces, the stipulations import an uninterrupted commerce of the neutral with an enemy of the other party, with the usual exception of contraband.**

The like stipulation is found in a treaty of 1716, Art. VIII, between France and the Hanse Towns.††

A treaty, Art. VI, between the Emperor Charles VI, and Philip V, of Spain, May 1, 1725, is of like import.‡‡

The same is the language of a treaty in 1752, between Naples and Holland.∥∥

* Dumont, Tom 7, part 1, p. 169.

† Dum., Tom. 7, part 1, p. 317.

‡ Dum., Tom. 7, part 1, p. 325.

∥ Dum., Tom. 7, part 1, p. 359.

§ Dum., Tom. 7, part 1, p. 439.

¶ Dum., Tom. 7, part 1, p. 359.

** Dum., Tom. 8, part 1, p. 35.

†† Azuni, vol. 2, p. 130.

‡‡ Dum., Tom. 8, part 2. p. 115; Azuni, vol. 2, p. 124.

∥∥ Azuni. vol. 2. p. 131.

A treaty, Art. XVI, in 1767, between France and Hamburg, and another between France and the Duke of Mecklenburg in 1779, maintain the same doctrine.*

To these authorities derived from the conventional law of Europe, against the British principle under investigation,† might be added, if it were necessary, references to other treaties of the like tenor.

Treaties to which England first, and then Great Britain, was a party.

By a treaty with Sweden, in 1654, and another in 1656, confirming and explaining the former, it is stipulated, Art. II—IV, that it shall be lawful for the subjects of either of the confederates to trade with the enemies of the other; and, without impediment, to carry to them, except to places blockaded or besieged, any goods whatsoever not contraband, of which a specification is inserted. Provision is also made for the efficacy of passports in certain cases, and against the abuse of them for covering enemies' property.‡

The weight of these examples is not diminished by the name of Cromwell, under whose authority the treaties were concluded in behalf of England. In foreign transactions, as well as at home, his character was distinguished by a vigor not likely to relinquish or impair rights, in which his country, as a warlike and maritime power, was interested.

On the other hand, it adds weight to the examples, that they are treaties of *alliance*, containing mutual engagements of friendship and assistance; and, consequently, the less apt to indulge the parties in an intercourse with the enemies of each other, beyond the degree required by the law of nations. This observation is applicable to all the succeeding examples, where the treaties are of the same kind.

* Martens' treaties, vol. 1, p. 255; vol. 2, p. 38.

† The list, however, would not extend to the period between 1738 and 1761; no *general* collection of treaties to which Great Britain is not a party, during that period, being at hand. The chasm is of the less moment, as the British treaties of that period embrace most of the other maritime nations of Europe.

‡ Chalmers. vol. 1. p. 32—3.

On the restoration of Charles II, a treaty of *alliance* was concluded with Sweden in 1661, the 11th Article of which, in pursuance of those above copied from the treaties of 1654 and 1656, stipulates anew, that neither party shall be impeded in carrying to the enemies of the other, any merchandize whatever, with the exceptions only of articles of contraband, and of ports or places besieged.*

In a treaty with Spain, May 13, 1667, the Articles XXI—XXVI import, that the subjects of each shall trade freely in all kingdoms, estates, and countries at war with the other, in all merchandizes not contraband; with no other exception of places but those besieged or blockaded.†

In July, 1667, a treaty was concluded with the United Provinces, of which Art. III provisionally adopts certain articles from the treaty of Breda; between the United Provinces and France, on the subject of maritime commerce; until a fuller treaty could be perfected between the parties. The articles adopted, in relation to the trade between the subjects of one of the parties and the enemies of the other, declare that the trade shall extend, without impediment, to all articles not contraband, and to all places not besieged or blockaded.‡

In February, 1667—8, the same parties, then under a perpetual defensive alliance by virtue of a treaty of 21st July, 1667, and in a league moreover with Sweden by the triple league of 1668, resumed the subject of maritime and commercial affairs, and repeated, in the first article of their treaty, the precise stipulations adopted provisionally from the treaty between France and the United Provinces.||

A treaty with Denmark, in 1669, stipulates, that they may trade each with the enemies of the other, in all articles not contraband, and to all places not blockaded, without any other exceptions.§

* Chalm., vol. 1, p. 52.

† 2 Chalm., 17—19.

‡ Chalm., vol. 1, p. 154.

|| Chalm., vol. 1, p. 163.

§ Dum., Tom. 7, part 1, p. 126.

On the 11th July, 1670, another treaty of *alliance* was concluded with Denmark, the 16th Art. of which declares that "neither of the parties shall be impeded in furnishing to the enemies of the other any merchandizes whatever; excepting only articles of contraband, as described in the treaty, and ports and places besieged by the other."*

It is worthy of notice in this treaty, and the remark is applicable to others, that the 5th Art. having stipulated a right mutually to trade in the kingdoms, provinces, marts, towns, ports, and rivers of each other, it was immediately provided in the next article, that *prohibited ports and colonies* should be excepted. If it had been conceived that such ports or colonies of enemies were not to be traded with, under the general right to trade with enemies acknowledged in the 16th Article, it is manifest that they would have been as carefully excepted in this, as in the other case, out of the meaning of general terms equally comprehending them. This treaty proves also, that as early as 1670, colonies began to fall under attention in making treaties.

In a marine treaty of December 1, 1674, with the United Provinces, stating in the title that it was "to be observed throughout *all and every the countries and ports of the world* by sea and land," it is stipulated again, in Art. I, to be "lawful for all and every the subjects of the most serene and mighty prince, the King of Great Britain, with *all freedom* and safety to sail, trade, and exercise any manner of traffic *in all those kingdoms, countries, and estates*, which are, or any time hereafter shall be in peace, amity, or neutrality with his said majesty; so that they shall not be any ways hindered or molested in their navigation or trade, by the military forces, nor by the ships of war, or any kind of vessels whatsoever, belonging either to the High and Mighty States General of the United Netherlands, or to their subjects, upon occasion or pretence of any hostility or difference which now is, or shall hereafter happen between the said Lords the States General, and any princes, or people whatsoever, in peace, amity, or neutrality with his said majesty;" and so reciprocally.

* Chalm., vol. 1, p. 85.

Art. II. "Nor shall this freedom of navigation and commerce be infringed by occasion or cause of any war, in any kind of merchandizes, but shall extend to all commodities which may be carried in time of peace, those only excepted which follow in the next article, and are comprehended under the name of contraband."

Art. III enumerates the articles of contraband.

Art. IV contains a negative list, which, with *all* other articles not expressly included in the list of contraband, may be *freely* transported and carried to *places under the obedience of enemies*,* except only towns or places besieged, environed, or invested.†

This recital has been made the more minute, because it is necessary, in order to understand the whole force of the explanatory declaration between the parties bearing the same date; a document so peculiarly important in the present discussion, that its contents will be recited with equal exactness.

This document, after stating "that some difficulty had arisen concerning the interpretation of certain articles, as well in the treaty marine concluded this first day of December, 1674, as in that which was concluded the 17th February, 1667—8, between his majesty of Great Britain on the one part, and the States General, &c., on the other part," proceeds to state "that Sir William Temple, &c., on one part with eight commissioners on the other, have declared, and do by these presents declare, that the true meaning and intention of the said articles is, and ought to be, that ships and vessels belonging to the subjects of either of the parties, can and might, from the time that the said arti-

* That this treaty stipulated the rights of neutrals in the extent which it is cited to prove, is acknowledged by the British government, in the letter of Secretary Fox, of May 4, 1782, to M. Simolin the Russian Minister at London, in which this treaty is referred to as the basis of a reconciliation with Holland, and as "a treaty by which the principles of the armed neutrality are established in their widest extent." The first article in the armed neutrality asserts the neutral right in question, and on that ground has been always combated by British writers, and in Parliamentary discussions. In the debate in the House of Commons on the treaty of 1786, with France, Mr. Fox took an occasion to remark that what was then done had "the unanimous consent of his Majesty's Council."

† Chalm., vol. 1, p. 177—179.

cles were concluded, not only pass, traffic and trade, from a neutral port or place, to a place in enmity with the other party, or from a place in enmity to a neutral place, but also from a port or place in enmity to a port or place in enmity with the other party, whether the said places belong to one and the same prince or State, or to several princes or States, with whom the other party is in war. And we declare that this is the true and genuine sense and meaning of the said articles; pursuant whereunto we understand that the said articles are to be observed and executed on all occasions, on the part of his said majesty, and the said States General, and their respective subjects; yet so that this declaration shall not be alleged by either party for matters which happened before the conclusion of the late peace in the month of February, 1673—4.*

Prior to the peace, neither of them could claim the rights of neutrality against the other.

This declaratory stipulation has been said to be peculiarly important. It is so for several reasons:

1st. Because it determines the right of the neutral party, so far as may depend on the belligerent party, to trade not only between its own ports and those of the enemies of the belligerent party, without any exception of colonies, but between any other neutral port and enemies' ports, without exception of colonial ports of the enemy; and moreover, not only between the ports, colonial as well as others, of one enemy and another enemy, but between the different ports of the same enemy; and consequently between one port and another of the principal country; between these and the ports of its colonies; between the ports of one colony and another; and even to carry on the coasting trade of any particular colony.

2d. Because it fixes the meaning not only of the articles in the two specified treaties; but has the same effect on all other stipulations by Great Britain, expressed in the same or equivalent terms; one or other of which are used in most, if not all her treaties on this subject.

* Chalm., vol. I, p. 189.

3d. Because it made a part of the treaties explained, that free ships should make free goods; and consequently, the coasting and colonial trade, when combined with that neutral advantage, was the less likely to be acknowledged, if not considered as clearly belonging to the neutral party.

4th. Because the explanatory article was the result of the* *solicitation* of England *herself*, and she actually claimed and enjoyed the benefit of the article, she being at the time in peace, and the Dutch in war with France.†

In the treaty with France, February 24, 1677, Articles I, II, and III, import that each party may trade freely with the enemies of the other, with the same merchandize as in time of peace, contraband goods only excepted, and that all merchandizes not contraband "are free to be carried from any port in neutrality, to the port of an enemy, and from one port of an enemy to another; towns besieged, blocked up or invested, only excepted."‡

In 1689, England entered into the convention with Holland, prohibiting *all* neutral commerce with France, then the enemy of both.¶ In consequence of the counter treaty of Sweden and Denmark, for defending their neutral rights against this violent measure, satisfaction was made, according to Vattel, for the ships taken from them; without the slightest evidence, as far as can be traced, that any attempt was made by either of the belligerent parties, to introduce the distinction between such part of the trade interrupted, as might not have been allowed before the war, and as was therefore unlawful, and such part as having been allowed before the war, might not lawfully be subject to capture.

We are now arrived at the treaties of Utrecht, an epoch so important in the history of Europe, and so essentially influ-

* See Sir William Temple's correspondence with his government, vol. 4, p. 55, of his works, where the success of his efforts, made with the sanction of his government, is particularly rehearsed.

† See memorial of Dutch merchants in the Annual Register for 1778. These treaties remained in force for more than a century, viz: from 1674, to the war with the United Provinces in 1781.

‡ Jenkinson, vol. 1, p. 209.

¶ *Id.*, vol. 1, p. 209.

encing the conventional law of nations, on the subject of neutral commerce.

The treaty of navigation and commerce, March 31, 1713, between Great Britain and France, Article XVII, imports, that all the subjects of each party shall sail with their ships with all manner of liberty and security, no distinction being made who are the proprietors of the merchandizes laden thereon, from *any port*, to the places of those who now are, or shall hereafter be, at enmity with the queen of Great Britain and the Christian king," and "to trade with the same liberty and security from the places, ports and havens of those who are enemies of both or of either party, without any opposition or disturbance whatsoever, not only directly from the places of the enemy aforementioned to neutral places, but also *from one place* belonging to an enemy, *to another place* belonging to an enemy, whether they be under the jurisdiction of the same prince or under several."

Art. XVIII. "This liberty of navigation and commerce, shall extend to all kind of merchandizes, excepting those only which follow in the next article, and which are specified by the name of contraband."

Art. XIX gives a list of contraband, which is limited to war-like instruments.

Art. XX specifies others, many of which are in other treaties on the list of contraband, declaring that these with all other goods, not in the list of contraband in the preceding article, "may be carried and transported in the freest manner by the subjects of both confederates, even to places belonging to an enemy, such towns or places being only excepted as are at that time, besieged, blocked up round about, or invested."*

Could the principle maintained against Great Britain be more clearly laid down, or more strongly fortified by her sanction?

To give to this example the complete effect which it ought to have, several remarks are proper.

In the first place, on comparing the description given of the

* Chalm., vol. 1, p. 390.

free trade, which might be carried on between the neutral party and an enemy of the other party, with the description of the free trade allowed between the parties themselves, by the 1st article of the treaty, it appears that in order to except the colonial trade in the latter case, the freedom stipulated in Article I, is expressly limited to *Europe*. The terms are, "that there shall be a reciprocal and entirely perfect liberty of navigation and commerce between the subjects on each part, through all and every the kingdoms, States, dominions of their royal majesties *in Europe*." In the stipulation relating to the neutral commerce of either with the enemy of the other (who, if a maritime enemy, could not fail to possess colonies out of Europe) the terms are, "that all merchandizes, not contraband, may be carried in the freest manner to places belonging to an enemy, such towns or places only being excepted, as are at that time besieged or blockaded, &c.," without any limitation to Europe, or exception of colonies any where. It is obvious, that the terms here used comprehend all colonies, as much as the terms in the first article would have done, if colonies had not been excepted by limiting the freedom of trade to places "*in Europe*;" and consequently that if any distinction between the colonial and other places of an enemy, had been contemplated in the neutral trade of either party with him, as it was contemplated between the colonies and European possessions of the parties in their commerce to be carried on between themselves, the distinction would have been expressed in the latter case, as it was in the former; and not being so expressed, the trade in the latter case was to be as free to the colonies, as it would have been in the former, if the colonies had not been excepted by the limitation of the trade to Europe.*

Secondly. But the treaty not content with this necessary construction, in favor of a neutral commerce with the colonies of an enemy, proceeds, in conformity to the example in the declaratory convention between England and Holland in 1674, explicitly to declare the freedom of the neutral party, to trade not only from *any port*, to the places of an enemy, and from the

* There are other treaties to which this reasoning is applicable.

places of an enemy to neutral places, but also from *one place* to *another place* belonging to an enemy, whether the places be under the same or different sovereigns. Here both the coasting trade and the colonial trade, which, in relation to the parent country, is in the nature of a coasting trade, are both placed on the same footing with every other branch of commerce between neutral and belligerent parties, although it must have been well known, that both those branches are generally shut to foreigners in time of peace, and if opened at all, would be opened in time of war, and for the most part, on account of the war.

Thirdly. It is well known, that this particular treaty underwent great opposition and discussion, both without and within the British Parliament; and that it was for some time, under a legislative negative. Yet it does not appear, either from the public debates, or from the discussions of the press, as far as there has been an opportunity of consulting them, that the difficulty arose in the least from this part of the treaty. The contest seems to have turned wholly on other parts, and principally on the regulations of the immediate commerce between the two nations. This part of the treaty may be considered, therefore, as having received the complete sanction of Great Britain. Had it indeed been otherwise, the repeated sanctions given to it on subsequent occasions, would preclude her from making the least use of any repugnance shewn to it on this.

On the 28th November, 1713, a treaty of peace and another of commerce and navigation, were concluded at Utrecht with Spain, renewing and inserting the treaty of May 13th, 1667, the 21st and 26th Articles of which have been seen to coincide with the rules of neutral commerce, established by the treaty at Utrecht, between Great Britain and France.*

Genoa and Venice were comprehended in the treaty of Utrecht, between Great Britain and Spain.†

The above treaty of 1713, was confirmed by Article XII, of a treaty of December 3, 1715, between Great Britain and Spain.‡

From the above date to the treaty of 1748, at Aix la Cha-

* Chalm., vol. 2, p. 109.

† Id., vol. 2, p. 341.

‡ Id., vol. 2, p. 174.

pelle, the following treaties between England and other powers took place; in each of which, the principles established by her treaties at Utrecht, are reiterated:

With Sweden, January 21, 1720, Article XVIII.*

With Spain, June 13, 1721, Article II.—Confirming the treaty of 1667 and 1713.†

With France and Spain, November, 9, 1729, Article I.—Renewing all treaties of peace, of friendship, and of commerce, and consequently those of Utrecht.‡

With the Emperor of Germany and the United Netherlands, March 16, 1731, Article I.—Renewing all former treaties of peace, friendship, and alliance.∥

With Russia, December 2, 1734.—Stipulating in Article II, a free trade between either party and the enemy of the other, in all articles except munitions of war; and consequently articles permitted after, though not permitted before, the war.§

With Spain, (a convention,) January 14, 1739, Article I.—Reiterating among former treaties, those of 1667 and 1713, above cited.¶

The treaty of Aix la Chapelle concluded in 1748, forms another memorable epoch in the political system of Europe. The immediate parties to it were Great Britain, France, and the United Provinces.

The 3d** Art. of this treaty renews and confirms, among others, *the treaties of Utrecht*.††

This treaty was acceded to by Spain, Austria, Sardinia, Genoa, and Modena.

* Jenkinson, vol. 2, p. 263.

† Jenkinson, vol. 2, p. 265.

‡ Chalm., vol. 2, p. 200.

∥ Chalm., vol. 1, p. 312.

§ Azuni, vol. 2, p. 129.

¶ Jenkinson, vol. 2, p. 340.

** The treaty of *commerce* at Utrecht not being specially mentioned in that of Aix la Chapelle, it may, perhaps, be questioned, whether it be included in the confirmation. The question is of little consequence, as that treaty is expressly included in the confirmation of preceding treaties, by the treaties of Paris, 1763 and 1783.

†† Jenkinson, vol. 2, p. 374.

In 1763,* in the treaty between Great Britain, France, and Spain, to which Portugal acceded, the 1st Art. expressly renews and confirms, among other treaties, the treaties of peace and commerce at Utrecht.†

The treaty with Russia in 1766, Art. X, stipulates a free trade between either party, being neutral, and an enemy of the other, with the sole exception of military stores, and places actually blockaded.‡

In a convention with Denmark, July 4, 1780, explanatory of a list of contraband settled in a former treaty, it is expressly determined that merchandize not contraband, may be transported to *places* in possession of enemies, without any other exception than those besieged or blockaded.||

The treaty of peace in 1783 with France, by Art. II, renews and confirms, among others, the treaties of Westphalia in 1648, of Utrecht in 1713, of Aix la Chapelle in 1748, and of Paris, 1763; in all of which the neutral right, now denied by Great Britain, was formally sanctioned by her stipulations.§

In her treaty of the same date, with Spain, the same confirmation is repeated.¶

In the treaty of commerce again with France in 1786, deliberately undertaken in pursuance of Art. XVIII, of the treaty of 1783, the articles above recited from the treaty of Utrecht are inserted word for word; and thus received anew the most deliberate and formal sanction.—*Chalm.*, vol. 1, p. 350.

It may be here again remarked, that although this treaty underwent the most violent opposition in Great Britain, it does not appear that the opposition was at all directed against the articles on the subject of neutral commerce.

The treaty of 1786 was explained and altered in several par-

* If Great Britain had rested her captures of vessels trading with colonies of enemies, during the war of 1756, on the principle now asserted, this treaty relinquished the principle.

† Jenk., vol. 2, p. 180.

‡ Jenk., vol. 3, p. 228.

|| Chalm., vol. 1, p. 97.

§ Jenk., vol. 3, p. 337.

¶ Jenk., vol. 3, p. 377.

ticulars, by a convention bearing date August 31, 1787; without any appearance of dissatisfaction, on either side, with the articles on neutral commerce.

In the negotiations at Lisle, in 1797, it was proposed on the part of Great Britain, by her ambassador, Lord Malmesbury, to insert, as heretofore usual in the articles of peace, a confirmation of the treaties of Utrecht, Aix la Chapelle, &c., which was opposed by the French negotiators, for reasons foreign to the articles of those treaties in question.

On this occasion, Lord Malmesbury, in urging the proposed insertion, observed, "that those treaties had become the law of nations, and that if they were omitted* it might produce confusion." This fact is attested by the negotiations, as published by the British Government.†

If the treaties had become, or were founded in, the law of nations, such an omission, although it might be made a pretext for cavil between the parties, could certainly have no effect on the law of nations; and if the treaties expressed the law of nations on any subject at all, on what subject, it might be asked, have they been more explicit than on that of the maritime rights of neutrals?

This series of treaties, to which Great Britain is an immediate party, lengthy and strong as it is, has not exhausted the examples by which she stands self-condemned. One, in particular, remains for consideration; which, if it stood alone, ought forever to silence her pretensions. It is the treaty with Russia on the 5—17 of June, 1801.

A very important part of the treaty is the preamble:

"The mutual desire of his majesty the King of the United Kingdoms, &c., and his majesty the Emperor of all the Russias, being not only to come to an understanding between themselves with respect to the differences which have lately interrupted the good understanding and friendly relations which

* Those treaties were not inserted in the treaty of Amiens, probably for the reasons which prevailed at Lisle.

† See Lord Malmesbury's dispatch to Lord Grenville, dated 16th July, 1797.

“ subsist between the two States; but also to prevent, by frank
 “ and precise *explanations* upon the navigation of their respec-
 “ tive subjects, the renewal of similar altercations and troubles
 “ which might be the consequence of them; and the *common ob-*
 “ *ject* of the solicitude of their said majesties being to *settle*, as
 “ soon as can be done, an equitable arrangement of those differ-
 “ ences, and an *invariable determination* of their *principles* upon
 “ the *rights of neutrality*, in their application to their respective
 “ monarchies, in order to unite more closely the ties of friend-
 “ ship and good intercourse, &c., have named for their plenipo-
 “ tentiaries, &c., who have agreed,” &c.

With this declaratory preamble in view, attend to the follow-
 ing sections in Article III:

“ His Britannic majesty and his Imperial majesty of all the
 “ Russias having resolved to place under a sufficient safeguard
 “ the freedom of commerce and navigation of their subjects, in
 “ case one of them shall be at war while the other shall be neu-
 “ ter, have agreed;

“ 1st. That the ships of the *neutral power* may *navigate freely*
 to the ports and upon the coasts of the nations at war.

“ 2d. That the effects embarked on board *neutral ships* shall
 be *free*, with the exception of *contraband of war* and of *enemy's*
property; and it is agreed not to comprize under the *denomina-*
tion of the latter, the merchandize of the produce, growth, or
 manufactures of the *countries at war* which should have been
acquired by the subjects of the neutral power, and should be
transported on their account; which merchandize cannot be ex-
 cepted *in any case* from the freedom granted to the flag of the
 said power,” &c., &c.

These extracts will receive additional weight from the fol-
 lowing considerations:

First. This treaty, made with Russia, the power that took
 the lead in asserting the principles of the armed neutrality, was,
 with exceptions not affecting the point in question, acceded to
 by Sweden and Denmark, the two other European powers most
 deeply interested in, and attached to, those principles. It is a

treaty, therefore, of Great Britain, as to this particular point, as well as to most of the others, with Russia, Sweden, and Denmark.

Secondly. The treaty had for its great object, as appears by its adoption of so many of the definitions of the armed neutrality, to fix the law of nations on the several points therein, which had been so much contested; the three northern powers yielding the point of free ships, free goods; and Great Britain yielding to all of them, those relating to the coasting, as well as every other branch of neutral trade; to blockades, and to the mode of search; and yielding to Russia, moreover, the point relating to the limitation of contraband. With respect to the case of convoys, a case not comprehended in the armed neutrality of 1780, but of much subsequent litigation, and inserted in that of 1800; a modification, satisfactory to the northern Powers, was yielded by Great Britain; with a joint agreement that the subjects on both sides should be prohibited from carrying contraband or prohibited goods, according to an article in the armed neutrality of both dates.

Thirdly. The treaty is expressly declared to be an *invariable* determination [fixation] of their *principles* upon the *rights of neutrality*, in their application to their respective monarchies."

It cannot be pretended that this *stipulated* application of the rights of neutrality to the contracting parties, limits the *declaratory* effect, which is equally applicable to all neutral nations. *Principles* and *rights* must be the same in all cases, and in relation to all nations; and it would not be less absurd than it would be dishonorable, to profess one set of principles or rights in the law of nations towards one nation, and another set towards another nation.

If there be any parts of the treaty, to which this declaratory character is regarded as not applicable, it cannot be pretended that they are the parts relating to the rights of neutrals to trade *freely* to the *ports* and on *the coasts* of nations at war; because, as already observed, the main object of the treaty was to settle the questions involved in the armed neutrality; of which this was a primary one, and is here placed by the structure of the

article under the same precise stipulation, with the liability to confiscation, of enemy's property in neutral ships; a point above all others which Great Britain must have wished to consecrate as the law of nations, by declaratory acts for that purpose.

It cannot be pretended that the neutral rights here declared, do not extend to the colonial as well as coasting trade of belligerent nations, because the colonial trade is not only included in a "free trade to the ports and on the coasts" of such nations, but because it is expressly declared that the effects belonging to neutrals, and transported on their account from countries at war, cannot be excepted from the freedom of the neutral flag *in any case*, and consequently not *in the case of colonies*, more than any other portion of such countries. It is not improper to remark that this declaratory stipulation is not only included in the same article, which recognised the principle that enemy's property is excepted from the freedom of the neutral flag, but is associated with that recognition in the same section of the article, and even in the same sentence.*

If it were possible to controvert the construction here given

* The British government having become aware of the entire renunciation here made of her claim to intercept, in time of war, the commerce of neutrals with the colonies of her enemies, set on foot negotiations, with a view to new-model the stipulation. Nothing more, however, could be obtained from Russia than her concurrence in an explanatory declaration, dated October 20, of the same year, in the terms following: "In order to prevent any doubt or misunderstanding with regard to the contents of the second section of the third article of the convention, concluded 5—17 June, 1801, between his *Britannic Majesty* and his Majesty the Emperor of all the *Russias*, the said high contracting parties have agreed and declare, that the freedom of commerce and navigation granted by the said article to the subjects of a neutral power, [in the column in French, *de la puissance neutre*,] does not authorize them to carry in time of war, the produce and merchandize of the colonies of the belligerent power direct to the continental possessions; nor *vice versa* from the mother country to the enemy's colonies; but that the said subjects are, however, to enjoy the same advantages and facilities in this commerce, as are enjoyed by the most favored nations, and especially by the *United States of America*."

In this declaration it will be observed, that it excepts from the general right of the neutral party to trade with the colonies of an enemy, merely the *direct* trade between the colony and the mother country. It leaves consequently, and *recognises* to the neutral party, 1, an *indirect* trade between the mother country and her colonies—2d, the trade between one belligerent country and the colo-

to the treaty, a reference might be made to a very able speech delivered by Lord Grenville in the British House of Lords in November 1801, in which this very construction is fully demonstrated. The demonstration is rendered the more striking by the embarrassed and feeble opposition made to it by the ingenuity of the very able speakers who entered the list against him.*

nies of another—3d, the trade between the neutral party itself, and enemy colonies—4th, the trade between such colonies and any other neutral country.

Another observation is, that as the distinction made between the particular trade excepted and the other branches of colonial trade, is not deducible by any possible construction, from the terms of the original text, it must be understood to be a compromise of expediency, on the part of Russia, rather than a derogation from the principle on which the general right is founded.

It is to be further observed, that even the particular exception is abridged by an agreement on the part of Great Britain, that in case a *direct* trade between an enemy country and its colonies should be enjoyed by any other neutral country, equal advantages and facilities shall be extended to Russia.

It may be still further observed, that the reference to advantages and facilities, as they may be enjoyed by neutral nations, particularly the *United States*, seems to imply that the United States at least, (who are indeed alluded to by Sir William Scott, as a nation particularly favored by France—2 Rob. Rep., 168; 4 Rob. Rep. Append., p. 4,) furnished an example of such a state of things; and as no such state of things was applicable to them, but that arising from regulations of France, which, being prior to the war of 1793, authorised on the British principle itself, a like trade by the United States during the war, it follows that all captures and condemnations of American vessels trading between France and her colonies under those regulations, were on the British principle itself illegal, and ought to be indemnified.

Lastly, it may be observed, that the treaty to which this explanatory declaration relates, was accepted and ratified by Sweden and Denmark, and that these two powers are not parties to the declaration. If they afterwards became parties, it is more than is known. The observations, of which the declaration has been found susceptible, must, indeed, render the fact of little consequence in any point of view.

* For the speech, see a pamphlet entitled, "Substance of the Speech delivered by Lord Grenville in the House of Lords, November 13, 1801." The object of his Lordship was to make it appear that the treaty had abandoned certain maritime doctrines of Great Britain; among others the doctrine relating to the trade of neutrals with the colonies, and on the coasts of nations at war. This he has done with the most complete success. With respect to the legality of the doctrine, he assumes, rather than attempts to prove it. Had he employed in the latter investigation the same abilities and candor, which distinguish his discussion of the meaning of the treaty, he could not have failed to be as much convinced

Such is the accumulated and irresistible testimony borne by Great Britain, in her own treaties, against the doctrine asserted by her.

It will be in order now to resume the notice of treaties to which she was not a party, but which authorize some inferences and observations contributing still further, if possible, to invalidate her novel pretensions.

of the illegality of the doctrine abandoned, as he was of the abandonment itself. For the very lame replies made by other speakers, see Annual Register for 1802, chap. 4.

An anonymous author of six ingenious letters in vindication of the treaty attempts a distinction between its meaning and that of the armed neutralities, with a view to reconcile the former with the British doctrine.

In the two treaties of armed neutrality in 1780 and 1800, the neutral right to trade with a party at war, is expressed as follows: "to navigate freely from port to port, and on the coasts of nations at war."

In this treaty with Russia, the right is expressed with the following difference of terms: "to navigate freely to the ports, and upon the coasts of the nations at war."

The author of the letters contends that the trade "from port to port" means a neutral trade in the purchased produce of the belligerent country carried coastwise; whereas to trade on the coasts of the belligerent, means nothing more than to proceed from one port to another, in making successive deliveries of the neutral cargo transported to the belligerent country.

The answer is simple as it is conclusive. To navigate on the coast is to navigate from port to port. This is its plain meaning. The distinction between neutral property carried to the belligerent country, and property acquired by a neutral in the belligerent country, is suggested neither by the distinct modes of expression, nor by any circumstance whatever affecting the interpretation of them. The distinction is purely arbitrary. It would not be more so if the different meanings which it assigns to these different phrases, were transposed. To navigate or trade from port to port, must mean to trade on the coasts; and to trade on the coast, is a coasting trade. It may be added, that the distinction and inference attempted, are contradicted both by the general scope of the treaty, and by the terms of Art. 3, §. 2.

Were the criticism allowed all the force which the author claims for it, he would still give up more than he would gain. For the Russian treaty affirms the right to navigate freely to the ports of those at war, without excepting the colonies. The trade would therefore remain free between all neutral and colonial ports, and the neutral trade between a belligerent and its colonies, would be unlawful on no other ground but that it was merely a coasting trade, without any of those peculiarities often ascribed to the colonial trade by the advocates for the British principle.

From the aspect of the letters, it may be conjectured that they were not writ-

The review heretofore taken of this class of treaties was limited to such as preceded the armed neutrality. Those now to be added, are principally the treaties and conventions entered into in the years 1780 and 1800.

The treaties of 1780 declare the right of neutrals in the case under discussion, in the following terms: "that all vessels shall be permitted to navigate from port to port, and on the coasts of the belligerent powers." Those of 1800 are in terms too little varied to require recital.

It has never been questioned, that these definitions of the neutral right were as applicable to colonies as to any other of the territories belonging to a belligerent nation. All the British writers have so understood the text, and in that sense, have employed their pens against it.

It need scarcely be remarked that the treaties in question were framed with a view, not of making a new law of nations, but of declaring and asserting the law as it actually stood. The preamble to the convention of 1800, for the re-establishment of an armed neutrality between Russia and Sweden, explains the object in the terms following: "In order that the freedom of navigation and the security of merchandize of the neutral powers may be established, and *the principles* of the law of nations be fully *ascertained*, &c."

The preamble to the convention of 1780, states the principles avowed by the parties to be the principles derived from the primitive rights of nations."

The treaty of 1780 was originally concluded between Russia and Denmark. But it was acceded to by Sweden, Prussia, the United Provinces, Austria, Portugal and Naples; and in effect, by France and Spain. The principles of the treaty had the sanction also of the United States of America in their cruising ordinances. Thus it is seen, that with the exception of Great

ten without a knowledge of the views of the government; and that they were intended to give colour to the distinction on which the explanatory declaration above cited is founded; whether as a measure actually concluded, or projected only, does not appear, the letters having no date in the edition which has appeared in this country.

Britain alone, all the powers of Europe, materially interested in the maritime law of nations, have given a recent and repeated sanction to the right of neutrals to trade freely with every part of the countries at war. And although several of those nations have, on some of the points contained in these treaties, as on the points of contraband and enemy's property under neutral flags, entered since into adverse stipulations; not one of them has by treaty or otherwise relinquished the particular right under consideration,* whilst Great Britain, as we have seen in her treaty with Russia, has herself, expressly acceded to the right.

The importance of treaties in deciding the law of nations, or that portion of it, which is founded in the consent of nations, will justify the extent which has been given to this review of them; and the conclusion which this review justifies is, that the tenor of treaties, throughout the whole period deserving attention, confirms the neutral right contended for; that for more than one and a half centuries, Great Britain has, without any other interruptions that those produced by her wars with particular nations, been at all times bound by her treaties with the principal maritime nations of the world, to respect this right; and what is truly remarkable, that throughout the long period of time, and the voluminous collection of treaties, through which the research has been carried, a single treaty only (putting aside the explanatory article between Great Britain and Russia, noted above) has occurred, which forms an exception to the general mass.

The exception will be found in an article of a Danish treaty of June, 1691,† with England and Holland. In that article

* On the contrary these rights have been repeated in the following treaties subsequent to those of the armed neutrality, namely, Russia and Denmark, 8—19 October, 1782—Art. 16, 17, 2 Martens' treaties, p. 290. Same and the Porte, 10—21 June, 1783—Art. 39, *ib.*, p. 392. France and Holland, 10th November, 1785—Art. 8, *ib.*, p. 616. Austria and Russia in the year 1785—Art. 12, *ib.*, p. 624. France and same, 31st December, 1786—11th Jan., 1787—Art. 26—7, 3 Mart. treat., p. 15. Russia and the king of the Two Sicilies, 6—17 January, 1787—Art. 18, *ib.*, p. 44. Portugal and Russia, 9—20 December, 1787—Art. 22, *ib.*, p. 117.

† Dum., Tom. 7, par. 2, p. 293.

(the 3d) though somewhat obscure, either from inaccuracy in the original text, or in the printed copy, it seems that Denmark relinquished her neutral right of commerce between the ports of France, then at war with the other parties. But this exception, instead of availing in any respect the belligerent claim in question, corroborates the testimony furnished by treaties against it; as will appear from the following observations:

1st. In other parts of the treaty, there are stipulations favorable to Denmark, which may have been regarded as some compensation for the restriction imposed on herself.

2d. Admitting, however, the restriction to have been made without any compensating advantages; the sacrifice might fairly be ascribed to the dreadful oppressions on the Danish commerce, practised by England and Holland, and to the desire of Denmark, as a weaker power, to effect some mitigation of her sufferings. These sufferings cannot be better explained, than by an extract from the preamble to a treaty concluded in 1693, between Denmark and Sweden, for the purpose of putting in force a preconcerted plan of reprisals. "Although their majesties, the kings of Sweden and Denmark had hoped, that after they had concluded their treaty of March, 1691, for maintaining their navigation and commerce, the many unjust piracies exercised on their subjects, would at length have ceased; they have nevertheless been grieved to find that, notwithstanding the reclamations and remonstrances which they have from time to time made to the parties engaged in the war, in order that an end might be put to them, they have rather increased and augmented, even to a point that it is in a manner impossible to express, the pretexts, the artifices, the inventions, the violences, the chicaneries, the processes which have been practised, not only against the vessels and goods of the subjects of their majesties, but also against their public convoys, to the prejudice of the customs and tolls of their majesties, to the considerable diminution of their duties and imports, and to the irreparable injury of their kingdoms and provinces, the subjects of which have suffered and lost infinitely, in their persons, their crews,

their vessels, goods and merchandizes. Hence it is that their majesties have been obliged, &c.”

Distresses, such as are here painted, might sufficiently account for concessions on the part of a sufferer, without supposing them to flow from a deliberate or voluntary acquiescence in the principle on which they were founded.

3. But admitting the stipulation to have been both gratuitous and deliberate, and to form a fair exception to the general rule of treaties, still being but a single exception to stipulations as numerous and as uniform as have been brought into view, the exception must be considered as having all the effect in confirming the general rule, which can be ascribed, in any case, to a confirmation of that sort.

4. The exception is limited to a trade between one French port and another. It implies, therefore, and recognizes a freedom of trade between foreign and French ports, as well colonial as others.

To this ample sanction, drawn from the conventional monuments of Europe, it will be allowable to add the testimony of the only nation at once civilized and independent, in the American hemisphere. The United States have, or have had, treaties with France, Holland, Sweden, Russia, Spain, and Great Britain.* In all of these, except the treaty with Great Britain, they have positively maintained the principle that neutrals may trade freely between neutral and belligerent ports, and between one belligerent port and another, whether under the same or different jurisdictions; and the treaty with Great Britain contained not even an implication against the principle. It merely omitted a stipulation on the subject, as it did on many others, contained in other treaties.†

* To these might be added their treaties with the coast of Barbary, which are all favorable to the neutral rights of commerce. So are various treaties of Great Britain, and of the other powers of Europe, with that coast and with the Ottoman Porte; all of which, as well as those with the Asiatic powers, it was thought most proper to omit in this enquiry.

† One of the results of that treaty comprehends a most important sanction from Great Britain, against the doctrine asserted by her. The 7th Article of the

The Conduct of other Nations.

The evidence from this source is merely negative; but is not on that account without a convincing effect. If the doctrine advanced by Great Britain had been entertained by other nations, it would have been seen in the documents, corresponding with those which contain the British doctrine. Yet, with all the research which could be employed, no indication has been met with, that a single nation, besides herself, has founded on the distinction between a trade permitted and a trade not permitted in time of peace, a belligerent right to interrupt the trade in time of war. The distinction can be traced neither in their diplomatic discussions, nor their manifestoes, nor their prize ordinances, nor their instructions to their cruisers, nor in the decisions of their maritime courts. If the distinction had been asserted or recognized, it could not fail to have exhibited itself, in some or other of those documents. Having done so in none

treaty stipulated a compensation to citizens of the United States, for the damages sustained from irregular and illegal captures, and established a joint board of 5 commissioners, to decide on all claims, according to equity, justice, and the *law of nations*. These claims were founded in a very great degree on captures authorized by the British instructions of November 6, 1793, and depending, therefore, on the question whether a neutral trade with belligerent colonies, shut in time of peace, was a lawful trade in time of war. The board, on a full consideration, reversed the sentences pronounced, even by the admiralty tribunal in the last resort, in pursuance of those instructions; and consequently, as the commissioners were guided by the law of nations, the reversal decided that the instructions and the principle on which they were founded, were contrary to the law of nations. The joint commissioners were appointed, two by each of the parties, and the 5th by lot, which fell on an American citizen. Whether the British commissioners concurred in the decision, does not appear. But whether they did, or did not, the decision was equally binding; and affords a precedent of great weight in all similar controversies, between the two nations. Nor is the authority of the case impeached by the circumstance, that the casting voice was in an American citizen; first, because he was selected and nominated by the British side as an American candidate, possessing their confidence; secondly, because as a man, he was highly distinguished for the qualities fitting him for so independent a station; thirdly, because a joint tribunal so composed, must in every point of view, be less liable to improper bias, than a tribunal established by, and dependent on the orders of one of the parties only.

of them, the inference cannot be contested, that Great Britain is the only nation that has ever attempted this momentous innovation on the law of nations.

Conduct of Great Britain. *

If it be not enough to have shewn, that the belligerent claim asserted by Great Britain is condemned by all the highest authorities on the law of nations, by the clearest testimony of treaties among all the principal maritime nations of the world, herself included, and by the practice of all other nations; she cannot surely demur to the example of her own proceedings. And it is here, perhaps, more than any where else, that the claim ought to shrink from examination. It will be seen, in the course of the following observations, that Great Britain is compelled, under every appeal that can be made to herself, to pronounce her own condemnation; and what is much worse, that the innovation, which she endeavors to enforce as a right of war, is under that name a mere project for extending the field of maritime capture, and multiplying the sources of commercial aggrandizement; a warfare, in fact, against the commerce of her friends, and a monopolizing grasp at that of her enemies.

1st. Whilst Great Britain denies to her enemies a right to relax their laws in favor of neutral commerce, she relaxes her own, those relating as well to her colonial trade, as to other branches.

2d. Whilst she denies to neutrals the right to trade with the colonies of her enemies, she trades herself with her enemies, and invites them to trade with her colonies.

1st. That Great Britain relaxes in time of war her trade laws, both with respect to her colonies and to herself, is a fact which need not be proved, because it is not denied. A review of the progress and modifications of these relaxations will be found in Reeves'* *Law of Shipping and Navigation*; and in the

* "This is all that I have been able to collect, for illustrating the rules laid down, in the act of navigation and of frauds, for the conduct of the European

successive orders of the British council, admitting in time of war neutral vessels, as well as neutral supplies, into her West India colonies. It will not be improper, however, to shew, that in these relaxations of her peace system, she has been governed by the same policy of eluding the pressures of war, and of transferring her merchant ships and mariners from the pursuits of commerce to the operations of war, which she represents as rendering unlawful the like relaxations of her enemies.

The object of dispensing, in time of war, with the navigation act, was avowed by the legislature itself, in the preamble to one of its acts, which was passed not long after the navigation act was adopted. The preamble recites, "And whereas by the laws

trade. And having now taken a view of the policy pursued for rendering the foreign trade of the whole world subservient to the increase of our shipping and navigation, I shall draw the reader's attention to another part of the subject; and present to him the instances in which this spirit of prescribing the mode of carrying on foreign trade has been *compelled to yield*, and the execution of our navigation laws has been suspended, lest, in the attempt to enforce them, our commerce might be extinguished, or greatly endangered.

"The laws of navigation, like other laws, have given way to *necessity*; and have been suspended *in time of war*. During the dread of continual danger from an enemy at sea, it is well if foreign trade can be carried on at all; it is no time to be curious as to the built of the ship that is employed in it, how it is navigated, or whence it comes. At such conjunctures *it has been usual*, more or less, to suspend the act of navigation: the first instance of this was in the Dutch war, in the reign of Charles II.

"It was then done, as was common in *those times*, by the prerogative exercised by the crown, of dispensing with laws upon urgent occasions. On the 6th March, 1664, it was found *necessary* to issue an order of council for suspending the act of navigation wholly, as far as regarded the import and export of Norway, and the Baltic sea, and as far as regarded Germany, Flanders, and France, provided the merchants and the owners of the ships were natural-born subjects: it was further permitted to any one of a nation in amity to import from any parts, hemp, pitch, tar, masts, saltpetre, and copper, and to pay duty only as natural-born subjects. English merchants were permitted to *employ foreign ships* in the *coasting* and *plantation trade*; but they were to comply with the restriction of shipping in, and bringing their cargoes to England or Ireland.

"This was letting loose at once most of the restrictions belonging to our navigation system, and throwing it *among the rest of Europe*, to make the best of it, *during the time we were unable* to follow up the plan we had proposed to ourselves.

"In the war of 1740, when we had a war with both France and Spain, it was again *necessary* to relax from the strictness of our navigation laws; but it was

“ now in force, the navigating of ships or vessels in divers cases, “ is required to be, the master and three-fourth parts of the “ mariners being English, under divers penalties and forfeitures “ therein contained: And whereas great numbers of seamen are “ employed in her majesty’s service for the *manning of the Royal “ Navy*, so that it is become *necessary*, during the *present war*, “ to dispense with the said laws, and to allow a *greater num- “ ber of foreign mariners* for the *carrying on of trade and com- “ merce*: Be it enacted, &c., that during the present war,” &c.

Without pursuing the series of similar recitals during successive wars, one other example of later date will be given, in which the same object is avowed. The preamble of 13 G. 2, Ch. 3, is in the following words: “For the better supply of mariners and seamen to serve in his majesty’s ships of war, and on board merchant ships and other trading vessels and priva-

endeavored to be done in such a way as would facilitate the carrying on of our trade, without wholly giving up the favorite object of British shipping; and this was, by permitting foreigners to become owners of British ships, and to trade as British subjects.

“In the war with France, beginning in the year 1756, the like law was passed, to continue during that war; and again in the year 1779, during the continuance of the then subsisting *hostilities with France*.

“In these temporary expedients, we may trace the progressive increase of British shipping. In the Dutch war of 1664, the nation were obliged at once to abandon the Baltic trade, and to admit *foreign ships into the coasting and plantation trade*. But in the war of 1740 we made no other concession than that of admitting foreigners into the ownership of British-built ships, and to navigate with foreign seamen for carrying the European commodities to this country and *to the plantations*. This was also done in the war of 1756, and in the last war. However, in the last war, pressed as our trade was on all sides, we were *compelled* to yield a little further. Many articles of the trade of Asia, Africa, and America, were permitted to be brought *from any place*, in *any ships* belonging to a nation in amity. But in neither of these wars, not even in the last, when we had the maritime powers of both worlds to cope with, Spain, France, Holland, and America, did we allow foreign ships to participate in the coasting or in the plantation trade.”—*Reeves’ Law of Shipping and Navigation, part 2, chap. 3.*

The reason for not then opening the plantation trade is obvious. The only country furnishing the articles needed, was this country, with which Great Britain was then at war.

In the wars of Great Britain, since the United States have been a neutral country, her colonial trade has been opened to them.

teers, and for the better carrying on the present or any future war, and the trade of Great Britain during the continuance thereof," &c.

The British orders of council, and proclamations of governors, issued from time to time during war, and opening, on account of war, the colonial trade to neutrals, in cases where it was shut to them in times of peace, are too well known to require particular recital or reference. Orders to that effect are now in operation; and fully justify the position, that, as well in the case of the colonial trade as of the trade with the parent country, the same thing is done by Great Britain herself, which she denies the right of doing to her enemies.

2d. That she trades with her enemies, and invites them to trade with herself, during war, are facts equally certain and notorious.

The efforts of Great Britain to maintain a trade at all times with the colonies of other nations, particularly of Spain, both in peace and in war, and both by force, and clandestinely, are abundantly attested by her own, as well as other historians. The two historians of Jamaica, Long and Edwards, are alone sufficient authorities on the subject.

It has been already noticed, that, in the infancy of her beligerent pretension against the trade of neutrals with the colonies of her enemies, she favored, by special licences, a trade of her own subjects with the same colonies.

The like inconsistency might be verified by a train of examples since the pretension was, during the war of 1793, brought again into action. But it would be a waste of time to multiply proofs of what is avowed and proclaimed to all the world by her acts of parliament; particularly by the act of June 27, 1805, "to consolidate and extend the provisions respecting the free ports in the West Indies."

This act establishes certain free ports in Jamaica, Grenada, Dominica, Antigua, Trinidad, Tobago, Tortola, New Providence, Crooked Island, St. Vincent's, and Bermuda. These ports, distributed throughout the West Indies, with a view to the most convenient intercourse with the colonies, and settlements of her enemies in that quarter, are laid open to all the

valuable productions thereof, and to small vessels with single decks, belonging to, and navigated by, inhabitants of such colonies and settlements. In like manner, the enemies of Great Britain are allowed to export from the enumerated ports, rum, negroes, and all goods, *wares*, and *merchandizes*, excepting naval stores, which shall have been imported thither in British vessels. Provision is, at the same time, made for the re-exportation, in British vessels, of the enumerated productions imported from the colonies and settlements of her enemies, to Great Britain and her possessions, according to the regulations prescribed by her navigation act.

In pursuance of the same principle exercised in her laws, we find her entering into a treaty in time of war, which, in one of its articles, opened a branch of colonial trade to neutrals not open to them in time of peace, and which being to continue in force only two years after the end of the war, may be considered as made in effect for the war.

The 12th Article of the treaty with the United States in 1794, stipulated that American vessels not exceeding a given size, may trade between the ports of the United States and the British West Indies, in cases prohibited to them by the colonial system in times of peace. This article, it is true, was frustrated by the refusal of the United States to ratify it; but the refusal did not proceed from any supposed illegality of the stipulation. On the part of Great Britain the article had a deliberate and regular sanction; and as it would not have been a lawful stipulation, but on the supposition that a trade not open in peace may be opened in war, the conduct of Great Britain, in this case also, is at variance with the rule she lays down for others.

But a most interesting view of the conduct of Great Britain will be presented by a history of the novel principle which she is endeavoring to interpolate into the code of public law, and by an examination of the fallacies and inconsistencies to which her Government and her courts have resorted, in maintaining the principle.

It is a material fact that the principle was never asserted or enforced by her against other nations, before the war of 1756.

That at the commencement of the preceding war of 1739, it

did not occur, even to the ingenuity of British statesmen labouring for parliamentary topics of argument, is proved by the debate which, on that occasion, took place in the House of Lords.

In the course of the debate on the expediency of the war, this particular point having fallen under consideration, the following observations were made by Lord Hervey against the war:

“Some people may perhaps imagine that great advantages might be made by our intercepting the Spanish plate fleets, or the ships that are employed in the trade with their settlements in America, because no Spanish ships can be employed in that trade; but even this would be precarious, and might in several shapes be entirely prevented; for if they should open that trade to the French and Dutch, it is what those two nations would be glad to accept of, and *we could not pretend to make prize of a French or Dutch ship on account of her being bound to or from the SPANISH SETTLEMENTS IN AMERICA, no more than we could make prize of her on account of her being bound to or from any port IN SPAIN.* We could not so much as pretend to seize any treasure or goods (except contraband she had on board) unless we could prove that those goods or treasure actually belonged to the King or subjects of Spain. Thus the Spanish treasure and effects might safely be brought, &c.”

Lord Bathurst in answer:

“We may do the Spaniards much damage by privateering, &c. If they bring their treasure home in flotas, we intercept them by our squadrons; if in single ships our privateers take them. They cannot bring it home either in French or Dutch ships,* because by the 6th Article of the treaty of Utrecht, the King of France is expressly obliged not to accept of any other

* It was overlooked by both sides in the discussion, that the neutral right to trade with the coasts and colonies of an enemy; and even to cover the property of an enemy, was stipulated by Great Britain to France, in the treaty of Utrecht, 1713, then in force, and to the Dutch in the treaty of 1674, then also in force. If it be said that the omission to notice these treaties was deliberate, and proceeded from a construction of the treaties which excluded from their purview, the colonial trade of an enemy, this presumed accuracy and deliberation of the speakers would strengthen the inference from the omission to cite the principle in question, that the principle was unknown to or disclaimed by them.

usage of navigation to Spain and the Spanish Indies, than what was practised in the reign of Charles II, of Spain, or than what shall likewise be fully given and granted at the same time to other nations and people concerned in trade. *Therefore*, the Spaniards could not lay the trade in America open to the French, or at least the French could not accept of it; and if the Dutch should, they would be *opposed by France as well as by us*; an opposition they would not, I believe, chuse to struggle with.”*

Through the whole of the debate the subject is taken up, not on the ground of a belligerent right, or of a neutral duty, but merely on that of commercial jealousy and policy. Had the distinction between a trade allowed in peace as well as war, and a trade allowed in war only, been maintained by British statesmen then, as it is maintained by them now, the same ready answer would have been given then, as in a like discussion, would be given now, viz: that neither France nor Holland could enter into a trade with the Spanish colonies, because, being a trade not open in time of peace, it could not be laid open in time of war.

In the debates also, which took place in the House of Lords, concerning the Spanish captures in America, and the war which followed, several of the Lords in their speeches lay down in detail, the cases in which belligerent nations may search, capture, and confiscate neutral vessels in time of war; yet, although colonial trade was the immediate subject of discussion, the distinction now employed, seems never to have entered into the thoughts of the speakers.

Again, in the course of this war to which France became a party on the side of Spain in 1744, it appears that the tribunals of Great Britain proceeded on the same principle, that the trade of neutrals with the colonies of her enemies, though not open in time of peace, might be a lawful trade in time of war. For this there is the testimony of Robinson’s reports, in which it is stated, that ships taken on a voyage from the French colonies, were released before the Lords of Appeal.†

We find then, that prior to the war of 1756, this belligerent

* 6 Lords’ debates, 136, 154.

† 2 Rob., 122, Am. edit.

claim of attacking all neutral commerce not permitted in time of peace, a claim so broad in its principle and so baneful in its operation, never had a place among the multiplied pretensions enforced by power, or suggested by avarice. At some times nations have been seen engaged in attempts to prevent all commerce whatever with their enemies; at others to extend the list of contraband to the most innocent and necessary articles of common interchange; at others to subject to condemnation both vessel and cargo, where either the one or the other was the property of an enemy; at others to make the hostility of the country producing the cargo, a cause of its confiscation. But at no time, as seems to be admitted by Sir William Scott himself,* was this encroachment on the rights of neutrality devised by any nation until the war of 1756. Then it was that the naval resources of Great Britain augmented by her prosperous commerce, more especially that of her then colonies, now the United States of America, gave her an ascendancy over all her rivals and enemies, and prompted those abuses which raised the voice of all Europe against her.

The first effect of this overgrown power was seen in the bold enterprize of seizing on the whole trade of France within her grasp, in contempt of all forms of commencing hostilities, required by the usage of nations. It was next seen in the extensive depredations on the trade of neutrals, particularly of the Dutch, in defiance not only of the law of nations, but of the most explicit stipulations of treaty. The losses of that single nation, within the first two years of the war, amounted to several millions sterling.† The Dutch, by their ambassador at London, remonstrated. The British ambassador at the Hague was instructed to enter into explanations. Among these it came out,‡ for the first time, that Great Britain meant, notwithstanding the admonitions of prudence as well as of justice, to deny the right of neutrals to carry on with her enemies any trade beyond the precise trade usually carried on in time of peace.

* In the case of the *Immanuel*, 2 Rob., 156. Am. edit.

† See Annual Reg., 1757—8.

‡ *Ibid.*, 1758.

The origin of this novel principle deserves a more particular development. The English Government had no sooner made war on the French commerce, than the Dutch began to avail themselves of their neutral and stipulated rights to enter into it; particularly the commerce of the colonies, both to their own ports, and to French ports. The English immediately made war on this commerce, as indeed they did on the commerce to Spain, Portugal, and other countries. The Dutch vessels were even pillaged on the high seas, and their seamen very badly treated. In the years 1757 and 1758 alone, the number of vessels captured and pillaged amounted to no less than three hundred; and the damages were estimated at eleven millions of florins, between five and six millions of dollars. The Dutch appealed to their treaties with England [those in 1674 and 1675] which made enemy's goods free in their ships, contraband only excepted, and the Dutch trade free from and to the enemy's ports, and from one enemy's port to another. The English were driven to the pretext, that the treaty of 1674 said only that the liberty of trade should extend to all merchandizes which were transported in *time of peace*, those of contraband excepted; and was, therefore, not applicable to the colonial trade in time of war. Besides that *the time of peace*, if it had been any thing more than a mode of expressing the entire freedom of commerce, could refer only to the *kind of merchandizes*, not to the *ports or channels* of trade, the Dutch were able to appeal to the declaratory treaty of 1675, which stipulated an unlimited freedom of trade *from and to* ports of enemies, without saying any thing as to times of peace. This admitting no reply, the English found no refuge but in the pretext, that the Dutch vessels, being engaged in the colonial trade, were to be *considered as French vessels*. This lucky thought eluded the stipulation that free ships make free goods, as well as that which embraced the right of trade on the coasts and with the colonies of enemies. It was alledged also, but with little seeming reliance on such an argument, that the commerce with the French islands was not known in 1674, and therefore could not be comprised in that treaty. These pretexts being very little satisfac-

tory to the Dutch, the Province of Holland, the chief sufferer, talked of reprisals. The English answer is in Tindal's Cont., vol. 9, p. 577—8. Undertaking to decide on a constitutional question within an independent nation, they said, if the Province of Holland, which had no authority, should fit out ships, they would be treated as pirates; and if the States General should do it, it would be taken as a declaration of war. Such was the birth of this spurious principle.

Being avowed, however, on the part of the Government, it was to be expected that it would have its effect on the courts of admiralty. As the decisions of these, during that period, were never reported, the best knowledge of them is to be gathered from references incidentally made to them, in the proceedings of other British courts, and in the proceedings of the high court of admiralty, since the reports of them have been published. The most precise information which has been obtained through the first channel, appears in the case of Berens vs. Rucker, before the court of King's bench, reported in 1 Blackstone, p. 313. This was the case of a Dutch ship which had taken in sugars at sea, off the Island of St. Eustatius, brought along side of her by French boats from a French island; which ship was captured in 1758, on her return with that cargo to Amsterdam. Lord Mansfield in pronouncing on the case in 1760, expressed himself as follows:

“ This capture was certainly unjust. The pretence was that part of this cargo was put on board off Saint Eustatius by French boats from a French island. This is now a *settled point* by the *lords of appeals* to be the *same thing* as if they had been *landed* on the Dutch shore, and then *put on board afterwards*, in which case there is no color for seizure. *The rule is*, that if a neutral ship trades to a French colony with *all the privileges* of a French ship, and is thus *adopted and naturalized*, it must be looked upon as a French ship, and is liable to be taken—not so, if she has only French produce on board, without taking it at a French port, *for it may be pursued of neutrals.*”

Here the ground of capture must be distinctly noted. It is not that the trade, as a trade allowed in war only, was unlawful, and thence incurred a forfeiture of both ship and cargo; the ground and measure of forfeiture, which are now alleged. The vessel is condemned on the ground, or presumption, that it had, by adoption, been made the *property of the enemy*; whilst the cargo is not liable to condemnation, if not proved to be enemy's property. In other words, the vessel is, in spite of the fact, presumed from the mere circumstance of navigating in a French channel, to be French property; and the cargo, although of French production, and found in a vessel looked upon as French, is notwithstanding these considerations, open to the presumption that it might be neutral property.

This shews only that the Herculean principle was at that time in its cradle; and that neither the extent of its powers, nor the wonders which it was to be called to perform, were at first understood. Its capacities were to be learnt and applied, as they might be unfolded by time and occasions. At that time, neutral vessels being admitted into new channels of French trade by grants of special licences to the vessels, the occasion was thought to be best answered with respect to the vessels, by the presumption, or rather the fiction, that they were French vessels; and with respect to the neutral cargo, as it did not fall precisely under the presumption applied to the vessels, it was left to escape until further time and occasions should teach the other shapes and uses, of which the innovation was susceptible.

These shapes and uses soon began to disclose themselves: for it appears from the references made in the case of the *Providentia*,* tried before Sir W. Scott in 1799, that French West India produce, conveyed by neutrals from Monte Christi, a Spanish neutral port, was, in the progress of the war of 1756, condemned, on the pretext that the intervention of a neutral port, was a fraudulent evasion of the rule which condemned the trade with a French port; notwithstanding the previous rule of the Lords of appeal, according to which the landing or even

* 2 Robinson, 120.

trans-shipment of such produce, at a neutral port, neutralized the trade, and made it lawful.

There is some obscurity, it must be owned, as to the principle on which a neutral trade with the French colonies was condemned, after the discontinuance of special licences; it being sometimes stated in the arguments referring to that period, that the condemnation was founded on the principle, that the trade was virtually or adoptively, a French trade; and sometimes, that it was founded on the general principle that it was a trade not open in time of peace. Certain it is, that the original principle was that of a virtual adoption, this principle being commensurate with the original occasion; and that, as soon as this original principle was found insufficient to reach the new occasions, a strong tendency was seen towards a variation of the principle, in order to bring the new occasions within its reach.

It is remarkable that, notwithstanding the broad principle asserted by the cabinet through its diplomatic organ at the Hague, which interdicted to neutrals every trade not allowed to them in time of peace, the courts of Admiralty not only limited the principle at first, and hesitated afterwards to extend it, in the manner which has been seen; but never undertook to apply it to the *coasting trade*; though so strongly marked as a peace monopoly, and therefore so clearly within the range of the principle; nor does it appear, even, that the principle was applied to the trade with the *Spanish* colonies, after Spain joined in the war, notwithstanding the rigorous monopoly under which they are known to be generally kept, in time of peace.

It is still more important to remark, as a proof of the inconsistency always resulting from false principles, and the indulgence of unjustifiable views, that the English themselves, if the *Annual Register* is to be believed, were actually trading, by means of flags of truce equivalent to licences, both directly with the French islands, and indirectly through Monte Christi, during the very period when they were confiscating the property of neutrals carrying on precisely the same trade, in the same manner.

Such is the state of the question as presented during the war

of 1756. The next enquiry relates to the war of the American Revolution, or the French war of 1778.

Here it is conceded on the British side, that the new principle was, throughout that period, entirely suspended. On the other side, it may be affirmed, that it was absolutely abandoned.

One proof is drawn from the course of decisions, in the British high court of Admiralty, by Sir James Marriott, the predecessor of Sir Wm. Scott.

The first volume only of his decisions has yet found its way to this country. In that are contained the cases referred to below;* all of which are adjudged on the principle, that the coasting trade, and of course every other branch of trade, not allowed to foreigners by a nation at peace, and which may be opened to neutral foreigners by such nation when at war, are lawful trades.

Although some of the ships, in these cases, were Danish, and others Dutch, and consequently within the stipulations of treaties which have been heretofore cited; yet there is no appearance that the Judge was guided in his decisions by that authority; nor is it in the least probable, that they will now be explained by a resort to it. But should such an attempt be made, it could be of no avail; because, among the cases, there are two, one of a Lubeck and the other of a Prussian vessel, which could be decided by no other rule than the general law of nations; there being no British treaty, with either Prussia or Lubeck, applicable to the question. There is another case, a *colonial* one too, decided 21st January, 1779, in which the law of nations must of necessity have been the sole guide. It was that of a French ship, bound from St. Domingo to Nantz. The general cargo, as well as the vessel, were condemned as enemies' property; reserving the question concerning the claims of considerable

* The Yonge Helena, a Dutch ship, p. 141.

La Prosperite, or Welfaren, claimed as a Lubecker, p. 170.

Les Quatres Freres, a Danish vessel, p. 180.

The Verenderen, or Le Changement, a Prussian vessel, p. 220.

The Zelden, a Dutch ship, p. 243.

The Dame Catherine de Workeem, a Dutch ship, p. 258.

value, made by two passengers as neutrals, the one asserting himself to be a subject of Bohemia, the other of Tuscany. The articles claimed were ultimately condemned as *enemies' property*; without the slightest allusion to the illegality of a neutral trade between a belligerent country and its colonies; which, if then maintained, as it is now, would at once have put an end to the claims.

It is strictly and incontrovertibly just, then, to say, that these decisions maintain the law of nations as asserted in this investigation; and abandon and renounce it, as asserted in the decisions of the same court, under its present Judge. During the war of 1778, the Judge had no guide whatever in prize cases, turning on this question, but the law of nations. Neither treaties, nor acts of parliament, nor any known orders of council, interposed any special rule controuling the operation of that law. That law, consequently, was the sole rule of the decisions; and these decisions, consequently, complete evidence of the law, as then understood and maintained by the court: and let it be repeated, that if such was the law in the case of the coasting trade, it was equally the law as to every other channel of trade, shut in peace, and laid open in war.

These decisions were, indeed, made by the high court of Admiralty, and not by the Lords Commissioners of Appeal, the authority in the last resort, on such subjects. But this consideration does not impeach the inference drawn from the decisions; which having not been reversed, nor appealed from, are fair evidence for the purpose to which they are applied. It is impossible to account for an omission to enter appeals, where the captors were in their own country, and must have had the best counsel, without supposing that the appeals afforded not the smallest chance of a more favorable decision.

But as a further and more unexceptionable proof that the principle was abandoned, it is stated by Sir Wm. Scott himself, that "in the case of the *Verwagtig*,"* (a vessel trading between France and Martinique during the war of 1778) and in *many*

* 1 Rob., 252.

other succeeding cases, the *Lords of Appeal* decreed payment of freight to the neutral ship owner." This, it must be observed, is a case of colonial trade; and a colonial trade of the most exclusive kind in time of peace; a trade between the colony and the parent country.

To these authorities, an explanation equally singular and unsatisfactory is opposed. It was understood, says Sir William Scott, that "France in opening her colonies, during the war [of '1778] declared that this was not done with a temporary view "relative to the war, but on a general and permanent purpose "of altering her colonial system, and of admitting foreign vessels, universally and at all times, to a participation of that "commerce. Taking that to be the fact, (*however suspicious* "its commencement might be, during the actual existence of "the war,) there was no ground to say that neutrals were not "carrying on a commerce, as ordinary as any other in which "they could be engaged; and therefore, in the case of the *Verwagtig*, and many other succeeding cases, the lords decreed "payment of freight to the neutral ship owner."

At what particular time, and in what particular terms, this important declaration by France was made, is not mentioned; nor has any such declaration been discovered by a search which has been carried through all the French codes, and such of the annals of the time, as were most likely to contain it; and without some further account of this "declaration," or this "profession" on the part of France, as it is elsewhere called in *Rob. Reports*, it is impossible to decide on the precise character and import of it.

But supposing the fact, as it was taken to be, how account for so unexampled an instance of blind confidence by Great Britain, in the sincerity of an enemy, always reproached by her with the want of sincerity; and on an occasion too, so peculiarly suspicious, as that of a profession at the commencement of war, calculated to disarm Great Britain of a most precious branch of her rights of war?

If her suspension of the new principle is not to be explained by an intentional return to the established law of nations; and

the explanation of the fact lies in the alternative between her respect for a suspicious declaration of France, made in the suspicious crisis of a war, more than any other charged by her on the perfidious ambition of France; and her respect for those prudential motives which her own situation may have suggested for abandoning, rather than renewing, the attempt to maintain such a principle; it will not be easy to avoid preferring the explanation drawn from the following review of her situation.

However bold it may have been in Great Britain to advance and act upon the new principle in the war of 1756, it has been seen that she went but a small part of the length of it; and with an evident desire to make the innovation as little conspicuous and obnoxious as was consistent with her object. In this caution she was probably influenced by a regard, not only to the progress of opinion in Europe in favor of neutral rights; but particularly to the king of Prussia, whose friendship she courted, and who was known to be a patron of those rights. His dispute with Great Britain, produced by her seizure of Prussian vessels in the preceding war, and by his seizing in return, the Silesian funds mortgaged to Great Britain, is well known. The issue of this dispute has been represented as a complete triumph of the belligerent claims of Great Britain, over the pretensions of the neutral flag. The fact, however, is, that she was obliged to redeem the Silesian debt from the attachment laid on it, by paying to Prussia the sum of 20,000 pounds sterling, as an indemnity for the prizes made of Prussian ships.*

At the commencement of the war of 1778, the public opinion had become still more enlightened and animated on the subject of neutral rights. The maritime success of Great Britain in the war of 1756, had alarmed, and the abuses of her power had sharpened the feelings of every commercial nation. Champions had started up all over Europe, maintaining with great learning and strong reasoning, the freedom of the seas, and the rights

* The instrument containing this stipulation bears date January 16, 1756. It may be seen in Jenkinson's collection of treaties.

of the neutral flag. The principle that free ships make free goods, more especially employed a variety of very able pens; and had made a rapid progress. Other principles, the offspring or auxiliaries of this, and equally adverse to the maritime claims of Great Britain, were also gaining partizans. In a word, that state of fermentation in the public mind was prepared, which being nourished by the example and the policy of France, enabled Russia, in concert with France, to unite and arm all the maritime nations of Europe, against the principles maintained by Great Britain. To these discouraging circumstances in the situation of Great Britain, it must be added, that the cause in which she was fighting against her colonies, who had separated from her, was unpopular; that their coalition with her enemies, weakening her and strengthening them, had a double effect in depressing her; and that it happened, as was to be foreseen, that the fleets and cruisers brought against her, and the distress to which her own West Indies were reduced by her inability to supply their wants, made it questionable, whether she might not lose, rather than gain, by renewing the principle which she had formerly asserted. Early in that war, Mr. Burke, in the House of Commons, exclaimed, "we are masters of the sea, no farther than it pleases the house of Bourbon to permit."

The effect of this state of things, in tempering the policy and pretensions of Great Britain during the war of 1778, is attested by a series of her public acts too tedious to be here inserted, but which may be seen in Hennings' collection.

But to whatever causes, the relinquishment by Great Britain of the new principle, is to be ascribed, the fact of the relinquishment remains the same; and that it did not proceed from any declaration made by France, that she had permanently abolished her colonial monopoly, is fully demonstrated by the following considerations.

The first is, that such a declaration, or such an abolition by France, however satisfactory the evidence of it might be to the British Cabinet, could have no legal effect on the decisions of

a Court, without some notification or instruction which is not pretended; and which is sufficiently contradicted, by the guarded terms used by Sir William Scott in speaking of the declaration. And that the then judge of the court, Sir James Mariott, was not in fact influenced in his decisions, either by the declaration of France itself, or by any instruction of his own government founded on such a declaration, is put beyond the possibility of doubt, not only by the want of reference thereto in the decisions, but by an acknowledgment made by Sir William Scott, in the case of the *Emanuel* in 1799, (1 Rob., p. 253;) the case of a neutral vessel carrying from one Spanish port to another, salt owned by the king of Spain, then at war with Great Britain. "With respect to authorities (says he) it has been much urged, that in three cases, *this war*, the Court of Admiralty has decreed payment of freight to vessels so employed: and I believe that such cases did pass, under an intimation of the opinion of the very learned person who preceded me, in which the parties acquiesced, without resorting to the authority of a higher tribunal." If the decisions of Sir James Mariott in the war of 1778, had been guided by the declaration of France, and not by the law of nations, it is evident, as that declaration was inapplicable to the war of 1793, and had even been falsified on the return of peace in 1783, as stated by Sir William Scott himself, that the opinion intimated by Sir James Mariott with respect to cases, Spanish too, and not French cases, in the beginning of the war of 1793, could have no other basis than the principle, that according to the law of nations taken by itself, the trade of neutrals on belligerent coasts was a rightful trade.

Secondly. Were it admitted that a declaration by France had been so made and communicated, as to become a rule binding on the admiralty court, it is clear that the rule must have been restricted to cases of trade with the *French colonies*, and could have no effect on those of a trade with *Spanish* or *Dutch* colonies, whose governments had made no such declaration as is attributed to France: yet it is not pretended, nor is it known, that any distinction was made by the British courts, between

the former and latter cases. The principle in question seems to have been equally renounced in all.*

Thirdly. The alleged change in the system of France was restricted to her *colonies*. It is not pretended that any permanent change was either made, or declared in the system of her coasting trade. But the decisions of the British court above cited, relate principally to the coasting trade. The principle then must have been drawn, not from the alleged change of France, but from the law of nations: and if the law of nations authorized in the judgment of the court, a coasting trade shut in peace and opened in war, it must have authorized, in the same judgment, the colonial and any other trade shut in peace and opened in war.

It is an inevitable conclusion, therefore, not only that the trade of neutrals to belligerent coasts and colonies, was sanctioned by the British courts, throughout the war of 1778, but that the sanction was derived from the law of nations; and, consequently, that the new principle, condemning such a trade, was not merely suspended under the influence of a particular consideration which ceased with that war, but was, in pursuance of the true principle of the law of nations, judicially abandoned and renounced.

Passing on to the war of 1793, it appears, however, that the policy of the British government, yielding to the temptations of the crisis, relapsed into the spirit and principle of her conduct towards neutral commerce, which had been introduced, in the war of 1756.

The French revolution which began to unfold itself in 1789, had spread alarm through the monarchies and hierarchies of Europe. Forgetting former animosities, and rival interests, all

* Hennings, a Danish writer, alluding to the period of the war of 1778, says, "But although in respect to the neutral trade to the colonies in America, since France has permitted it to all nations, nothing has been expressly conceded by Great Britain. Yet the courts of admiralty have released all prizes which had been brought in, as coming from the French or Dutch possessions in America; and the commerce of neutrals with the colonies, has been generally permitted. This permission, therefore, may be considered as a settled point."—Treatise on Neutrality, p. 58.

the great powers on the continent were united, either in arms or in enmity, against its principles and its examples: some of them, doubtless were stimulated, also, by hopes of acquisition and aggrandizement. It was not long before the British government began to calculate the influence of such a revolution, on her own political institutions; as well as the advantages to which the disposition of Europe, and the difficult situation of her ancient rival and enemy might be turned. War was, indeed, first declared by the French government; but the British government was, certainly, the first that wished it, and never perhaps entered into a war against France, with greater eagerness, or more sanguine hopes. With all Europe on her side, against an enemy in the pangs of a revolution, no measure seemed too bold to be tried; no success, too great to be expected.

One of her earliest measures was accordingly that of interdicting all neutral supplies of provisions to France, with a view to produce submission by famine.*

The project, however, had little other effect, than to disgust those most interested in neutral commerce, and least hostile to France. This was particularly the case with the United States, who did not fail to make the most strenuous remonstrances against so extraordinary a proceeding. The correspondence of their Secretary of State with the British plenipotentiary, (Mr. Hammond,) and of Mr. Pinckney the American plenipotentiary with Lord Grenville, the British Secretary of State, are proofs of the energy with which the innovation was combated, and of the febleness and fallacy with which it was defended. The defence was rested on a loose expression of Vattel. Bynkershoek, who had not altogether got rid of the ideas of the former century, and by whom Vattel probably was misled, could have furnished a still stronger authority.†

The next experiment of depredation on neutral commerce was directed, notwithstanding the former abandonment of the principle, and the continuance of the abandonment into the early

* See instructions of June 8, 1793.

† *Frumentum scilicet etiam non hostis, ad hostem recte advchit, excepta ob-
sisionis famis-ve causa.*—Lib. I, Cap. 9.

cases of the war* of 1793, against that carried on with the possessions of France in the West Indies. This experiment too fell with peculiar weight on the United States. For some time the irregularities went on, without any known instructions from the government reviving the abandoned principle; but without the licentious excesses which followed.

As early, however, as November 6, 1793, instructions were issued, which struck generally at the neutral commerce with the French West Indies. That of the United States was the principal victim. The havoc was the greater, because the instructions being carried into operation before they were promulgated, took the commerce by surprize.

This instruction of November 6th, 1793, was addressed to the commanders of ships of war, and to privateers having letters of Marque against France, in the following terms:

“That they shall stop and detain all ships laden with goods the produce of any colony belonging to France, or carrying provisions or other supplies for the use of any such colony, and

† The Charlotte, Coffin, an American vessel, taken on a voyage from Cayenne to Bourdeaux, October, 1793, and reserved with a class of like cases, prior to the instructions of November, 1793, was tried and decided by the Lords of appeal in 1803. On the side of the claimants it was argued, that considering the *changeable ground* on which the principle, condemning a trade in war not permitted in peace, was *first established in 1756*, and the *apparent abandonment* of it during the war of 1778, neutral merchants were entitled to the benefit of a justifiable ignorance, until the instructions of November, 1793, had conveyed an admonition to them: on the other side it was contended that the principle was *sufficiently obvious* as a *principle of public law*, without any instructions, and that neutrals had no right to presume that relaxations confined to circumstances of the war of 1778 [on which subject by the way it was impossible they could have any knowledge] would be continued. The court concurring in this view of the case, pronounced the ship and cargo with the others in the like situation, subject to condemnation. 4 Rob., Appendix, p. 12. As the state of appearances had misled the “very learned person” who preceded Sir William Scott, into an opinion that the neutral trade, though not permitted in peace, was lawful in war, it was surely rather a hard sentence that refused to unlearned traders a plea of ignorance, of which so very learned an expositor of the law is obliged to avail himself. Besides, if “the principle was sufficiently obvious,” why were the cases depending on it reserved, and above all, why were the parties kept in uncertainty and expense for ten years, and till the war was over? These are questions which it is more easy to ask than to answer.

shall bring the same with their cargoes to legal adjudication in our courts of admiralty."

In some respects this instruction went farther than the new principle asserted by Great Britain; in others it fell short of that principle.

It exceeded the principle in making the *produce* of a French colony, although owned by neutrals, and going from a neutral port where it might have been regularly naturalized, the criterion of the trade. The principle would have extended only to produce exported *immediately* from the colony, in a trade not permitted in time of peace.

Again, the principle was not applicable to an immediate trade from certain ports* and places in the colonies, authorized by permanent regulations antecedent to the war. The instruction extends to *any colony*, and consequently violates a trade where it was permitted and customary before the war.

On the other hand it falls short of the principle, in as much—1, as it spares articles directly exported from, though not the produce of, the colonies—2, as it does not affect the coasting trade of France, and other branches of French trade, laid open in time of war, on account of the war.

With these mitigations, however, the instruction had a sweeping operation on the neutral commerce with the French colonies, carried on chiefly from the United States.

The resentment produced by it, and which was doubled by the ensnaring concealment of the instruction, appeared not only in the outcry of the suffering merchants, but in the discussions and proceedings of the government. Important restrictions on the commerce of Great Britain were agreed to by one branch of the Congress, and negatived by a single vote in the other. A sequestration of British funds and effects in the United States was proposed and strongly supported. And an embargo withholding supplies essential to the subsistence of the British West Indies, actually passed into a law, and remained in force for some time. These measures, at length, gave way to the mission

* See the French free port act of 1784, in force in 1793.

of a plenipotentiary extraordinary to the British court, which terminated in the treaty of 1794.

The British government, in the mean time, aware of the powerful tendency of such depredations, to drive the United States into a commercial, if no other warfare, against her, prudently retreated from the ground taken by this instruction, as early as the 8th of January, 1794, when she revoked the instruction to her cruisers, of November 6th, 1793, and substituted the following:

“1. That they shall bring in for lawful adjudication all vessels with their cargoes, that are loaded with goods the produce of the *French West India Islands*, and *coming directly* from any port of the said islands to any port *in Europe*.”

“2. That they shall bring in for lawful adjudication, all ships with their cargoes, that are loaded with goods the produce of the said islands, the property of which goods shall belong to subjects of France, to whatsoever ports the same may be bound.”

“3d. That they shall seize all ships that shall be found attempting to enter any port of the said islands that is, or shall be, blockaded by the arms of his majesty or his allies, and shall send them in with their cargoes for adjudication, according to the terms of the 2d article of the former instructions, bearing date the 8th day of June, 1793.”

“4th. That they shall seize all vessels laden wholly or in part with naval or military stores, bound to any port of the said islands, and shall send them into some convenient port belonging to his majesty, in order that they, together with their cargoes, may be proceeded against according to the rules of the law of nations.”

As the three last articles cannot be regarded as any relaxation or re-modification of the instructions of November, 1793, since they relate only to principles well known to have been long enforced by Great Britain, as a part of the law of nations, it is not easy to discern the motive to them. The only effect of the articles, as an enumeration and definition of belligerent rights, in certain branches of trade, seems to be, to beget per-

plexing questions with respect to these rights, in the branches of trade pretermitted.

The material article is the first. It varies the preceding instructions in three respects: 1st, in substituting "the French West India islands" for "any colony of France;" of which there are some not *islands*, and others not *West India* islands: 2d, in limiting the seizure, to produce "*coming directly*" from any port of the said islands: 3d, in the very important limitation of the seizure, to vessels bound from those islands to any port *in Europe*.

By these limitations it was, apparently, intended to take the direct trade from the French West Indies to the United States, out of the operation of the order of 1793: and, probably also, the trade from the United States to the West Indies; leaving the trade *to Europe*, from the French West Indies, a prey to British cruisers. Whether it was also meant, as seems to be implied, that the neutral trade from Europe to the French West Indies was to be undisturbed, is a distinct question. This question was actually raised under the ambiguity of the instruction, and decided, not without some marks of self distrust, by Sir Wm. Scott, in the case of a trade from France herself to a West India colony.*

The explanation of this change in the instructions of the British Government is given, by the Reporter of Sir Wm. Scott's decisions, in the following passage extracted from the appendix to 4 Rob., p. 4: "The relaxations that have since [the instructions of November 6, 1793] been adopted, have originated chiefly in the change that has taken place in the trade of that part of the world, since the establishment of an independent Government on the continent of America. In consequence of that event, American vessels had been admitted to trade in some articles, and on certain conditions, with the colonies both of this country and of France. Such a permission had become a part of the general commercial arrangements, as the ordinary state of their trade in time of peace. The commerce of Amer-

* Immanuel, 2 Rob., 156.

ica was therefore abridged by the *foregoing instructions*, and debarred of the right generally ascribed to neutral trade in time of war, that it may be continued, with particular exceptions, on the basis of its ordinary establishment. In consequence of representations made by the American Government, *to this effect*, new instructions to our cruizers were issued, 8th January, 1794, apparently designed to exempt American ships trading between their own country and the colonies of France."

One remark suggested by this explanation is, that if it be a just defence of the orders of January, 1794, it is a severe imputation on those of November, 1793; for the sole reason which is stated, as requiring this revocation of the orders of 1793, was in existence at the date of those rigorous orders; and ought, therefore, to have prevented them. Yet they were not only not prevented, but were permitted to have a secret and extensive operation on the American commerce. Nor does it appear, that in any of the decisions on the captures made within that period, conformably to the instructions, but contrary, as is here admitted, to the law of nations, which, on the British principle, authorized the American commerce, at least as far as it had been actually enjoyed with the French, in time of peace, the court ever undertook to modify the instructions; as is alledged to have been done, in the war of 1778, in consequence of the professions of France that she had opened her colonial ports, generally, to the permanent trade of other nations.

The explanation calls for two other remarks. The first is, that the instruction goes beyond the reason assigned for it. The reason assigned is, that the trade between the United States and the French islands had, by the permission of France, become "the ordinary state of their trade in time of peace." Now so far as this was the fact, the trade is expressly and truly stated, in the explanation itself, to have been limited to "some articles," and "on certain conditions." But the instruction is admitted to have been designed to exempt, without any such limitations, American ships trading between their own country and the colonies of France.

The second remark is, that it is not a fact, that the *repre-*

sentations of the American Government were made to the effect here stated; namely, that the instructions of 1793 debarred them of the right of trading with the French colonies in time of war, according to the ordinary state of the trade permitted to them in time of peace. The representations of the American Government recognized no such principle, nor included any such complaint; as is proved by official documents* on the subject.

A third remark might be added. If the ordinary permissions of France to trade with her colonies, was a good reason for exempting the trade of the United States from the orders of November, 1793, the exemption ought to have been co-extensive with the permissions; and, consequently, to have embraced the *neutrals of Europe*, who enjoyed the same permissions as the United States; instead of being restricted to the latter.

One is really at a loss, which most to admire, the hasty and careless facility with which orders proceed from the Government of a great and an enlightened nation, laying prostrate the commerce and rights of its friends; or the defective and preposterous explanations given of such orders, by those who undertake to vindicate or apologize for them.

But whatever may have been the origin, or the intention of the second orders of 1794, revoking the restraints imposed by those of 1793, on the United States; whilst they suffered those restraints to continue, in great part at least, on other nations;

* Among the printed documents of that period is a letter of January 9, 1794, from Mr. T. Pinckney, the American Minister at London, to Mr. Jefferson, then Secretary of State, in which, alluding to an interview with Lord Grenville, he says, "I reminded him that our ideas differed materially from theirs on this subject; and without repeating the arguments I had before addressed to him, both verbally and in writing, in support of our position, it was only necessary to say, that we did not admit the right of the belligerent Powers to interfere further in the commerce between neutral nations and their adversaries, than to prevent their carrying to them articles, which, by common usage, were established as contraband, and any articles to a place fairly blockaded; that consequently the two first articles, though founded upon *their principles*, of not suffering, in war, a traffic which was not admitted by the same nations in time of peace, and of taking their enemy's property when found on board of neutral vessels, were nevertheless contrary to what we contended to be the just principles of the modern law of nations."

two consequences resulted, which seem not to have been taken sufficiently into foresight.

One of them was, that the nations of Europe, excluded from the trade not forbidden to the United States, were not a little soured by the distinction; and which, very possibly, may have contributed to the revival of the sympathies which brought about the armed neutrality of 1800.

The other was, the vast growth of the carrying trade of the United States, which supplied all parts of Europe, with the produce of the West Indies, and without affording to Great Britain any of the profits of an entrepot.

The developement of these consequences could not fail to awaken the attention of the British Government, and is the best key to the instruction which was issued January 25, 1798; and which was extended to the possessions of Spain and Holland, then united with France against Great Britain.

It revoked the instructions of January, 1794, reciting as the consideration which rendered the alteration expedient, "the present state of the commerce of Great Britain, as well as that of neutral countries;" and in lieu thereof, the following was issued:

"That they should bring in for lawful adjudication, all vessels with their cargoes, that are laden with goods, the produce of any island or settlement belonging to France, Spain, or the United Provinces, and coming directly from any port of the said islands or settlements, *to any port in Europe, not being a port of this kingdom, nor a port of that country, to which such ships, being neutral ships, shall belong.*" The residue of the articles merely extend to the islands and settlements of France, Spain, and Holland, the three last articles in the instructions of January, 1794.

The effect of this new change in the instructions was, to sanction a direct trade from *all* the French islands, as well as from those in the *West Indies*, and also from the French *settlements* which were not islands, with a like sanction, to a like trade, from the islands and settlements of the other enemies of Great Britain; to extend to neutrals in Europe, the enjoyment of this

trade, with a refusal to the American States, of the *direct trade*, from those islands and settlements to such European neutrals; and finally, to permit to these States, as well as to the neutrals of Europe, a direct trade from the hostile islands and settlements to *Great Britain herself*.

The explanation attempted by the reporter, Dr. Robinson, in his appendix to the 4th vol., p. 4—5, is, that “In consequence of the relaxation [in 1794] of the general principle in favor of *American* vessels; a similar liberty of resorting to the colonial market, for the supply of their own consumption, was conceded to the *neutral* States of *Europe*, a concession rendered more reasonable by the events of war, which, by annihilating the trade of France, Spain, and Holland, had entirely deprived the States of Europe of the opportunity of supplying themselves with the articles of colonial produce in those markets.”

With regard to the *permission to all neutrals* to convey the produce of the enemies' colonies, directly to *British ports*, he is silent.

From a summary, however, of the discussions which had taken place on cases before the Lords of Appeal, as it is given in the appendix to 4 Rob., p. 6, an explanation of this part of the regulation, might be easily collected, if it were not otherwise sufficiently obvious. Among the arguments used for so construing the last order of 1798, as to justify a Danish vessel in trading from a Spanish colony, to a neutral country, to which the vessel *did not belong*; it is observed, “that, originally, the pretension to exclude *all neutrals*, was uniformly applied on the part of the belligerent; by which the effect of *reducing* such settlements *for want of supplies*, became a *probable issue of the war*; now, since the relaxations have conceded to neutral merchants the liberty of carrying thither cargoes of innoxious articles, and also of withdrawing the produce of the colony, for the purpose of carrying it to their own ports; now, to restrict them from carrying such cargoes *directly to the ports of other neutral States*, becomes a rule apparently capricious in its operation, and one, of which the policy is not evident. From the northern nations of *Europe*, no apprehensions are to be entertained

of a *competition injurious to the commercial interests of our own country*. To exclude *them* from this mode of traffic [that is of trafficking directly from such colonies to other neutral countries] in the produce of the enemy's colonies, is to throw a *farther* advantage into the hands of *American* merchants, who can, with greater ease, import it first into their own country, and then, by *re-exportation*, "send it on" to the neutral nations of Europe.

No other key is wanted to let us into the real policy of the orders of 1798; which placed the neutral nations of Europe, and the United States on the same footing, by extending the rights of the former, and thereby abridging the advantages of the latter. This change of "the actual state of the commerce of this country (G. B.) as well as that of neutral countries" was expedient for two purposes: It conciliated the Northern nations, then perhaps listening to a revival of the armed neutrality, and *from whom* "no apprehensions were to be entertained of an injurious competition with the commercial interests of Great Britain; and at the same time, it so far took the advantages of re-exportation out of the hands of the American merchants, from whom such a competition, probably was apprehended.

But a mere adjustment of the balance between neutrals in their advantageous trade with the enemy colonies, did not answer all the purposes which were to be consulted. It gave Great Britain herself, no share of the forbidden fruit. She took at once, therefore, the determination, whilst she would permit none of the neutral merchants of any country to carry on this colonial trade of her enemies with another neutral country, to authorize them *all* to carry it on *with herself*; disguising, as well as she could, the policy of making herself the centre and thoroughfare of so extensive a branch of profit, under the general expediency of changing "the state of commerce both British and neutral" as it had resulted from her regulations of 1794; and avoiding, as much as she could, to present to notice, the palpable inconsistency of making herself a party to a trade with her colonial enemies, at the very moment when she was exerting a belligerent pretension, having no other basis, than the

probable reduction of them, by suppressing all trade whatever with them.

This subject is too important not to be a little further pursued. Unpleasant as the task is, to trace into consequences, so selfish and so abounding in contradictions, the use made by Great Britain of the principle assumed by her, the development is due to truth and to the occasion. It will have the important effect, at the same time, of throwing further light on the checkered scene exhibited by the admiralty jurisprudence of Great Britain.

It must be added then, that the *commercial policy* for which she employs her new *belligerent* principle, is the more apparent from two subsidiary pretensions, as new, as they are at variance with the maritime rights of neutral nations.

The object of *drawing* through her own warehouses and counting-houses, the colonial trade of her enemies, on its way from the West Indies to the other countries of Europe, being counteracted by the extensive intercourse between the United States and those colonies, and by the re-exportation from the United States, of the imported surplus of colonial produce, the project was adopted, of *forcing* this trade directly from the West Indies to, and through Great Britain; 1st, by checking the West India importations into the United States, and thereby lessening the surplus for re-exportation; 2d, by embarrassing the re-exportation from the United States; both considerations seconded, no doubt, by the avidity of her cruisers and by the public interest, supposed to be incorporated with their success in making prizes; and the first consideration, seconded also, perhaps, by a desire to give an indirect check to the exportation of contraband of war from the United States.

In order to check importations, the principle is advanced, that the outward and the return voyage are to be regarded, as forming but a *single voyage*; and consequently, if a vessel is found with an innocent cargo on board, but on her return from a hostile port, her outward cargo to which, was as contraband of war subject to capture, the vessel is thereby rendered liable to capture, and the chance for capture, by that means, doubled.

That this principle is of modern date, can be shewn by more than negative evidence; and from a source highly respectable. When Sir L. Jenkins was judge of the high court of admiralty, in the latter period of the 17th century, it was the practice, sometimes for the king, at others for the commissioners of appeal, to call for his official opinions in writing, on cases depending in other courts, or diplomatically represented to the government. These rescripts are valuable, not only as one of the scattered and scanty materials composing the printed stock of admiralty precedents in Great Britain; but as the testimony of a man, who appears to have been not undeservedly regarded as an oracle in his department of law; and to have delivered his opinions with a candor and rectitude, the more meritorious as he served a sovereign who gave little encouragement to these virtues, and as he was himself of a temper and principles sufficiently courtly.

The case of a Swedish vessel, which had conveyed enemy's goods, having been seized on her return, with neutral goods, was represented to the government by the Swedish Resident; and by the Government referred to Sir L. Jenkins, the judge of the high court of admiralty. His report is so interesting in another respect, as well as that for which it was required, that it shall be given in his own words:

“The question which I am (in obedience to his Majesty's most gracious pleasure) to answer unto, being a matter of fact, I thought it my duty not to rely wholly on my own memory or observation, but further to inquire of Sir Robert Wiseman, his majesty's advocate general; Sir William Turner, his royal highness, the lord high admiral's advocate; Mr. Alexander Check, his majesty's proctor; Mr. Roger How, principal actuary and register in the high court of admiralty in England; whether they, or any of them, had observed, or could call to mind, that in the late war against the Dutch, any one ship, otherwise free, (as belonging to some of his majesty's allies,) having carried goods belonging to his majesty's enemies, *from one enemies port to another*, and being seized (after it had discharged the said goods) *laden with the proceed of that freight* which it had carried and

received of the enemy upon the account of the ship's owners, had been adjudged prize to his majesty; they all unanimously resolved that they had not observed, nor could call to mind that any such judgment or condemnation ever passed in the said court; and to this their testimony I must (as far as my experience reaches) concur: and if my opinion be (as it seems to be) required, I do not (with submission to better judgment) know any thing, either in the statutes of this realm, or in his majesty's declarations upon occasion of the late war, *nor yet in the laws and customs of the seas*, that can (supposing the property of the said proceed to be *bona fide* vested in the ship owners his majesty's allies) give sufficient ground for a condemnation in this case. And the said advocates (upon the debate I had with them) did declare themselves positively of the same opinion. Written with my hand this 6th day of February, 1667."* Sir L. Jenkins' works, 2 vol., p. 741.

Here the point is clearly established, that a vessel found with a lawful cargo, on a return voyage, cannot be affected by the unlawfulness of the cargo immediately preceding it; and, conse-

* The works of Jenkins have become so scarce, that it were to be wished that the parts at least, which contain his admiralty opinions and decisions, were republished. Considering the luminous character, and the official weight belonging to them, it might have been expected that this would long ago have been done; as well as that his authority would have been more frequently consulted in admiralty proceedings. Perhaps one cause of the neglect may lie in the difference which would be exhibited between his testimony of the law of nations, and the expositions of modern date, on some other points beside that in the text. For example, in defining contraband, he limits it to things "*directly or immediately*" subservient to the uses of war; and expressly decides "pitch and tar" not to be contraband. By what authority has the law of nations been changed in this particular? Certainly, not by an *unanimous* consent of nations, as was required by Great Britain to change the law subjecting enemy's property under a neutral flag, to confiscation; the contrary being admitted by Sir William Scott, who remarks that this was a point, though not the only point of British difference from the tenets of Sweden. 4 Rob., 201. With respect to tar and pitch, it cannot even be pretended, that any change in the uses of these articles, since that date, can have changed the reason of the rule, as it existed in the time of Jenkins; or that the change was merely an adaptation of the same general principle to particular circumstances: for tar and pitch had the same relation to ships, and ships the same relation to war, then as they have now.

quently, that an outward and return voyage, cannot be considered as but one voyage, or the character of one as transfused into the other.

It is true that, in this case, the cargo in question was not contraband of war, but enemy's property. But there is no room for a distinction in the principle applicable to the two cases. If the two voyages in fact make one and the same voyage in law, an outward cargo of enemy's property must authorise capture in the returned voyage as much as an outward cargo of contraband would authorise it. If the two voyages do not make one and the same; the contraband of war, in one voyage, can no more affect another voyage, than enemy's property, in one voyage, can affect another voyage.

It will not have escaped attention that, in the case stated in the report of Jenkins, the voyage in which enemy's property had been carried, and which it was imagined might thence have vitiated the return voyage, was a *coasting* voyage from one enemy's port to another. Yet so immaterial was *that circumstance*, at *that time*, that it appears not even to have been taken into his consideration, much less to have influenced his opinion. Had it been otherwise, it would indeed have made his decision so much the stronger against the amalgamation of two voyages, on account of the unlawfulness of one of them: for on that supposition the first of the two voyages would have been doubly unlawful, as engaged both in carrying enemy's property, and in carrying it from one enemy's port to another.

But this particular principle is not only of modern date, but of very recent date indeed. Its history, like that of many other belligerent innovations by Great Britain, is not unworthy of attention.

In December, 1798, in the case of the Frederick Molke, a Danish vessel that had got into Havre, then deemed in a state of blockade, and was taken on her way out, August 18th, 1798, it was urged to be like the case of a return voyage, where the cargo of the outward voyage had been contraband. Sir William Scott admitted that, in the latter case, "*the penalty does not attach on the returned voyage,*" but denied the affinity be-

tween the cases: "there is this essential difference," said he, "that in *contraband* the offence is *deposited with the cargo*, whilst in such a case as this, it is continued and *renewed* in the subsequent conduct of the ship;"* the act of *egress* being, according to him, as culpable as the act of *ingress*.

In August, 1799, in the case of the *Margaretha Magdalena*; a vessel returning to Copenhagen from Batavia, her outward cargo having consisted of contraband goods, was seized at St. Helena, September, 1798. On the ground, however, that the ship and cargo were neutral, and that the outward shipment from Copenhagen was contingent and not absolutely for Batavia, but sent under the management of the master to invest the proceeds in the produce of Batavia, restitution was decreed by Sir William Scott, notwithstanding the fact that the contraband "articles were *actually sold at Batavia*," with a remark only, that there was great reason to bring this case to adjudication, as a case very proper for enquiry. On this occasion the judge made the following observations: "It is certainly an alarming circumstance in this case, that although the outward cargo appears to have consisted of contraband goods, yet the principal owner appears publicly at Copenhagen, and makes oath, "that there were no prohibited goods on board, destined to the ports of any party now at war." The master himself describes the cargo that he carried out as *naval stores*, and in looking into the invoice I find that they are there represented *as goods to be sold*. That being so, I must hold that it was a most noxious exportation, and an act of very hostile character, to send out articles of this description to the enemy, in direct violation of public treaties, and of the duty which the owners owe to their own government. I should consider it as an act that would *affect the neutral in some degree* on this *returned voyage*, for although a ship *on her return* is not liable to confiscation for having *carried a cargo of contraband* on her *outward voyage*, yet it would be a little too much to say, that *all impression* is done away; because if it appears that the owner had sent such

* 1 Rob., p. 72.

a cargo, under a certificate obtained on a false oath, that there was no contraband on board, it could not but affect his credit at least, and induce the court to look very scrupulously into all the actions and representations of such a person.”*

That the judge was beginning to be a little unquiet under the rule imposed on himself, not to consider a ship on her return voyage as liable to confiscation for having carried a cargo of contraband on her outward voyage, is sufficiently visible. He is found, nevertheless, still submitting to the restriction.

The case of the *Immanuel* succeeded November 7th, 1799. It is the case of a Hamburg ship, taken 14th August, 1799, on a voyage from Hamburg to St. Domingo, having in her voyage touched at Bourdeaux, where she sold part of her cargo, and took a quantity of other articles for St. Domingo. The question was started, whether the stores which had been discharged at Bordeaux, though originally destined for St. Domingo, were contraband or not. The inference of the judge was, that they were not of a contraband nature, at least that they were left ambiguous, and without any particular means remaining of affording a certainty upon the matter. “If so,” said he, “it is useless to imagine what the effect of contraband, in *such circumstances*, would have been. I shall say no more, than that *I incline to think* that the discharge of the goods at Bordeaux would have extinguished their powers of infection. It would be an extension of this rule of infection, not justified by any former application of it, to say, that after the contraband was actually withdrawn, a mortal taint stuck to the goods, with which it had once travelled, and rendered them liable to confiscation, even after the *contraband itself* was out of its reach.”†

This was not indeed a return voyage, but one link of an outward voyage. The reason, however, given why contraband, after being discharged, could not leave a confiscating taint on the expedition, namely, because itself was out of the reach of confiscation, is precisely common to the two cases; yet it would seem that the judge is becoming not a little languid in main-

* 2 Rob., p. 116, 117.

* 2 Rob., p. 164.

taining the opinion, "that the offence of contraband is deposited with the cargo." He now "*inclines to think* that such would be the effect."

February 5, 1800, the case of the *Rosalie* and *Betsey*, was that of a ship taken May 31, 1799, on a voyage from the Isle of France, asserted to be to Hamburg. It was made a question of property, turning on a question of fraud; the fraud in the returned voyage was held to be reinforced by the fraud in the outward voyage; and that fraud is stated by Sir William Scott, "as more noxious on account of the *contraband nature* of several of the articles of the *outward cargo*."

Here contraband in an outward voyage was, in spite of the maxim that its offence was deposited with the cargo, allowed to have an *influence* on the character of the *returned voyage*. Still it was but an indirect and partial influence. It was held to be an *aggravation only* of the fraud, the fraud being the git of the offence.

In 1800, June 24, occurs the case of the *Nancy*, Knudson master, a ship taken on a voyage to Copenhagen from Batavia, whither she had carried contraband of war. The cargo appears to have been condemned, on the ground of fraud in the papers and destination, *combined with the contraband quality* of the *outward cargo*. The complexion and weight, however, which the last ingredient had assumed in the mind of the judge, are seen in the following extract from the judgment pronounced by him:

"But it is said, this is a past transaction, and that in cases of contraband, the returned voyage has *not usually* been deemed connected with the outward. In *European* voyages of no great extent, where the master goes out on one adventure, and receives at his delivering ports, new instructions and further orders, in consequence of advice obtained of the state of the markets, and other contingent circumstances, *that rule* has prevailed; *but* I do not think, in *distant* voyages to the *East Indies*, conducted in the manner this has been, the same rule is fit to be applied. In *such a transaction*, the different parts are not to be considered as *two voyages*, but as *one entire transaction*,

formed upon one original plan, conducted by the same persons, and under one set of instructions, *ab ovo usque ad mala*.* This condemnation of the cargo was confirmed by the lords of appeal, and the indulgence even allowed with respect to the ship, by the high court of admiralty, reversed by that superior tribunal.

The existence of contraband in an outward voyage, not only figures more considerably in this, than in any preceding case; but the judge gets hold of a new implement of judicial warfare on neutral commerce. In aid of presumptive fraud, of the alleged continuity of fraud from the outward into the returned voyage, and of the aggravation given to fraud by the ingredient of contraband in the outward voyage; in aid of all these, the *distance of the voyage*, makes for the first time, its appearance. In the case of the *Margaretha Magdalena*, the voyage, like this, was a voyage to Batavia. In the case of the *Rosalie* and *Betsy*, the voyage was also into the East Indian seas. In neither of these cases, the slightest allusion is made to that criterion of right and wrong. The discovery then may fairly be dated with the case of the *Nancy*, of no older date than June, 1800.

But mark the reason, why *distant* voyages to the East Indies are distinguished from European voyages of no great extent. It is, because in the latter the master "receives at his delivering ports, new instructions and further orders, in consequence of advice obtained of the state of the markets, and other contingent circumstances;" whereas, in distant voyages to the East Indies, *conducted in the manner this has been*, the two voyages are to be considered as one entire transaction, formed upon one original plan, conducted by the same persons, and under one set of instructions.

If the reason here given for the distinction between distant voyages and voyages of no great extent, be a good one, it is not easy to see the reason for requiring, in addition to the distance of the voyage to the East Indies, that it should be conducted in the manner of this particular voyage; unless indeed it be, as

* 3 Rob., 105—6.

there is too much room to remark in the decisions of the Judge, with a view to rest every case, as much as possible, on its own particular circumstances; and thereby avoid the judicial fetters formed by a chain of definite precedents.

Certain it is, that if the outward and returned voyages are to be taken as one, where the distance of them is such, that new orders cannot be given, in consequence of new advices from the foreign ports of delivery, as may be done in voyages of no great extent; but that the whole business must be executed under one original set of instructions; every voyage to the East Indies, *in whatever manner conducted*, must fall within the rule which determines the outward and returned voyage to be but one voyage; in other words, that in that extensive branch of neutral commerce, the outward and returned voyage, making but one, contraband in the outward cargo, *though deposited at its place of destination*, is to have the same effect on the returned voyage, as it would have had on the outward voyage, if actually intercepted on the outward voyage.

Nay more; the rule must be applicable to every *European voyage, of great extent*; an extent so great as to require that the sale of the outward cargo at the ports of delivery, and the purchase of a return cargo, should be provided for, in the same original instructions.

In no view can the rule be less applicable to *distant voyages* between Europe and the West Indies, than between Europe and the East Indies; nor more to European voyages than to American voyages to the West Indies, where these are of so great extent as to require that the returned voyage should be provided for in the same set of instructions with the outward voyage.

Whether these analogies and inferences entered into the contemplation of the Judge on this occasion, is an enquiry which may be waived. Nor is it known to the public, whether any intermediate steps were taken by him, or by the superior tribunal, between that date and the 24th June, 1803, conducting the policy or opinion of the cabinet, towards the instructions of this last date. These form, however, a very natural result to those

preliminary ideas, as appears by the tenor of the instructions, which is as follows:

“In consideration of the present state of commerce, we are pleased hereby to direct the commanders of our ships of war and privateers, not to seize any neutral vessel which shall be carrying on trade directly between the colonies of enemies and the neutral country to which the vessel belongs, and laden with the property of inhabitants of such neutral country: Provided, that such neutral vessel shall not be supplying, nor shall have, on the *outward voyage* supplied, the enemy with any articles of *contraband of war*; and shall not be trading with any blockaded port.”

In these instructions we find the principle formally adopted, and the returned cargoes of West India produce actually obstructed, on their way to the United States, by the application of the principle, wherever the outward cargo had included contraband. We find, of course, the West India trade so far forced out of the channel to Europe through the United States, into such channels to and through Great Britain, as she may chuse to prescribe.

This being necessarily and obviously the commercial effect of the instructions, it may fairly be supposed that it corresponds with the intentions of a nation so clear-sighted in whatever affects her commerce; and, consequently, that the principle on which this instruction is founded, was assumed as subsidiary to the commercial policy on which was founded the main principle under investigation.

Another observation, with respect to this instruction, forces itself upon us. It was a heavy reproach against the instruction of November 6th, 1793, that it was not promulged until it had for some time been ensnaring, and laying waste, the commerce of neutral nations with the West Indies. The instruction of June 24, 1803, first found its way (probably by chance) to public notice in the United States, from the obscure island of Tortola, in the summer of 1805. It must, then, have been in the pockets of cruisers, ensnaring and destroying the commerce of this country, as far as that degree of innovation could have

that effect, for a period of about two years. The reproach is heightened, too, by the consideration that the snare, in this case, was successful in proportion to the respect observed towards former instructions, the faith of which was violated by the *ex post facto* operation of that in question. A reparation of the damage is the least atonement that a just and wise nation can wish to make, for such a trespass on all the maxims of public morality, as well as of national honor.

The second pretension subsidiary to the commercial policy of instructions, clothed with the language of belligerent rights, is that of subjecting to capture, colonial produce, re-exported from a neutral country to countries to which a direct transportation from the colonies by vessels of the re-exporting country, has been disallowed by British regulations. The effect of this pretension evidently is, to check neutral nations, particularly the United States, in the circuitous transportation of West India produce; and in the same proportion, to force the trade into channels terminating in British ports. And the effect is the more particularly in her favor, as the re-exportation of the surplus carried into her ports can be regulated by her own laws, for her own interests; whilst she will not permit the laws of other countries to regulate the re-exportation of the surplus carried into their respective ports.

That this pretension, also, is as new as it is arbitrary, will be best seen by a review of its rise and progress; which will at the same time, as in the other instance, illustrate the inconstancy and inconsistency of the maritime proceedings of Great Britain towards other nations.

Prior to the war of 1756, no trace of any such pretension is discovered; and it is testified by the authority of Lord Mansfield, as already seen, that a principle was, during that war, judicially settled in opposition to it. A neutral vessel, off the neutral island of St. Eustatius, had received on board a part of her cargo from French boats, from a French colony. "This," says his lordship, "is now a *settled point by the lords of appeals*, to be the same thing as if they had been *landed* on the Dutch

shore, and then put on board afterwards; in *which case* there is no *color* for seizure."

Here the rule was solemnly settled by the highest admiralty tribunal in Great Britain, that the trans-shipment, off a neutral port, of colonial goods from an enemy's vessel, protected the goods from capture, and that where such goods had been landed and reladen, there was not even a *color for seizure*.

Notwithstanding this solemn recognition of the neutral right, it was found, as also has been seen, that French produce exported by neutrals from the neutral port of Monte Christi, during the war of 1756, was not protected by the rule.

During the war of 1778, the whole claim of disturbing neutral commerce on the ground of its not being open in peace as well as in war, having been relinquished, the question could not occur until the war of 1793. And what is not to pass unnoticed, the first case in which the point fell under judicial observation, appears to have been that of the *Immanuel* in November, 1799. During the six preceding years, as may be inferred from what then fell from the judge, no doubt had existed, that an importation of colonial produce into a neutral country, converted it into the commercial stock of the country, with all the rights, especially those of exportation, incident to the produce or manufactures of the country itself.

It will be most satisfactory to present the opinion of Sir William Scott on that occasion, in the words of his reporter. "It is argued that the neutral can import the manufactures of France to his own country, and from thence directly to the French colony; why not immediately from France, since the same purpose is effected? It is answered, that it is effected in a manner more consistent with the general rights of neutrals, and less subservient to the special convenience of the enemy. If a Hamburg merchant imports the manufactures of France into his own country (which he will rarely do if he has like manufactures of his own, but which in *all* cases he has an incontrovertible right to do) and exports them afterwards to the French colony, which he does not in their original French character, but as goods

which, by *importation* had become part of the national stock of his own neutral country, they come to that colony with all the inconvenience of aggravated delay and expence; so if he imports from the colony to Hamburg, and afterwards to France, the commodities of the colony, they come to the mother country under a proportional disadvantage; in short, the rule presses on the supply at both extremities, and, therefore, if any considerations of advantage may influence the judgment of a belligerent country, in the enforcement of the right, which upon principle it possesses, to interfere with its enemy's colonial trade, it is in that shape of this trade, that considerations of this nature have their chief and most effective operation."*

Although the judge is somewhat guarded in his terms, *more consistent* with the *general* rights, and *less subservient* to the special convenience of the enemy; and somewhat vague, if not obscure, in his reasoning; yet he admits that an *importation* of goods from a belligerent country, into a neutral country, had the effect of making them a part of the national stock of the neutral country, equally entitled with the national stock itself, to be exported to a belligerent country. What circumstances would constitute an importation are not specified; nor does it appear in what light a mere trans-shipment, at a neutral port, would have been regarded.

The next occasion, on which the judge delivered an opinion on this subject, occurred in a case before the court, February 5, 1800, and which came before it again on farther proof, April 29, 1800. It was the case of an American ship taken October 16, 1799, on a voyage from Marblehead to Bilboa, with a mixed cargo of fish, sugar and cocoa. The fish, which made the principal part of the cargo, could not enter into the question. The sugar was part of a whole cargo brought from the Havanna in the same ship, had been warehoused from some time in June till some time in August, during the repair of the ship, and was then reshipped. The cocoa, small in quantity, was originally from a Spanish settlement, and had been trans-shipped from

* 2 Rob., 169, 170.

another vessel, lying at Marblehead, after having been entered at the custom-house. *The ship had been restored by the captors.* The property of the cargo was proved. The legality of the voyage was the sole question. On this question, Sir William Scott pronounced the following judgment:

“There remains then only the question of law, which has been raised, whether this is not such a trade as will fall under the principle that has been applied to the interposition of neutrals in the colonial trade of the enemy. On which it is said that if an American is not allowed to carry on this trade directly, neither can it [he?] be allowed to do it circuitously. An American has *undoubtedly* a right to import the produce of the Spanish colonies for his own use; and after it is imported bona fide into his own country, he would be at liberty to carry them on to the general commerce of Europe: Very different would such a case be from the Dutch cases, in which there was an original contract from the beginning, and under a special Dutch licence to go from Holland to Surinam, and to return again to Holland with a cargo of colonial produce. It is not my business to say what is universally the test of a bona fide importation. It is argued that it would not be sufficient that the duties should be paid, and that the cargo should be landed. *If these criteria are not to be resorted to, I should be at a loss to know what should be the test;* and I am strongly disposed to hold, that it would be sufficient *that the goods should be landed and the duties paid.* If it appears to have been landed and warehoused for a considerable time, it does, I think, raise a forcible presumption on that side; and it throws it on the other party to shew how this could be merely insidious and colorable. There is, I think, reason to believe that the sugar was a part and parcel of a cargo said to have been brought from a Spanish colony in this vessel; and if so, the very distribution of the remainder is some proof that they were not brought with an intention only of sending them on. But I have besides positive proof in the affidavit of Mr. Asa Hooper, who swears *that the duties had been paid for them.* Then the only difficulty remains as to the cocoa, and it is said by one of the witnesses, and by one only,

that it was trans-shipped from another vessel, and that it had been brought into America only ten days before; but although there is something of a difficulty arising on this small part of the cargo, yet upon the whole I cannot think it weighty enough to induce me to send the case across the Atlantic for still further proof, as to the facts of this recent importation and trans-shipment, or of its having been transferred to the present proprietors, or of having been exported without a previous payment of import duties. If it had composed a larger part of the cargo, I might have deemed it reasonable to have had somewhat more of satisfaction on some of these points, which do not appear with sufficient certainty to found any legal conclusion against it. It appears by the *collector's certificate* that it had been *entered* and *imported*, and I think that these words are *sufficient to answer the fair demands of the court.*"

It must be confessed that we perceive, in this opinion of the judge, somewhat of that customary forecast, which in tying a knot to bind himself, avoids drawing it too close to be loosened a little, if there should be occasion. It is, nevertheless, established by the precedent, that the landing of the goods and paying the duties, is a sufficient test of the importation; and that the certificate of the collector that "they have been entered and imported, is all the evidence of the fact, that can *fairly* be demanded by the court."

It might indeed have been expected that the rule stated by Lord Mansfield to have been *settled by the lords of appeals*, [which makes the trans-shipment to be equivalent to the landing and reshipment of goods, and this last procedure to take away all color for seizure,] would have found its way into the notice of the judge. That rule, however, cannot be impaired by any thing in his decision for two reasons. One is, that the further satisfaction, which, if the part of the cargo trans-shipped had been more considerable, he might have deemed reasonable on some of the questions; might refer not to the legality of the voyage, but to the question of property; and it is certainly agreeable to all the just rules of interpretation so to understand it, rather than to suppose a purpose in an inferior court, to de-

cide in direct opposition to a rule settled by the superior court. The other reason is still more conclusive; it is, that on the supposition of such a purpose in an inferior court, it could have no legal effect in controuling the rule *settled* by the superior court, the rule by which alone the conduct of individuals could be governed.

Such has been the *judicial* exposition of the neutral right, even under the British restrictions. The acknowledgment by the *cabinet itself*, was officially disclosed on the following occasion, and to the following effect:

The cruisers of Great Britain having seized, and the vice admiralty courts having condemned, American vessels bound from the United States to the Spanish West Indies, on the pretext that their cargoes consisted of articles the growth of Spain, then at war with Great Britain; the American Minister in London, in March, 1801, represented to the British Government the iniquity of the proceeding, with the indignation which it inspired: and required that precise instructions should be dispatched to the proper officers in the West Indies and Nova Scotia, to put an end to the depredations. The subject was referred to the king's advocate general, an extract from whose report was communicated by the British Secretary of State to the American minister, with information that the king had ordered the doctrine laid down in the report, to be immediately transmitted to the several inferior judges, as the law for their future guidance and direction.

The extract containing this doctrine shall be literally recited:

“I have the honor to report, that the sentence of the vice admiralty court appears to be erroneous, and to be founded in a misapprehension or misapplication of the principles laid down in the decision of the court of admiralty referred to, without attending to the limitations therein contained.

“The general principle respecting the colonial trade has in the course of the present war been to a certain degree relaxed in consideration of the present state of commerce. It is now *distinctly understood*, and has been repeatedly so decided by

the high court of appeals, that the produce of the colonies of the enemy may be imported by a neutral into his own country, and may be re-exported from thence, even to the mother country of such colony; and in like manner the produce and manufactures of the mother country may, in this circuitous mode, legally find their way to the colonies. The direct trade, however, between the mother country and its colonies has not, I apprehend, been recognized as legal, either by his majesty's Government or by his tribunals.

“What is a direct trade, or what amounts to an intermediate importation into the neutral country, may sometimes be a question of some difficulty. A general definition of either applicable to all cases, cannot well be laid down. The question must depend upon the particular circumstances of each case; perhaps the mere touching in the neutral country, to take fresh clearances, may fairly be considered as a fraudulent evasion, and as in effect the direct trade; but the high court of admiralty has expressly decided (and I see no reason to expect that the *court of appeal will vary the rule*) that *landing the goods and paying the duties* in the neutral country, *breaks the continuity of the voyage*, and is such an importation as legalizes the trade; altho' the goods be *reshipped* in the *same vessel*, and on account of the *same neutral proprietors*, and forwarded for sale to the mother country.”*

It is impossible to express the law meant to be here laid down in clearer terms, so far as it determines “that landing the goods and paying the duties” in a neutral country, legalizes the circuitous trade, even between a belligerent country and its own colonies. What inferior circumstances would have the same effect are not specified. It is not decided without a “perhaps” that the mere touching, &c., would be insufficient to legalize the trade. Nor is the legality even of a *direct trade* between the mother country and its colonies, denied in stronger terms than “I apprehend it has not been recognized.”

Thus stood the admiralty in Great Britain, as announced by

* See the printed correspondence.

British tribunals, and officially communicated by the British Cabinet to the neutral world. So it had continued to stand, as a pledge and safeguard to neutrals, conforming themselves to it, from the dates of those authorities, the last of which is as far back as the spring of the year 1801.

With what astonishment, then, must the neutral world now learn, from the decision of Sir William Scott on the 23d July, 1805, that, according to the rule of law just laid down, after much deliberation, by the lords of appeals, "the circumstances of landing the goods or securing the duties, do not furnish complete evidence of the termination of the voyage;" and that without this complete evidence, derived from the *original intention* of the importing voyage, the voyage from the neutral port will be treated as the continuance of the voyage from the colony to the mother country.

This political change in the judicial rules of condemnation, admits no other satisfactory, than a commercial explanation; for the loss of character, which it induces, is a greater sacrifice than could be made to the cupidity of cruisers, or the value of their prizes to the public.

The whole course, indeed, of modifications pursued by the instructions, and by the decisions of the courts as they appear from day to day, can leave no doubt that the primary object with Great Britain has been to transfer to herself as large a share as possible of the commercial advantages yielded by the colonies of her enemies. An absolute monopoly was embarrassed by the irresistible pretensions of neutral countries; more especially of the United States, whose neighborhood and habits of intercourse, together with other considerations, forbade a perseverance in the original attempt to exclude them. They were accordingly the first of the neutral nations towards which a relaxation was afforded. The relaxation, after considerable delay, was extended, by the instruction of 1798, to the neutral nations of Europe. That instruction was founded on a compromise between the interest and the prudence of Great Britain. It permitted neutral nations to trade *directly* with the colonies of her enemies; without trading in colonial productions with

one another; and permitted all of them to carry those productions *directly* to *Great Britain*. This arrangement was manifestly calculated to limit the importations of each neutral country to the amount of its own consumption; and consequently to turn the immense residue of colonial wealth, through neutral vessels, into her own market; whence it might be dispensed, under her own regulations, to the neutral countries of Europe having no direct commerce with the West Indies, and even to the belligerent nations whose commerce with their respective colonies she has as completely destroyed, as she has their commerce with foreign countries. The arrangement was specious, but proved to be deceptive. It was expected that the expence and delay of a circuitous trade through the United States would prevent importations and re-exportations, interfering with the projected trade directly from the West Indies to herself; and as long as this expectation was in any degree indulged, the right of re-exportation was admitted, though reluctantly, both by the Government and the courts. Experience, however, finally shewed, that the activity, the capital, and the economy employed by the American traders, overpowered the disadvantages incident to the circuit through the ports of the United States; and secured to them the profits of supplying Europe with the colonial productions of her enemies. In proportion as this unforeseen operation disclosed itself, the *commercial* jealousy of Great Britain began to take alarm. Obstructions were to be thrown in the way of importations. Re-exportations were seen with growing discontent. The idea of continuity, by which two voyages were consolidated into one, came into vogue. The Vice Admiralty courts, regardless of the superior decisions in England, would not allow that the landing of a cargo, and paying the duties, protected it against condemnation. At length appeared *the sentence of Sir Wm. Scott*, above cited, carrying into effect the construction of the inferior courts, as having been deliberately sanctioned by the Lords of Appeal. The doctrine established by that decision has been followed by other decisions and dicta, at first requiring the re-exportation, in another ship, then a previous sale of the articles in the neutral market,

then other conditions, one after another, as they were found necessary; till it is finally understood, that no precautions whatever are to bar the cruisers from suspecting, nor the courts from scrutinizing, the *intention* of the original importer, and that the proof of this intention not to re-export the articles, is to fall on the claimant. To fill up the measure of judicial despotism, these wanton innovations are now extended to vessels returning from the belligerent mother countries, as well as to those going thither from the United States; with the addition of demands of proof never before heard of in prize courts, on points utterly unknown to the law of nations.

These unexampled and vexatious proceedings manifestly have in view *the entire obstruction* of colonial re-exports from the United States; and it would be more candid in Great Britain, if not more just, to give public notice, at once, that in all such cases capture and condemnation would be authorized.

Her present system, as subsidiary to the extension of her commerce, will be still further seen in her concurrent measures, of a type not less extraordinary than that of any which have preceded them.

According to the instructions issued within the period of the existing war, or to the received interpretation of them, the permission given to neutrals by those of 1798, to carry the produce of enemy's colonies, directly therefrom to Great Britain, has not been continued. At first view this might appear to be inconsistent with the policy ascribed to her, in obstructing re-exportations from the United States. The act of Parliament, of June 27, 1805, however, which has been already noticed, changes this appearance of departure from that policy, into a new proof, and even an extension of that policy. By the regulations of that act a direct trade is opened between the British colonies in the West Indies and those of her enemies; and her enemies themselves are invited to enter into the trade. Whilst neutrals, therefore, are excluded from carrying colonial produce directly from the colonies to Great Britain, the commercial views of Great Britain are answered by the substitution of another channel through her own colonies; with the additional

advantage of a *monopoly to her own ships*, in the transportation from her colonies across the Atlantic; and for the sake of this advantage, or for that of repressing the growth of neutral rivalry, or on both these accounts, she has been willing to encounter all the reproach of cultivating an avowed commerce with her enemies, in the very moment of laying new restrictions on that of neutrals with them.

Further; the act of Parliament, of June 27, 1805, providing for a trade between Great Britain and the colonies of her enemies, through the medium of free ports in her own colonies, was preceded by an act of April 10, 1805, authorizing licences to *British subjects*, to import, *during the war*, into Great Britain, in *neutral vessels*, for their *own* or neutral account, from the American colonies of her enemies, most of their productions; requiring, at the same time, that all sugar and coffee so imported should be *re-exported*; and that *the value of* a certain portion of the imports from such colonies should be returned *in goods and commodities from Great Britain*.

Again; in concert with the act of June 27, instructions, founded on another act of Parliament, were issued, June 29, 1805, authorizing British subjects to export in neutral vessels to France, Spain, and Holland, a long list of articles, including their respective colonial productions; and to import therefrom a long list of such articles as suited her own wants.

To complete the arrangement, in all its forms, it has been officially announced in the American Gazettes, conformably to a resolution of the British privy council, of August 3, 1805, that the trade with the settlements and islands belonging to the enemy, in America and the West Indies, is to be carried on through the medium of the British free ports in the West Indies, and *not otherwise*.

The system of Great Britain may, therefore, now be considered as announced to all the world, without disguise, and by the most solemn acts of her government. Her navy having destroyed the trade of her enemies, as well between the mother countries and their colonies, as between the former and neutral countries; and her courts, by putting an end to re-exportations

from neutral countries, reducing the importations into these, to the mere amount of their own consumption; the immense surplus of productions accumulating in the American possessions of her enemies can find no outlet but through the free ports provided for it; nor any other market than the British market, and those to which she finds it for her interest to distribute it; with a view to which, she not only allows her enemies to trade with her possessions, but allows her own subjects to trade with her enemies. And thus, in defiance as well of her treason laws and of her trade laws, as of the rights of neutrality, under the law of nations, we find her, in the just and emphatic language of the President, "taking to herself, by an inconsistency at which reason revolts, a commerce with her own enemy, which she denies to a neutral, on the ground of its aiding that enemy in the war."*

But let us return for a moment to the series of instructions of which an historical review has been taken; and advert to some additional lights in which the judicial construction and application of them present the conduct of Great Britain.

Prior to the orders of November 6, 1793, the general principle forbidding to neutrals a trade opened to them during the war, must, if it be a principle of the law of nations, as asserted by Great Britain, have been the rule of Admiralty decisions. Accordingly, it appears, by 4 Rob. Appendix, p. 12, that condemnations in cases prior to that date were, in the court of Appeals, made to rest on that principle.

The orders of November 6, 1793, designated for the operation of the principle, the trade with the colonies of the enemy; as well the trade to, as the trade from, them.

The orders of January, 1794, expressly revoking the orders of November, 1793, designated for capture, the trade only *from the West India Islands* of the enemy, and bound directly to Europe, only.

The orders of January, 1798, revoking expressly the orders of January, 1794, designated for capture the trade from the

* President's message, December 3, 1805.

islands or settlements of the enemies, bound directly to any port in Europe; excepting what might be bound to British ports, or to the ports of the country to which the neutral vessels should belong.

Without entering into a variety of minute questions growing out of the varied and very inaccurate expressions in which the orders are penned, several of very great importance occur, in expounding and applying the rules laid down.

The first question is, whether the first order of 1793, which made no express reference to the general principle, and which was limited to the colonial branch of the enemy's trade, was to be understood as merely a specification of certain cases to which the general principle was applicable, leaving the general principle in force as to all unspecified cases; or whether this specification of certain cases was to be understood as implying a legalization of cases unspecified.

The question arises, also, under the successive orders, each of them revoking the orders immediately preceding, whether it was to be understood, that the specification of certain cases did, or did not, legalize the cases omitted in the same order, but specified in the orders preceding.

The more obvious construction of the original order, even, seems to be, rather that it was meant to define the *only* cases to which the general belligerent claim was to be applied, than that it was meant merely to notify the claim in those particular cases; a claim not more requiring notification in those cases, than in the cases not notified.

With respect to the orders of posterior dates, the fair construction implies, that the belligerent claim was narrowed, first, by all the difference between the orders of 1793 and those of 1794; and finally, by all the difference between the orders of 1794, and those of 1798.

Taking the whole together under these constructions, the application of the general principle of capture was restricted by these orders to the trade of neutrals *from* the colonies of enemies, *directly* to ports, other than their own *respective ports*

and the *British ports*, and consequently there remained exempt from capture:

1st. The coasting trade, and every branch of trade not colonial.

2d. The trade *from any* neutral country, *to* belligerent colonies.

3d. The trade by neutrals *from* any belligerent country *to* its own colonies, and to the colonies of another belligerent country.

4th. The trade between belligerent colonies, whether belonging to the same or to different belligerent countries.

Applying this rule of implication to the two orders only of 1794 and 1798; and admitting those of 1793 not to have superseded by implication, the claims to capture in cases not therein specified, there will be no other exception to the relations or exemptions just enumerated in favor of neutral commerce, but the coasting trade, and other trades not colonial, to which Great Britain has applied, or may choose to apply, the general principle.

In general the high court of admiralty seems, by applying the assumed principle to the coasting trade, to have pursued that construction of the original order of 1793, which left the general principle in force as to cases not specified in it; and to have considered the relaxations in the succeeding orders of 1794 and 1798, as referring solely to the colonial trade.

There appears, however, at no time to have been any clear and fixed opinion in the court, with respect to the illegality and penal consequences of the coasting trade.

Few cases are reported, perhaps few have occurred, of discussions relative to this branch of trade. In 1 Rob., p. 104, the subject is incidentally brought into view, in a case where a French vessel had been purchased. The doctrine held by the judge is expressed as follows: "We certainly do allow it, [the purchase,] but only to persons conducting themselves in a fair neutral manner, &c.; besides, this vessel appears to have been engaged in the coasting trade of France. The court has

“ never gone so far as to say, that pursuing one voyage of that kind would be sufficient to fix a hostile character: but in my opinion, a habit of such trading would. Such a voyage however must raise a strong degree of suspicion against a neutral claim; and the plunging at once into *a trade so highly dangerous*, creates a presumption that there is an enemy proprietor lurking behind the cover of a neutral name.” Here, not the coasting trade itself, but the presumption of enemy’s property found in it, is made the ground of animadversion.

In the case of the *Speculation*, the same idea presents itself.*

The *Emanuel*† was itself the case of a coasting trade. In this case the judge descanted with great energy and rigor, on the manifest illegality of the coasting trade. “Can there be described,” says he, “a more effective accommodation that can be given to an enemy during war than to undertake it for him during his own inability?” He did not however proceed further than to refuse freight on the principle settled by ancient judgments, that “*neutrals are not permitted to trade on freight.*” He particularly refers to the case of the *Mercurius*, [Lords, March 7, 1795,] in which freight was refused. Why were not the ships confiscated in these cases? that being laid down in other cases as included in the penalty for illegal voyages, and actually applied ultimately to cases of a trade between a colony and the mother country, to which the coasting trade is strictly analogous; both being trades from one port to another port of the same nation. It is not even to be inferred from the authorities here cited, that a coasting trade, in the produce of the country, if carried not on freight, but as property belonging to the neutral owner of the ship, is subject to any penalty. This indulgence to the coasting, and rigor towards the colonial trade, is it to be explained by the fertility of the one, and the little value of the other, as a source of captures and commercial profit, or in what other way?

With respect to the orders of '94 and '98, and the colonial trade, it appears to have been in general understood, that they

* 2 Rob., p. 244.

† 1 Rob., 249.

were to be construed as successively enlarging the trade of neutrals with the colonies of enemies, in the manner and to the extent above explained.

The dilemma was indeed unavoidable; either the orders were to be considered as relaxations, (and if relaxations at all, in that extent,) or as leaving the general principle in force in cases not specified in the orders, and therefore as no relaxations at all.

This latter decision would have given a character of mockery to the profession and parade of making, in their orders, so many sacrifices of belligerent rights to a spirit of moderation and amity towards neutrals. The former side of the dilemma, therefore, was necessarily taken. The orders, those of '94 and '98 at least, were relaxations.

As relaxations however in the extent required by an obvious and consistent interpretation, the door, opened to neutral commerce with the belligerent colonies, was found to be wider than was compatible either with the interests of British commerce, the avidity of British cruisers, or the probable intentions of the British government.

What was to be the remedy? The first tried was that of shutting the door gradually, by the dint of constructions, as may be seen by tracing the colonial cases adjudged by Sir William Scott, and reported by Robinson, and the decisions of the Lords of Appeals referred to by the reporter.

The task was assuredly not a little difficult, of which there is the strongest demonstration in the crooked and contradictory reasonings and decrees, into which it forced the very eminent talents of the judge who presides in the high court of admiralty.

In addition to the evidence already presented, take the following comparison between his rule of construction in the case of the *Providentia*,* and the rule of construction in the case of the *Immanuel*.†

In the former case, August 16, 1799, he observes, "the first

* 2 Rob., p. 126.

† 2 Rob., p. 159.

“ instructions were to bring in all ships which had been trading
“ with any colony of the enemy: but this country afterwards re-
“ ceded from these directions; and the second orders were to
“ bring in all ships laden with produce of the West India
“ islands *coming directly* from the ports of the said islands to
“ any port in Europe. I cannot but consider this as an aban-
“ donment of the former law, [instruction,] and I cannot but
“ think that a cruiser taking this instruction, in *conjunction with*
“ *those given before must have inferred* that it was no longer
“ the intention of government to bring in, and much less to con-
“ fiscate,” [was there room for this distinction?] “ cargoes of
“ West India produce, *unless coming to some port* in Europe:
“ this was followed by instructions now in force, which direct
“ the bringing in of all vessels laden with the produce of the
“ French and Spanish settlements, coming *from* the ports of such
“ settlements to any port of Europe, other than the ports of that
“ country to which the vessel belongs. It is certainly not laid
“ down in the negative that they shall not bring in such vessels
“ as are coming from such settlements to their own ports; but
“ *looking at the former instruction*, I think it was a strong ad-
“ monition to cruisers not to bring in such ships, and I believe
“ it has been generally so understood and acted upon by them;
“ and in this court cargoes brought *from* Surinam to ports in
“ Europe to which the vessels belonged, have been uniformly
“ restored on proof of the neutrality of the property.”

The reasoning here is plain and just. The first instructions designated for capture the colonial trade, without distinguishing between Europe and America: the second designated the trade to Europe only: therefore, by fair inference, the trade to America was exempted from capture.

Again, the second orders designated for capture the trade to Europe: the third orders designated the trade to ports of Europe *not being of Great Britain or of the country owning the vessel*: therefore by fair inference the trade to Great Britain and to countries owning the vessels, was exempted from capture.

In the Immanuel, November 7, 1799, the case was that of a

neutral ship taken on a voyage last *from* France to a French colony. According to the reasoning of Sir William Scott, just quoted, the inevitable inference ought to have been that the voyage was legal.

The first instructions designated for capture the trade *to* and *from* the colonies. Both the second and third designated for capture the trade only *from* the colonies; therefore, according to that reasoning, the trade *to* the colonies was *exempted from capture*.

Hear nevertheless the reasoning employed by the judge himself in this case.

After combating the neutral right to trade with the colonies of an enemy, by arguments applicable, *in principle*, as well to a trade between neutral ports and the colonies, as to a trade between the mother country and its colonies; he proceeds to state, in answer to all pleas for a neutral trade from the mother country to its colonies, "that the true rule to this court is the text " of the instructions; what is not found therein permitted, is " understood to be prohibited, upon this plain principle, that " the colony trade is generally prohibited, and that whatever " is not specially relaxed, continues in a state of interdiction."

Now as what is *not permitted*, *not specially relaxed*, is by the instruction to continue prohibited, the question to be decided is, what it is that is permitted, or specially relaxed by the instructions. Is it what is positively and expressly permitted or relaxed? Then there is no permission or relaxation at all; for every thing positive and express in the instruction is for the capture, not for the permission or relaxation. Is it to be a permission or relaxation implied and inferred from a positive and specified prohibition in one order, and an omission of that or of a part of that prohibition, in a succeeding order? Then the neutral trade from a belligerent country *to* its colonies, which was prohibited in the order of 1793, and omitted in the orders of 1794 and 1798, was as much permitted, as specially relaxed, as the trade from a neutral country *to* the colonies of an enemy, is permitted or relaxed by the omission in the orders of 1794 and '98, to prohibit the trade *to* the colonies, which as well as

the trade *from* the colonies, was positively and specially prohibited by the previous order of 1793; or to recur to the reasoning of Sir William Scott, in the former case of the *Providentia*, as much permitted or relaxed as the trade from the colonies going *not to Europe*, was inferred to be so from the order of 1794, *taken in conjunction* with the order of 1793; the order of '93 having prohibited the trade from the colonies generally, and the order of '94 having omitted to prohibit more of the trade from the colonies than what was bound to some port in Europe.

The judge concludes with declaring, "I see no favorable distinction between an outward and return voyage. I consider the intent of the instruction to apply equally to both communications, though the return voyage is the only one specially mentioned."

What favorable distinction, then, could the judge see between the outward and the return voyage, in a trade between a *neutral* country, and the colonies of an enemy, more than between the two voyages to Spain, a mother country, and the colonies? Is not the *return* voyage the only one *specially* mentioned, whether the instruction be applied to the former trade or to the latter trade? This is self evident. Either then he must admit the distinction in both, and say that the return voyage only being specially mentioned, the outward voyage is in both trades permitted; or he must reject the distinction in both, and say, that the outward voyage, tho' the return voyage only be specially mentioned, is prohibited in both. A different course however was pursued. The instruction was applied to the outward voyage in the neutral trade from the mother country to the colony, without being considered as applicable to the outward voyage in the trade from the neutral country to a colony; which last has not as yet been subjected to condemnation. Whether that is to be its future destiny, as has happened to some other branches of commerce, where it was equally precluded by legal decisions and even *official assurances*, is among the arcana of the admiralty cabinet of Great Britain.

The judgment in this case, it is to be observed, did not go

beyond the condemnation of the goods. The vessel was restored, but with a forfeiture of freight and expences.

By degrees, however, with the aid of alleged fraud, of false destination, and of contraband in the outward voyages, the ship as well as the cargo were brought within the rules of condemnation in the high court of admiralty. The decision of the lords of appeal has finally established, in the case of a voyage from a Spanish colony to a neutral, but forbidden port in Europe, that any illegal trade of neutrals with the colonies of an enemy forfeits both ship and cargo.*

Other examples might be drawn from the proceedings in the British courts of admiralty, to illustrate the constructive return towards the general principle which had been mitigated by successive instructions, and the anomalous and entangled decisions, which have been employed for the purpose. These illustrations cannot be here pursued, without too great an addition to the prolixity which has already been incurred. It will only therefore be remarked generally; first, that the course of proceedings, as they relate to the coasting, and different branches of the colonial trade; to the grounds on which these have been interdicted to neutrals; and to the penalties attached to breaches of the interdictions, compose a labyrinth for which no concatenation of principles, no thread of reasoning whatever, affords a clue: secondly, that constructive decisions, as appears in the last volume of Robinson's reports, have not only restored, in a great measure, the operation of the general principle; but have introduced collateral principles, greatly extending the mischiefs of its operation.

Whilst all the considerations therefore which originally led to the examination of this principle, are acquiring additional force, it is fortunate that so irresistible a testimony against its legitimacy, should have been furnished by the conduct of Great Britain herself.

* 4 Rob. Appen., p. 11.

Review of the reasons urged in defence of the British principle.

Although some of the reasons by which this belligerent claim of Great Britain is defended, have incidentally fallen under consideration in the course which the subject has taken, yet a more particular notice of those most relied on, may be necessary to complete the present examination.

The principal champions for the claim, are the judge of the high court of admiralty himself, Sir William Scott; Mr. Ward, now under Secretary of State in Great Britain, who is sufficiently known by his treatises on the law of nations, one of which embraces this precise subject; and Mr. Browne, a professor of civil law in the University of Dublin, and author of a work on civil and admiralty law.

Sir William Scott has, in every view, the first title to be heard.

In the judgment delivered by him in the case of the *Immanuel*, his eloquence has painted the belligerent claim in very glowing colours. The passage shall be given in his own words:

“It is an indubitable right of the belligerent to possess himself of such places, as of any other possession of his enemy. This is his common right, but he has the certain means of carrying such a right into effect, if he has a decided superiority at sea: such colonies are dependent for their existence, as colonies, on foreign supplies; if they cannot be supplied and defended they must fall to the belligerent of course—and if the belligerent chooses to apply his means to such an object, what right has a third party, perfectly neutral, to step in and prevent the execution? No existing interest of his is affected by it; he can have no right to apply to his own use the beneficial consequences of the mere act of the belligerent, and to say, ‘True it is, you have, by force of arms, forced such places out of the exclusive possession of the enemy, but I will share the benefit of the conquest, and by sharing its benefits prevent its progress. You have in effect, and by lawful means, turned the enemy out of the possession which he had exclusively maintained against the

whole world, and with whom we had never presumed to interfere, but we will interpose to prevent his absolute surrender, by the means of that very opening, which the prevalence of your arms alone has affected; supplies shall be sent and their products shall be exported; you have lawfully destroyed his monopoly, but you shall not be permitted to possess it yourself; we insist to share the fruits of your victories, and your blood and treasure have been expended, not for your own interests, but for the common benefit of others.' Upon these grounds it cannot be contended to be a right of neutrals, to intrude into a commerce which had been uniformly shut against them, and which is now forced open merely by the pressure of war; for when the enemy, under an entire inability to supply his colonies and to export their products, affects to open them to neutrals, it is not his will but his necessity that changes his system; that change is the direct and unavoidable consequence of the compulsion of war, it is a measure not of *French* councils, but of *British* force."

The first remark to be made is, that were the intrinsic reasonableness of the claim admitted, it would not follow that the claim is justified by the law of nations as actually established. Reason is indeed the main source from which the law of nations is deduced; and in questions of a doubtful nature, is the only rule by which the decision ought to be made. But the law of nations, as an established code, as an actual rule of conduct among nations, includes, as already explained, a variety of usages and regulations, founded in consent, either tacit or express, and superadding to the precepts of reason, rules of conduct of a kind altogether positive and mutable. If reason and conveniency alone, without regard to usage and authority, were to decide all questions of public law, not a few of the received doctrines would at once be superseded; and among the first, some to which Great Britain is most pertinaciously attached. What would become of her favorite claim, to seize and condemn all enemy's property, laden in neutral vessels, if the claim were brought to the simple test of reason? a claim which gives so much more vexation to the nations at peace, than it contributes

to any just advantage of those at war. On this question, it is well known, that the appeal has been constantly made by Great Britain from the reasoning of her adversaries, to the authority of celebrated jurists, and other testimonies of the established rules and practice of nations. She must not expect to vary her test of right, according to her individual interest: to appeal to authority when reason is against her, and to reason, when authority is against her.

In testing the British claim, then, by the law of nations, recurrence must be had to other sources than the abstract dictates of reason; to those very sources from which it has been shewn that her claim is an unauthorized innovation on the law of nations.

But let us examine this appeal of the eloquent Judge to the reasonableness of his cause, and see what is gained by it.

“It is an indubitable right of the belligerent to *possess* himself of such places, viz: colonies, [but the argument extends to *all places* shut against neutral commerce in time of peace,] as of any other possession of his enemy.” Without question he has the right to possess himself of any place belonging to his enemy.

“But he has the certain means of carrying such a right into effect if he has a decided superiority at sea.” This is not so universally true as is assumed. A land force will be also necessary; unless both the superiority at sea and the situation of the colony be such as to admit a complete interruption of supplies; and then, a blockade must be the only legitimate expedient.

“Such colonies are dependent for their existence as colonies, on foreign supplies: if they cannot be supplied and defended they must fall to the belligerent of course.” It is certainly true that they must fall, if they can be neither fed nor defended. But it is not so true that colonies, *as such*, are dependent on foreign supplies. Some insular colonies are so dependent; others are not. Few, if any, of the *continental* colonies or settlements are dependent on foreign supplies.

“And if the belligerent chooses to apply his means to such an object, what right has a third party perfectly neutral to step

in, and prevent the execution?" No right at all to step in; provided the belligerent does, in fact, apply his means to that object, and, in the mode, conformable to the law of nations; that is, by intercepting contraband of war, and availing himself of his decided superiority at sea, to blockade the places, which if deprived of foreign supplies, must fall into his hands of course.

Take the argument under another aspect. Colonies must fall without foreign supplies; therefore, it is said, a belligerent, without invading or investing them, may prevent neutrals from supplying them.

The argument has one tendency which ought not to have escaped the penetration of its author. If the dependence of a place for its existence and defence on foreign supplies, be the ground of the belligerent right to intercept all neutral trade whatever with it, it will not be very easy to find a reasonable ground for the belligerent right to obstruct neutral supplies to a place blockaded, where the place, as frequently occurs, does not depend on foreign supplies for its existence and defence.

Or the argument may take another turn, which ought not to escape the attention of neutrals. If the applicability, without an actual application of the means, to the legitimate object of possessing himself of the colonies of enemies, can justify the capture of neutral trade with such places, the mere existence of a force applicable to the purpose of a blockade any where, will, without an actual blockade, equally authorize the capture of a neutral trade with ports susceptible of blockade; and thus the neutral trade becomes interdicted with every part of the dominions of her enemy; on the same principle as interdicts it with the colonial part of their dominions; a blockade being as legitimate an object of war as conquest; and a decided superiority at sea being at least as applicable to the former, as to the latter object.

But an essential vice of the argument lies in the fallacy of the inference. It no more follows from the dependence of colonies on foreign supplies, that neutrals have no right to trade with them, with the exceptions of contraband and of blockaded ports, than it follows from the dependence of other countries or parts

of countries on foreign supplies, that neutrals have no such right. Is not Holland, is not Portugal, is not even Spain, at all times, dependent on foreign supplies for their subsistence; not less perhaps than some of the insular colonies in the West, and much more than some in the East Indies? Yet since the usurped power of obstructing *all* neutral trade with an enemy was abandoned by belligerent nations, has it ever been pretended that that dependence gave a right to the enemies of those countries, to prevent neutral supplies to them?

The argument fails when brought to another test. If the dependence on foreign necessities constitutes the belligerent claim against the neutral trade to colonies, the principle of the claim limits it to such colonies as labour under this dependence. The continental colonies or settlements, which have within themselves resources, necessary for their existence, and which therefore no decided superiority at sea can reduce into the possession of a belligerent, are clearly not within the utmost range of the principle. Yet no distinction is made in the application of it, either in argument or practice, between the most sterile and indefensible island, and the vast and fertile provinces on the continent of South America.

Thus far, then, the judge has found no foothold for the belligerent pretension which he endeavors to support.

But he must be heard further: "No existing interest of his [the neutral] is affected by it," [an exclusion, &c.]

The interest of neutrals may be materially affected by the loss of the customary supplies from belligerent colonies, as must happen, if they can neither trade directly with the colonies, nor receive supplies from them thro' the mother country. This is the consideration expressly assigned, in the appendix to 4 Rob., for the orders of 1798: "Neutral vessels were by this relaxation allowed to carry on a direct commerce between the colony of an enemy and their own country; a concession rendered more reasonable by the events of war, which by annihilating the trade of France, Spain, and Holland, had *entirely deprived* the States of Europe, of the *opportunity of supplying themselves* with the

articles of colonial produce, in those markets." This is a view of the subject very different from that given by Sir William Scott here, and in another paragraph; where he represents "Guadaloupe and Jamaica, as no more to Germany, than if they were settlements in the mountains of the moon, to commercial purposes, as not in the same planet."

The judge proceeds, "He [the neutral] can have no right to apply to his own use, the beneficial consequences of the mere act of the belligerent."

Why not? In many respects, as will hereafter be seen, the neutral suffers by war; is it unreasonable that in some respects, he should profit by its effects?

Waiving this consideration, it does not follow that one belligerent has a right to deprive a neutral of a *colonial* market opened to him under the pressure of war, by another belligerent, any more than of any new market or new channel of trade, in relation to *the mother country*, opened under a like pressure. As yet, however, the latter pretension has not appeared.* It is even disavowed in a succeeding passage of this very judgment. Is it not the pressure of war, which at this time, obliges the enemies of Great Britain, to abandon in great measure, to neutral vessels, the trade between themselves and other countries? Is it not the pressure of war, during which more food is consumed, with fewer hands to raise it, that often compels nations at war, to open their ports to the supplies and ships of neutrals, contrary to their ordinary regulations in time of peace? In a word, the whole commercial policy of belligerent towards neutral nations, undergoes changes, which the latter is in the constant practice of "applying to their own use." And it is manifest that Great Britain is as ready, as any of her enemies, to lay open her navigation and her colonial markets, though so rigorously

* The pretension has not appeared in the courts in England. But in a late case in the vice admiralty court at Halifax, it appears that the judge was disposed to consider the introduction of certain regulations at Bourdeaux, favorable to neutral commerce, as forming an *unusual* trade, and, in that view, as a legal ground of capture.

shut in time of peace, whenever the pressure of war, makes it her interest, that neutrals should apply the benefit of these changes to their own use.

It is perfectly clear, then, that the mere circumstance of an increase of profit to neutrals, from a participation in branches of trade opened under the pressure of war, does not render that participation unlawful.

The sequel of the argument assumes a very singular shape. The neutral has no right to say to the belligerent,—“True it is you have by force of arms forced such places out of the exclusive possession of the enemy, but I will share the benefit of the conquest; and by sharing its benefits, prevent its progress. You have, in effect, and by lawful means, turned the enemy out of the possession which he had exclusively maintained against the whole world, and with whom we had never presumed to interfere; but we will interpose to prevent his absolute surrender, by the means of that very opening which the prevalence of your arms alone has effected.”

Here let it be observed, the case first stated is, that the *place* has been forced by one belligerent out of the possession of another belligerent, and that the neutral is undertaking to share the benefit of the *conquest*. Were that the real intention, as it is the inevitable import of the statement, there could be no advocate for a neutral pretension to interfere. But with an inaccuracy (a harder term will not be applied) little to have been looked for where it is found, this conquest, this turning of the enemy out of exclusive possession, does not in the least mean, as is quickly disclosed, a transfer of the *place* or *colony* to a new sovereign. The colony remains precisely as it did; not even attacked or threatened by a military operation. The conquest really meant turns out to be nothing more than the creation of a certain degree of difficulty and danger in the trade between the colony and the mother country. With this change in the statement of the fact, the inference with respect to the intrusion of a neutral commerce must, unfortunately for the argument, undergo a correspondent change. As the conquest of the colony would have justified the conqueror stepping into

the exclusive possession, out of which his arms had forced his enemy, in prohibiting a neutral interference with its trade, it is equally certain, that he is not justified in any such prohibition by the mere obstruction thrown in the way of the ordinary colonial trade; any more than he would be justified by obstructions thrown equally in the way of other branches of his enemy's trade, in prohibiting the entrance of neutrals into them.

That the meaning of the judge is shifted from an expulsion of the enemy from his colony, to an obstruction of his trade with his colony, is put beyond all question by the conclusion of this hypothetical address of the neutral to the belligerent,—“Supplies shall be sent, and their products shall be exported; you have lawfully destroyed *his monopoly*, but you shall not be permitted to *possess it yourself*.”

Thus the right of a belligerent to possess himself of the colonies of his enemies depending on foreign supplies, which, in the beginning of the argument, was the ground of the unlawfulness of such neutral supplies, as might prevent the colonies from falling into the hands of the belligerent, undergoes a complete transformation in its progress, and ends in a right of the belligerent to supply the colonies himself, in exclusion of neutrals. The neutral is interdicted from sending supplies to an enemy's colony, and exporting its produce; not because it would interfere with the reduction of an enemy's possession; but because it would interfere with a commercial monopoly. This at least would be a new principle in the law of nations.

But it is worth while to enquire how the right of a belligerent to subdue the colonies of his enemy, and for that purpose to obstruct neutral supplies to them, can be reconciled with the actual regulations of the British Government on this subject. Whilst this claim is exercised, in general, so much to the disadvantage and dissatisfaction of neutrals, it is relaxed in some respects which are fatal to the very purpose of the belligerent to *subdue* the colonies of his enemy; which purpose alone could give a colour to any such obstruction of neutral commerce. The orders both of 1794 and of 1798 limit their restrictions on neutrals to the trade *from* colonies; leaving by implication, unre-

stricted, the trade *to* the colonies; or they manifest, at least, under every construction, a solicitude rather against the trade *from*, than against the trade *to* the colonies. Now if the object and the pretext, in controuling the trade with the colonies, be the conquest of the colonies, is it not extraordinary that whilst checks are opposed to the exports, which can, at the most, have but a remote influence in preserving them from the necessity of surrender, the channel should be left open for the importation of those foreign supplies, for the want of which, they might fall to the belligerent of course? How is this to be explained? Not, certainly, by a *belligerent* policy, which is completely defeated by the relaxation. There is but one explanation that is satisfactory, and it must not be deemed uncandid to resort to it. As the orders have endeavored to give to the trade from the colonies such a course as was most favorable to imports into Great Britain, the course allowed to the conveyance of supplies to the colonies is equally favorable to the export of *manufactures* from Great Britain. British manufactures, it must have been supposed, could find their way to hostile colonies, through no channel so conveniently and certainly, as through that of neutrals which conveys the means of subsistence. Whilst the regulation, therefore, defeats the measure of conquest, it extends the market for manufactures. Every fold of this belligerent claim wraps up some commercial project.

In prosecuting his argument, the judge occupies another ground for this belligerent pretension: "Different degrees of relaxation," he observes, "have been expressed in different instructions issued at various times during the war. It is admitted that no such relaxation has gone the length of authorizing a direct commerce of neutrals, between the mother country and its colonies; *because* such a commerce could not be admitted without a *total surrender* of the principle: for allow such a commerce to neutrals, and the *mother country* of the enemy recovers, with some increase of expence, the direct *market of the colonies*, and the *direct influx* of their productions; it enjoys as before, the *duties of import and export*, the same facilities of

sale and supply, and the mass of *public inconvenience* is very slightly diminished."

It was lately the object of dispossessing the enemy of his colonies altogether, that authorized the obstruction of neutral supplies. It was next the object of securing to the belligerent himself, the monopoly of the commerce with those colonies, that gave him such an authority. Now the authority is derived from the policy of withholding from the mother country of the colony, the public conveniencies arising from the revenue and from the commercial profits supplied by her direct intercourse with her colonies.

It cannot be necessary to dwell on the hollowness of this foundation, for the claim to make war on the participation of neutrals in a colonial trade. It will be merely observed, or rather repeated, that if neutrals have no right to trade with an enemy, where the enemy in consequence of the pressure of the war, would otherwise lose the revenues and other public advantages flowing from the trade, the inference fairly is, that Great Britain, by driving the ships of her enemies, as she does at this moment, altogether from the sea, may renew with effect the old and exploded tyranny of interdicting *all neutral commerce* whatever with her enemies.

This last argument only against the neutral trade to colonies, was applicable to the coasting trade. There, neither conquest, nor the substitution of the belligerent's own commerce, could be the object. It will accordingly be seen in the case of the Immanuel,* that the belligerent claim is founded, as it is here, on its general effect in cramping the revenues of the enemy, and in inflicting a pressure which may compel a due sense and observance of justice.

It only remains to advert to a reply, from the judge to the counsel at the bar, with which he closes the argumentative part of his judgment.

The inconsistency of Great Britain, in making, in time of

* 2 Rob., p. 249.

war, the same relaxations in her navigation and colonial monopolies, which she denies the right of her enemies to make, is so obvious that it could not possibly escape the notice of the counsel for neutral claimants. The more striking the inconsistency, however, the greater the delicacy which was to be observed in pressing it on the court. It appears accordingly to have been brought into view, in one instance only, in Robinson's Admiralty Reports, which was in this case of the Immanuel; and here it is managed with much tenderness, and seasoned, finally, with some material concessions to the known opinions of the Bench and the government. In order to do justice to Mr. Arnold and Mr. Sewell, charged on that occasion with the defence of the neutral claimants, and for the sake of some very judicious reflections of a more general nature, with which they introduce their particular argument, no abridgment will be made of the following passage:

“It is true that the general colonial law of Europe has created a monopoly, from which other countries are generally precluded; at the same time laws respecting colonies, and laws respecting trade in general, have always undergone some change and relaxation after the breaking out of hostilities; it is necessary that it should be so, with regard to the rights of neutral nations; because as war cannot be carried on between the principal powers of Europe, in such a manner as to confine the effects of it to themselves alone, it follows that there must be some changes and variation in the trade of Europe, and it cannot be said that neutrals may not take the benefit of any advantages that may offer from these changes—because if so, it would lead to a total destruction of neutral trade; if they were to suffer the obstructions in their old trade, which war always brings with it, and were not permitted to engage in new channels, it would amount to a total extinction of neutral commerce: such a position, therefore, cannot be maintained, that they may not avail themselves of what is beneficial in these changes, in lieu of what they must necessarily suffer, in other parts of their trade, in time of war. It is not meant that they should be entirely set at liberty from all the restric-

“ tions of peace—that would be going too far. But that, as
 “ there has been a regular course of relaxations, as well in our
 “ navigation laws, *as in the colonial trade*, in admitting impor-
 “ tations and exportations not allowed in time of peace; it
 “ seems not to be too much to say, that if they have been regu-
 “ larly relaxed in former wars, neutral merchants may think
 “ themselves at liberty to engage in it, in any ensuing war, with
 “ impunity; and *it does justify a presumption, that as a belliger-*
 “ *ent country allows a change in its own system as necessary, and*
 “ *invites neutrals to trade in its colonies under relaxations*, so it
 “ would allow them to trade in the same manner, with the colo-
 “ nies of the enemy.”

In reply:—

“It is an argument,” says the judge, “rather of a more legal nature than any derived from those general topics of commercial policy, that variations are made in the commercial systems of every country *in wars and on account of wars*, by means of which neutrals are admitted and invited into different kinds of trade, from which they stand usually excluded; and if so, no one belligerent country has a right to interfere with neutrals for acting under variations of a like kind made for similar reasons in the commercial policy of its enemy. And certainly if this proposition could be maintained without any limitation, that wherever any variation whatever is made during a war, and on account of the state of war, the party who makes it, binds himself in all the variations to which the necessities of the enemy can compel him, the *whole colony trade* of the enemy is *legalized*; and the instructions which are directed against any part are equally unjust and impertinent; for it is not denied that some such variations may be found in the commercial policy of this country itself; although some that have been cited are not exactly of that nature. The opening of free ports is not necessarily a measure arising from the demands of war; it is frequently a peace measure in the colonial system of every country: there are others, which more directly arise out of the necessities of war;—the admission of foreigners into the merchant service as well as into the military service of this country;—the permis-

sion given to vessel, to import commodities not the growth, produce, and manufacture of the country to which they belong, and other relaxations of the act of navigation, and other regulations founded thereon: these, it is true, take place in war, *and arise out of a state of war*; but then they do not arise out of the *predominance of the enemies force*, or out of any necessity *resulting therefrom*; and this I take to be the *true foundation of the principle*. It is not every convenience, or even *every necessity* arising out of a state of war; but *that necessity* which arises out of the *impossibility* of otherwise providing against the urgency of distress inflicted by the hand of a *superior enemy*, that can be admitted to produce such an effect. Thus, in time of war, every country admits foreigners into its general service—every country obtains, by the means of neutral vessels, those products of the enemy's country which it cannot possibly receive, either by means of *his* navigation or its own. These are ordinary measures, to which every country has resort in every war, whether prosperous or adverse: they arise, it is true, out of a state of war, but are totally *independent of its events*, and have therefore no common origin with those *compelled relaxations of the colonial monopoly*; these are acts of distress, signals of defeat and depression; they are no better than partial surrenders to the force of the enemy, for the mere purpose of preventing a total dispossession. I omit other observations which have been urged and have their force: it is sufficient that the variations alluded to stand upon grounds of a *most distinguishable nature*."

On comparing the argument of the counsel with the discourse of the judge, there is too much room to remark, that there are in the former a coolness and clearness not unworthy of the Bench; and in the latter a florid and fervid stile, which might have been less unsuitable to the zeal of the bar. But it is more important to examine and weigh the effect which their respective reasonings, so far as those of the judge can be extricated from the general and somewhat obscure expressions employed by him, ought to have on the point in question.

The reasoning at the bar is simply this—that as Great Brit-

ain is herself in the practice of opening to neutrals, in time of war, channels of navigation and colonial markets, which she shuts to them in time of peace; she ought to allow, or might reasonably be presumed to allow, as equally lawful in time of war, a like relaxation of the colonial system of her enemies.

The judge does not deny the fact that Great Britain is in the practice of relaxing in time of war her system of colonial trade. He does not deny the inference that a like relaxation would be equally lawful on the part of her enemies. It might have been expected, therefore, that in his reply he would have allowed to the enemies of Great Britain the same right to capture neutrals trading with her colonies, as is exercised by Great Britain against neutrals trading with the colonies of her enemies; and have contented himself with the advantage enjoyed by Great Britain in her superior means of intercepting the neutral trade with her enemies, and of preventing her enemies from intercepting the neutral trade with herself. This, it would seem, was a more consistent, and also a more politic ground to have taken. The judge was of a different opinion. Unwilling to make even that degree of concession, he attempts to retain the privilege claimed by Great Britain, and at the same time withhold it from her enemies; by certain distinctions between the two cases. With what success the distinctions are made, is now to be seen.

One of the distinctions is between a colonial trade which is *frequently opened in peace*, as in the case of *free ports*, and a colonial trade opened in war only.

The example of *free ports* was not very happily chosen; for it has been seen that the trade from such ports in the French West Indies to the United States, was not excepted in the British orders on the subject of neutral trade with the colonies of France; nor is it known that any such exception has been made in the British courts of admiralty.

The distinction, however, fails in its essential point. It is not an uncommon thing for relaxations to take place *in time of peace* as well as in time of war, in the colonial monopolies of all the European nations. The Spaniards, the French, and the

Dutch,* never fail to open their colonies to foreign supplies, whenever a scarcity, or other cause, renders it inconvenient to supply them from European sources. Even on this ground then, as admitted by the judge himself, a neutral trade with enemy's colonies would be lawful in time of war.

Another distinction is intimated between the ordinary measures of relaxation, to which every country has resort in every war, whether prosperous or adverse, and unusual measures of relaxation produced by a peculiar state of the war.

Here again the distinction directly militates against the object for which it is made, it being well known to be an *ordinary* measure, with the enemies of Great Britain, in all modern wars at least, to open their colonial ports to neutral supplies. Prior to the American revolution, Great Britain had, in these States, resources which rendered it unnecessary for her colonies to invite supplies, if indeed they could have been obtained, from any foreign sources. In her wars since that event, she has followed the example of her enemies in relaxing her colonial system, as far as was necessary to obtain supplies, from the sources and through the channels which furnish her enemies. At this moment, her islands are as open as the colonies of her enemies to the supplies and the vessels of the United States, with this difference, indeed, that her ports are opened by regulations more temporizing and more special, than those of some, if not all, of her enemies; and therefore with pretensions to legality, according to her own standard, inferior to those of her enemies.

The remaining distinction is the sole fortress on which the defence of the principle maintained by the judge, must depend. This distinction is so novel, and in its appearance so refined, that in explaining it some difficulty was naturally felt, in the selection of apposite expressions. A critic, tinctured with want of candor, might be tempted to exclaim, that a distinction between a necessity arising out of a state of war, and a necessity

* It is well known that the Dutch island of Curacao as well as that of St. Eustatius, has been constantly open in time of peace, to the trade of foreigners. The orders, however, of Great Britain, extend equally to those islands, with the other colonial possessions of her enemies.

arising out of an impossibility, which impossibility arises out of a state of war, was a subject less proper for discussion, than for a less serious treatment.

The judge, however, cannot be justly charged with a want of meaning, whatever may have been his difficulty or his caution in expressing it. It may be collected, with sufficient certainty, that he meant to establish the right of Britain, and the want of right in her enemies to interrupt neutral commerce, on the predominance of force, on the decided superiority at sea, which she enjoys, and on the inferiority of force, under which her enemies labour. When she opens her colonial ports to neutrals, although it arises out of a state of war, it does not arise, like theirs, out of the predominance of the enemy's force. This predominance he frankly declares to be the *true foundation of the principle*.

And thus we are arrived at the *true foundation* of the principle which has so often varied its attitudes of defence, and when driven from one stand, has been so ready to occupy another. Finding no asylum elsewhere, it at length boldly asserts, as its *true foundation, a mere superiority of force*. It is right in Great Britain to capture and condemn a neutral trade with her enemies, disallowed by her enemies in time of peace, for the sole reason that her force is predominant at sea. And it is wrong in her enemies to capture and condemn a neutral trade with British colonies, because their maritime force is inferior to hers. The question no longer is, whether the trade be right or wrong in itself, but on which side the superiority of force lies? The law of nations, the rights of neutrals, the freedom of the seas, the commerce of the world, are to depend, not on any fixt principle of justice, but on the comparative state of naval armaments, which itself may change at every moment, may depend on the event of a battle, on the skill of an admiral, on the tack of the wind; on one of those thousand casualties which verify the admonition, that the battle is not always given to the strong, any more than the race to the swift.

A government, which avows such a principle of conduct among nations, must feel great confidence in the permanence, as well as the predominance of its own power.

It would nevertheless not be unwise in any nation, to reflect on the vicissitudes of human affairs, and to ask herself the honest question, how she would relish the application of the principle, if in the course of events, a maritime superiority should happen to change sides? Should Great Britain ever find the state of things thus reversed, she might wish, in vain perhaps, to let her claim pass silently into abeyance, as she alleges was done in the war of 1778.

Nor would it be less unworthy of her wisdom to reflect, that if a predominance of force on one element confers right, a similar right must result from a predominance of force on another element.

The supposition may be made to press more immediately on her reflections. Great Britain as a maritime power is as dependent on external commerce, as the insular dominions of her enemies are, as colonies, dependent on external supplies. In this general view, the principle which she employs against the colonies of her enemies, may be turned by her enemies against herself. But a more particular view demands her attention. She has already beheld her principal enemy on a coast little distant from her own, by a decided preponderance of force on land, and a threatened co-operation of naval armaments, giving to the war an unexampled pressure on her faculties and resources. The wheel of fortune may reproduce the crisis. Her seamen may be taken from her merchant ships, to man her fleets. Her fleets may be called home from the protection of commerce, to the defence of the State. In this posture of things, her harvest may fail, her existence may depend on foreign food; its importation on neutral commerce; and the successful use of this resource, on the right of neutral ships to a navigation not open to them in times of peace. With such monitory possibilities in view, ought an enlightened nation by her own example, and her own language, to authorize her enemies to say to her friends—you have no right to step into a trade with our enemy, from which his monopoly of the navigation excluded you in times of peace; you have no right to import for him supplies which are

absolutely necessary for his support, and which the distress I am inflicting, renders it impossible for him otherwise to obtain. Neither have you any right by a trade, also forbidden in time of peace, to furnish to his colonies the supplies which his command of the sea no longer ensures to them, and without which they must fall of course into our possession.

What reply could be made to such an expostulation, by a neutral, who had not refused to recognize a like claim on the part of Great Britain; and, by the refusal, consulted better the interest of Great Britain, than she had consulted it herself in advancing the claim?

Taking leave of the very distinguished judge, with these observations, some notice is next due to Mr. Ward and Mr. Browne.

A remark that soon occurs on opening the volumes of these writers is, that both of them confound the principle here in question, with the question whether free ships make free goods; and under this confusion, bring the former within the arguments and authorities belonging to the latter only. The confusion results not only from the more general expressions in which they describe the controversy between neutral and belligerent nations, on the subject of commerce; but is promoted by their frequent use of the terms "carrying trade," without distinguishing between the carriage of enemies property in neutral vessels, and the neutral carriage of neutral property in channels navigated in time of peace by domestic carriers only. These questions are evidently and essentially distinct; and the distinction answers, of itself, much of the reasoning employed by those writers; and most, of the authorities cited by them.

With respect to the *consolato del mare*, so much appealed to by Mr. Ward, it has been already observed that however direct its authority may be against the principle that enemy's property in neutral vessels is subject to confiscation, there is not a sentence in that compilation which directly or indirectly recognizes or favors a belligerent claim, to confiscate neutral property, on the principle that it is found in channels of trade not

open at all or to other than subjects or citizens of the belligerent, in time of peace. The negative testimony of the consolato, therefore, is completely in favor of the contrary principle.

In recurring to Grotius, Mr. Ward, is led, by his own comment on the passage which describes the rights of belligerents against the trade of neutrals; to conclude that the real question before Grotius, was that which Grotius said had been so much and so sharply agitated, namely, whether a belligerent had a right to interdict *all* neutral commerce with his antagonist; and Mr. Ward accordingly takes the *defensive* ground of maintaining that the neutral "claim to a carrying trade had never entered the mind of Grotius."

If by the "*carrying trade*" Mr. Ward means the carriage of *enemy's property*, it must have been within the view of Grotius; because he has furnished Mr. Ward himself with an authority against the lawfulness of such a trade. If by the "*carrying trade*" he meant a trade carried on in war, where it was not allowed in peace, it is strictly true, that it appears never to have entered the mind of Grotius. It did not enter his mind, because no such particular claim had ever been asserted or exercised against neutrals. The general claim to intercept all neutral commerce with an enemy, did enter into his mind and into his discussion, as well as the other particular claims of belligerents in the case of contraband and of blockades; because as well that general claim, as those particular claims, had, at different periods, been asserted and exercised against neutrals. To suppose that the carrying trade could be unnoticed by Grotius, for any other reason than that no belligerent right to intercept that particular branch of trade, had been asserted, would be the more preposterous, for the reason suggested by Mr. Ward, "that Grotius lived in a time when his countrymen were raising to its height the source of their commerce, by rendering their State the emporium of trade, and becoming the *carriers of the rest of the world*;" carriers as well of their own property as of the property of others, and in every channel which might be opened to them with profit to the carriers.

Notwithstanding this relinquishment of the authority of Gro-

tius, in relation to the carrying trade, Mr. Ward has shewn a strong inclination to extract from certain terms employed by Grotius, on the subject before him, some general countenance to the British principle.

Grotius, it must be admitted, is less definite in explaining himself in this particular instance, than he is in others; and much less so, than other jurists who have succeeded him. It is impossible at the same time to put on his words, any construction that will avail Mr. Ward.

Although the passage has been heretofore analyzed, it will not be improper to re-examine it with a particular reference to the argument of this writer.

Grotius having made his distribution of the articles of neutral commerce into three classes—1st, of such as are wholly of pacific use—2d, such as are wholly military, and 3d, such as are, *usus ancipitis*—of a doubtful or double use, enlarges on this 3d class in the words following—“*In tertio illo genere, usûs ancipitis, distinguendus erit belli status. Nam si tueri me non possum nisi quæ mittuntur intercipiam, necessitas ut alibi exposuimus jus dabit sub onere restitutionis, nisi causa alia accedat. Quod si juris mei executionem rerum subvectio impedierit, id que sciri potuerit qui advexit, ut si oppidum obsessum tenebam, si portus clausos, et jam deditio aut pax expectabatur, tenebitur ille mihi de damno culpa dato, ut qui debitorem carceri eximit,*”* &c., &c. He proceeds next to graduate the injuries done to the belligerent and the penalties due to the neutral, according to certain distinctions since exploded, particularly the distinction between a just and unjust war, on which he

* This passage stands as follows in the English translation: “As to the third sort of things that are useful at all times, we must distinguish the present state of the war. For if I cannot defend myself without intercepting those things that are sent to my enemy, necessity (as I said before) will give me a good right to them, but upon condition of restitution, unless I have just cause to the contrary. But if the supply sent hinder the execution of my design, and the sender might have known as much; as if I have besieged a town or blocked up a port, and thereupon I quickly expect a surrender or a peace, that sender is obliged to make me satisfaction for the damage that I suffer upon his account as much as he that shall take a prisoner out of my custody.”

finds a rule; "Quod si præterea evidentissima sit hostis mei in me injustitia, et ille cum *in bello iniquissimo confirmet*, jam non tautum civiliter tenebitur de damno sed et criminaliter, &c."

From this text, Mr. Ward makes the following deduction: "The tenor of these words '*status belli*' which is a general description; of '*juris executione*' which is the very right to take arms; of '*pax expectabatur*' which is a final termination of hostilities, not surrender of the besieged place; and lastly of '*bello confirmet*' which is demonstrably applicable to the whole field of war: these (he says) prove him to be occupied with the general plan of operations, and the general exigencies of a state of hostility."

The great importance attached to this passage in Grotius, and the extensive consequences drawn from it by this learned champion of the British principle, will be apologies for a more critical attention to the passage, than it could be thought, of itself, to require.

Whether Grotius did or did not limit his meaning to the nature of contraband articles, and the case of blockades; it is demonstrable that his words are inapplicable to the distinction between a trade permitted, and a trade not permitted in peace.

1. According to Grotius, the articles in question are of the third class only, the class of a doubtful or double use: the principle of Great Britain makes no such distinction. Articles of every class and kind found in the new channel of trade, are rendered unlawful by the channel itself, however inapplicable they may be to the uses of war.

2. According to Grotius, it is one state of war compared to another state of war, that is to be distinguished—"distinguedus erit belli status:" According to Great Britain, the essence of the distinction is, between the state of war, and the state of peace; or rather between the state of the municipal laws of commerce in time of war, and the state of those laws in time of peace.

3. According to Grotius, the right to intercept the neutral commerce accrues from its particular necessity, as a measure of defence: according to Great Britain, the necessity is not the

criterion. If there be no such necessity, the trade is condemned, in case the channel were unlawful before the war. Be the necessity what it may, the trade is free, if the channel was lawful before the war.

4. According to Grotius it must be such a necessity as he had elsewhere pointed out—“*ut alibi exposuimus.*” The British advocates have not undertaken to shew any other passage of Grotius, giving the explanation which their principle requires. No such passage exists.

5. According to Grotius, the articles intercepted, if no other cause prevent, are to be restored. According to the British decisions, no such restitution is due. Both vessel and cargo are confiscated.

6. Finally—The war to which Grotius refers, when he uses the expression “*bello confirmet*” is a war of the most evident injustice — “*evidentissima injustitia; bello INIQUISSIMO confirmet,*” not *bello confirmet*, as cited by Mr. Ward. The distinction between *just* and *unjust* wars, does not enter into the principle, on which Great Britain founds her belligerent claim. It is, in fact, disclaimed by Bynkershoeck,* who succeeded Grotius; and tho’ countenanced by Vattel, is generally understood to be excluded from questions affecting belligerent and neutral rights.

Whether the text of Grotius, therefore, is to be understood as confined, or not confined to the case of contraband and blockade, it cannot possibly be applied to the case of a trade asserted to be unlawful in war, merely as being a trade not permitted in peace.

It may be observed nevertheless, in justice to Grotius, that his meaning, ought in fairness, not to be extended beyond the cases of contraband and blockades: First, because it is the only construction that can satisfy one part of the text; whilst the terms used in the other part, are by no means, inconsistent with that construction. The expression least apposite to the case

* The whole passage is criticized, and, in several particulars, censured, by Bynkershoeck: whose comment, at the same time, shews that he understood Grotius, not in the sense of Mr. Ward, but in that here assumed.—Lib. 1, C. 11.

of a blockade, is that of "*pax expectabatur*," or "the expectation of peace," as an event which might be frustrated by the neutral commerce. But there may certainly be wars, where peace itself might depend on a blockade. It is obvious that a blockade of particular ports, such as that of Amsterdam, the chief emporium of the country of Grotius, might influence the question of peace, as well as the question of capitulation. Or to state a case still more decisive: a state at war, may consist of little more than the place actually blockaded. Venice and Genoa, formerly, Hamburgh at present, are examples. A close and continued blockade of such places as these, would necessarily involve a question of peace, with that of a surrender.

Again; the meaning of Grotius ought not to be extended, as Mr. Ward extends it, beyond those two cases of contraband and blockade "to the general plan of operations, and the general exigencies of a state of hostility;" because this construction is directly at variance with the principles heretofore cited from Grotius; particularly in the note where he condemns the practice of England and Holland, in their general prohibition of neutral trade with their enemy.

But the construction attempted by Mr. Ward not only puts Grotius at variance with himself; it puts Mr. Ward at variance with himself also; as well as with the limits affixed to the principle by his own government. For if the belligerent right laid down in the passage of Grotius be not restricted to contraband and blockades; and cannot be applied to the British distinction between a trade in war and a trade in peace; but extends to the general exigency of hostilities; it is impossible to deny to belligerents a right to intercept *all* neutral trade with their enemy, whenever the state of the war, the accomplishment of justice, or the expectation of peace, prescribe it; or whenever a neutral trade may be calculated to *confirm* an enemy *in the war*. This consequence is inevitable. Yet Mr. Ward, expressly,* in another place, disclaims any such a latitude in the rights of war, with an exultation that his country had once, and once only,

* See Ward's Treatise, &c., p. 3.

attempted it; and, on seeing its injustice, candidly renounced the attempt.

The observations which have been already made on Pufendorf, and on his letter to Groningius, cited by Barbeyrac, afford a conclusive reply to the use which Mr. Ward faintly endeavors to make of that authority, on the point here in question. He seems, indeed, in general, rather to combat it as an authority claimed by an opponent, than to claim it as of much weight in his own scale.

Bynkershoek and Heineccius, though jointly cited as explicit authority for the principle that free ships do not make free goods, are neither of them appealed to by Mr. Ward as supporting the principle that a trade not allowed in peace was unlawful in war. This silence of Mr. Ward, considering his spirit of research, and his zeal for this latter principle, may reasonably be ascribed to his discovery that he could gain nothing by bringing it to the test of those authorities.

The same inference may be drawn from his silence with respect to the authority of Vattel, as to a trade of that description.

In Hubner, whose authority it is a great object with Mr. Ward to discredit, he finds a half concession, to which he does not fail to summon a marked attention. Hubner, it seems, referring* to the case of a neutral trade with an enemy's colonies, opened on account of the war, admits that it is subject to some uncertainty, "quelque incertitude." He immediately subjoins, however, "that he does not see why neutral sovereigns should refuse themselves so considerable a benefit when it offers; provided they abstain from supplying those colonies with any merchandize which is prohibited in war. It is true," he adds, "if, besides that, they are careful not to carry provisions thither, by which I mean, articles of the first and second necessity, which, in time of war, are fully and more than equivalent to contraband of war properly so called; then it is *evident* that neutral nations may lawfully carry on that commerce, because

* Saisie, b. 1, c. 4, sec. 6.

“ the principal cause of its being opened to them during the war, will not have had the effect intended to be produced; by means of which that commerce will no longer have any thing that may directly influence the war, and which consequently may be an object of the right which belligerent nations have of opposing every thing which tends to the immediate assistance of their enemies.” In this ramble of Hubner, from the plain path in which he commenced his answer to the uncertainty suggested by himself, he bewilders both himself and his subject, and lays a foundation for real uncertainties, in his attempt to remove an imaginary one. How could distinctions be maintained, in practice, between provisions of the first and those of the second necessity, and between both and all other provisions? What is meant by the right which belligerent nations have of opposing *every* thing, which *tends* to the immediate assistance of their enemies?

But were the concession free from these incumbrances, it could not avail the advocates for the British doctrine: *First*, because the concession is limited to the colonial trade, not extending even to the coasting trade: *Secondly*, because it is limited to the case of those *necessary* supplies to the colonies, which were the object in opening the trade to neutrals; whereas the British doctrine extends to all trade *to* and *from* the colonies.

If any thing further be requisite to invalidate this fugitive concession, or rather hesitation of Hubner, it is amply furnished by Hubner himself, in sec. 5, of the same chap. and book, in which he systematically establishes principles, by which the rights of neutral commerce are to be determined.

“ But let us suppose,” says he, “ that the commerce of a neutral nation with one of the belligerent parties, however innocent it may be, should indirectly strengthen the latter, does it follow, that his adversary has a right to hinder it, to the detriment of the neutral nation? who, in carrying it on, neither had nor could have that particular object in view; which merely exercises her industry as in time of peace; and which, besides, will be very glad to trade with that same adversary, upon the like terms, as far as his commercial laws will per-

“mit, and the nature and interest of its own commerce may require.

“To attempt to render a neutral State responsible for the increase of the strength of an enemy, because that increase arises from the commerce which that State carries on with him, is to impute to one, a thing which he has caused by mere accident.”

Again—“Neutral nations by trading with those who are at war, merely avail themselves of their incontestible right. Now whoever makes use of his right, and merely does so, never can do an injury to another, which he can have a right to complain of. The possible consequences of just, innocent, and lawful acts, never can hinder us from doing them, at least there is no one who has a right to prohibit us, &c.”

With such principles in his mind, it is not wonderful, that if Hubner was startled, as Mr. Ward expresses it, by the terms of his own premises, he should be more startled at his own concession; and that finding himself at a loss to explain the ground on which such a claim as that of Great Britain could in any degree be reconciled with the rights of neutral commerce, he should be in a hurry to resume his principle, “that there is no reason why sovereign States who are neuter, should refuse the advantage presenting itself, provided they abstain from supplying colonies with contraband.”

Hubner wrote in the war of 1756. Another Danish writer, Hennings, published a treatise on “neutrality,” in the interval between the war of 1778 and the war of 1793. His authority is precise and peremptory against Mr. Ward.

After the capture of Grenada, and the Grenadines by the French, in the war of 1778, an act was passed by the British parliament* “to protect goods or merchandize of the growth, produce, or manufacture of those islands, on board neutral vessels bound to neutral ports during the present hostilities,” with provisoes, that the protection should not extend to cargoes from

* This act being temporary, is not found in D. Pickering’s statutes at large—but is inserted at full length in Hennings’ collection of State papers during the war of 1778—vol. 2, p. 114.

any other island, nor affect any sentence of any vice admiralty court, which prior to a given day should have condemned productions of the said islands.

There is some obscurity in the object and the text of this act. To make it consistent, however, with itself, as well as with the acknowledgment on all hands, that a neutral trade in neutral property was free, during that period, with French colonies, it must be understood, as intended either to exempt the trade of those islands, which had become French, from the operation of British laws, and to put them on the same footing with other French islands; or to exempt from capture the *property* of the inhabitants of the islands, become French property and French subjects; an indulgence* that might be thought due to those who had but just ceased to be British subjects, and who might be restored to that character by a peace.†

Hennings, however, conceiving the act to have been intended to legalize a neutral trade with French colonies, which otherwise might be subjected by the British courts to condemnation, is led to the following assertion of the law of nations in opposition to such a principle:

“An important subject which ought to be here noticed, is the trade with the colonies in America. Is there any principle on which the sugar islands in the West Indies ought to be considered as blockaded? And if there is no such principle, why is the permission of Great Britain required for neutral ships to take sugars from the islands of Grenada and the Grenadines, since those islands have fallen into the hands of the

* So great was the disposition to assuage the misfortunes of these islands, and perhaps to expiate the omission to defend them, that the Dutch, their enemies, were permitted by an additional instruction to trade with them, as also with St. Vincent and Dominica, freely as neutrals, for four months.—2 Hen., p. 105.

† If the act is to be construed as a proof that the parliament did not think the general trade of neutrals with enemy colonies justified by the law of nations, and therefore, as requiring a special legalization by this act, it strengthens the proof that the courts thought otherwise; since they continued to release neutrals taken in the general trade with enemy colonies, in spite of the constructive denial of its legality by this act of parliament.

“ French, and the French had opened a free trade to Martinico, and to their other islands, &c.?”

“ This law is *evidently* contrary to the rights of neutral powers, and they might refuse to acknowledge its obligation, as France alone has a right to permit or prohibit trading with her colonies, and as long as she permits it, no neutral ought to be molested therein.”

Hubner and Hennings appear to be the only writers who have taken notice of the principle in question. The former having written at a period when the principle was in operation, was doubtless influenced by that consideration. The attention of the latter seems to have been drawn to the subject by the act of parliament concerning Grenada and the Grenadines, which he was inserting in his collection of State papers, and by the construction which he gave to the purport of that act.

The other numerous writers of most modern date, though generally strenuous advocates for the neutral rights of commerce, make no allusion to the British principle: For it would be absurd to regard in the light of an allusion to, and consequently a recognition of this particular principle, the language they happen to use in stating the general principle, that when war arises between some nations, the nations at peace with all, are to proceed in their trade with all, on the same footing in time of war as they did before the war broke out. The obvious meaning of these phrases is, that with the particular exceptions of contraband and blockades made by all of them, the neutral right to trade with a nation at war remains the same as if that nation was at peace; and consequently the right to trade to whatever places, in whatever articles, and in whatever vessels, their regulations might mutually permit. That such must have been the intention of such writers as Galiani, Azuni, and even Lampredi, as well as of Schlegel and the German writers, cannot be questioned, without setting up a forced construction of a particular phrase, in opposition to the whole tenor of their publications; without supposing that whilst they contend for the general system of the armed neutrality, of which this is an essen-

tial principle, and have for their main object the enlargement of neutral rights, they could, by a loose stroke of the pen sacrifice a neutral right, far more important than those which they took up their pens to maintain. Such suppositions cannot for a moment be entertained. Nor indeed have any of the partizans of Great Britain undertaken to advance them.

With respect to the opinion of these very late writers, indeed, it is impossible to doubt that their sentiments are in opposition to the belligerent principle of Great Britain. If they have not been more expressly so, their silence is readily explained by the period when they wrote, that is, after the abandonment of the principle during the war of 1778, and before their attention could be called to the subject by the occurrences of the war of 1793. As late even as the year 1799, it was affirmed at the bar of the high court of admiralty, that "in the late practice of this court, *during this war*, there have been a variety of cases from the French and Dutch colonies, in which the court has either ordered further proof, or restored in the first instance."* And in a prior case, in the same year, Sir William Scott in reply to an argument at the bar, that the illegality of a trade between the mother countries and their West Indies had been in a good measure abandoned in the decisions of the lords of appeal, does not pretend that any contrary decisions had taken place. He says only—"I am not acquainted with any decision to that effect; and *I doubt* very much whether any decision *yet made* has given even an indirect countenance to this supposed dereliction of a principle rational in itself, and conformable to all general reasoning on the subject."† Even the orders of council, commencing in January, 1793, could not have been known to these writers; and if they had, were so loosely expressed, so frequently changed, and had their effects at so great a distance from European jurists, that the innovation could not be expected to become an immediate subject of their attention and discussion.

To the incidental hesitation of Hubner, then, opposed by his

* 2 Rob., 122.

† 1 Rob., 250.

own deliberate explanation of his principles, are to be opposed the direct authority of one of his countrymen, and the unanimous authority of a host of modern writers, all of a date later than Hubner, and many of them more distinguished for their talents and their erudition on subjects of public law.

It will be found that Mr. Ward is not more successful in his definitions and reasonings on this subject, than in his appeal to the authority of Jurists.

That the obscurity and incongruity into which this heresy in public law betrays the votaries who engage in its defence, may be the better seen, Mr. Ward shall be exhibited in his own words:

“Let it be remembered, therefore, that the question on the
 “part of the belligerent is not, as has been grossly supposed,
 “whether he has a right to interfere with the neutral; but
 “merely whether he cannot prevent the neutral from interfering
 “with him? In other words, whether, when the former *extends*
 “the bounds of his trade not *with* but *for* a belligerent; not
 “only purchases what he wants for his own consumption, or
 “sells his usual peace supply of articles; but sells to him arti-
 “cles which may be easily converted into the means of annoy-
 “ance; or even turns carrier for his oppressed friend who uses
 “the surplus strength which is thus afforded him against his
 “opponent; whether in such case the other belligerent has no
 “reason to be offended, and to reclaim those rights which the
 “pretended neutral is disposed to deny him? This is in fact
 “the true state of the question.”*

“In granting, therefore, the fair and reasonable enjoyment
 “of their privileges to neutral nations, there must always be
 “added the fair and reasonable caution that they use them so
 “as not to hurt the belligerent; and that I may not seem to en-
 “trench myself in generals ‘*ubi sæpe versatur error*,’ I would
 “add that they have certainly no right to use them in any one,
 “the smallest degree *more* than they did in times of peace, nor
 “even in so great a degree, if such augmented, or the ordinary

“ use of them, bears immediate mischief to either belligerent.
 “ For example, they may increase their purchases to any amount
 “ in the belligerent countries, provided their own consump-
 “ tion required it, and provided they remain domiciled in
 “ their own country. But if they persist in carrying, much
 “ more, if they extend their faculty of carrying for the belliger-
 “ ent, where the latter was in the habit of carrying before; and
 “ if, in consequence, he is enabled to come to the battle, and to
 “ stand the shock of war, with augmented strength, which he
 “ never would nor could have possessed without it, I see little
 “ or no difference between this and an actual loan of military
 “ assistance. All the distinction is, that he substitutes his own
 “ people in the place of taking foreigners, for every man which
 “ the neutral lends to his trade enables him to furnish a man to
 “ his own hostile fleets. In other words, it enables him to meet
 “ his enemy with undiminished forces, and yet preserve entire
 “ his sources of revenue; when, if it was not for this conduct of
 “ the neutral, either the forces or the revenue of the belligerent
 “ must be diminished.*

“ According to our principles, the same reason which applies
 “ to contraband, applies to all *nocent* cases whatsoever.”

A complaint in general terms that a power, which had hitherto stood by, should step in and do that for the belligerent which he was no longer able to do himself, introduces the following passage: “ to come a little more into the detail and application of this argument, let us suppose, as was the case with France, a heavy duty on foreign freight had formed an almost fundamental law of her own commercial code; which in times of peace, was a kind of *navigation act amounting to an interdiction of foreign interference*; and that of a sudden, while engaged in war, *wanting her sailors, perhaps her merchant ships*, for hostile expeditions, at the same time wanting the pecuniary and other sources of her trade, which would thus be extinguished, she applied to nations calling themselves neutral, by taking off this duty, or even by bounties, to carry on

* P. 8, 9.

“ this trade. Here is a proof how necessary this trade is to her
 “ exigencies, and how impossible it is to preserve it, consistently
 “ with her warfare. But where is the man of plain understand-
 “ ing, and uninterested in the question, who would not determ-
 “ ine, that if the neutral accepted the offer, that instant he in-
 “ terfered in the war, &c.?”*

“ These observations apply very generally to all the carrying
 “ trade, but they more particularly apply to that specific claim
 “ in the first article of the armed neutrality of 1780, to navigate
 “ freely on the coasts, and from port to port of nations at war.
 “ In so far as the coasting trade of a nation is more valuable
 “ and more necessary to its existence than its foreign commerce;
 “ in just so far is the interposition of neutrals more powerful in
 “ its favor.”†

These extracts cannot be charged with perverting or mutilating the argumentative part of Mr. Ward's vindication of the belligerent claim in question.

The views of this claim, which Mr. Ward here gives, are, it must be confessed, so vague and so confused that it is difficult to fix on the real meaning of the writer. As far as it can be reduced to any thing like precision, he appears to be at variance with himself; and what is perhaps, not less extraordinary, at variance with Sir William Scott; sometimes going beyond the belligerent claims of the judge, and sometimes relinquishing a part of them.

Thus, on comparing him with himself, he first allows neutrals to increase their purchases to any amount; provided their own consumption require it. He next states, that the neutral privilege is not only not to be used in the smallest degree more than in peace, but not in the *ordinary degree*, if it bears immediate mischief to either belligerent. Finally, he maintains, that the same reason which applies to contraband, applies to *all nocent* cases whatsoever.

On comparing him with Sir William Scott, Mr. Ward admits that neutrals have a right to trade, so far as to purchase and

* P. 11.

† P. 12.

increase their purchases, to the amount of their own consumption. It has been sufficiently seen that Sir William Scott, and indeed his superiors both in the admiralty and executive departments, consider the trade of neutrals, beyond the permission to trade in peace, as merely a relaxation of the rights of war. Here then he stops short of Sir William Scott.

If we are not to consider that, as his real meaning, but pass on to his next position, which denies to neutrals a trade, even in the *ordinary degree*, if it bears immediate mischief to a belligerent (by which the context will not permit us to understand any possible allusion to contraband) he here expressly contradicts Sir William Scott, who lays it down with emphasis, "that the general rule is, that the neutral has a right to carry on in time of war, his accustomed trade, to the *utmost extent* of which that accustomed trade is capable."

If we recur to his last and most rigorous position, that all *nocent cases* whatever are within the reason applicable to contraband; he must be still more extensively at variance with Sir William Scott.

In support of the claim, whatever be the extent in which he means to give it, Mr. Ward urges the unlawfulness of a neutral trade, which "is not *with*, but *for* an enemy." This has been a very favorite phrase with the patrons of the British claim. It probably was first used in expressing the fiction by which neutral ships, licensed to trade with the French colonies, were converted into French ships. In its application to the subsequent pretext, which determines the channel of trade itself to be unlawful, it is not easy to find any distinct signification: If by trading *for* an enemy be meant, carrying in neutral vessels *enemy's property*, the phrase has no connection with the present question; which is not, whether enemy's property in a neutral ship be liable to capture, but whether neutral property in a neutral ship, in a particular channel, be a lawful trade: If by trading *for* an enemy be meant, carrying to or from his ports, neutral property, where he used to carry it himself; then it cannot be any thing more than trading *with*, not *for* him, during the war; as he traded *with*, not *for* the neutral nation, before the war;

and the case is nothing more than a relaxation of a navigation act: If by trading with an enemy be meant, carrying neutral articles of trade, which he would neither carry himself nor permit to be carried by neutrals before the war, but the carriage of which he permits both to neutrals and to himself during the war; this can no more be *trading FOR, not WITH him*, than it was *trading FOR, not WITH each other*, for either to carry to the other during war or peace, *articles* at one time prohibited, and then permitted by the other; and the case is nothing more than a relaxation with respect to the articles of commerce; as the former was a relaxation with respect to the vessels transporting the articles. The same distinctions and inferences are generally applicable where particular ports shut, at one time, come to be opened, at another.

The essence of the argument supposed to be compressed into this equivocal phrase, thus, evaporates altogether in the analysis. It either means nothing that is true, or nothing that is to the purpose.

But the real hinge on which the reasoning of Mr. Ward turns, is, the injury resulting to one belligerent, from the advantage given to another, by a neutral whose ships and mariners carry on a trade previously carried on by the belligerent himself, and which, consequently, enables the belligerent to employ his own ships and mariners in the operations of war; without even relinquishing the revenue which has its sources in commerce. Between this and an actual loan of military assistance by the neutral, Mr. Ward can see no difference; and this is the most plausible consideration perhaps which could be urged in the cause which he defends.

But unfortunately for this defence, it is completely subverted by three other considerations:

1. The argument is just as applicable to cases where the vessels of the nation, before it was at war, were actually employed, without any *legal* exclusion of those of the neutral nation, as to cases where there was a legal exclusion of foreign vessels before, and a legal admission of them during, the war. In both cases, the belligerent vessels and seamen, as far as they are liberated

by the substitution of foreign vessels and seamen, may be added to his military strength, without any diminution of his exports and imports, or of the revenues connected with them. Either, therefore, the argument must be extended (which will not be undertaken) to the latter case, or it loses its force, as to the former.

2. It has been shewn that Great Britain does herself, thus relax her navigation act; and avowedly for the purposes of substituting neutral vessels and mariners in place of those which she finds it expedient to employ in the operations of war. Mr. Ward must therefore either relinquish his argument, or condemn the practice of his own government.

3. This fundamental argument of Mr. Ward is expressly thrown out of the question by Sir William Scott, who admits that Great Britain, like all countries, in all wars, relaxes her navigation acts and other regulations founded thereon, in order to obtain the service of foreigners with their vessels, where she did without it in times of peace; but that these relaxations, though they arise out of a state of war, do not arise from that predominance of force which he takes to be the true foundation of the principle.*

When Mr. Ward then asks, "where is the man of plain understanding, and uninterested in the question, who would not determine, that if the neutral accepted the offer, [of a trade from which the ships and seamen of the belligerent were withdrawn for the purposes of war,] that instant he interfered in the war?" A man may be named whose determination of the question, Mr. Ward, as may be inferred from his eulogies on Sir William Scott, would of all men be the last to contest.

On turning to the work of Mr. Browne, it does not appear that he has presented any views of the subject, which require particular examination. He has, in fact, done little more than appeal to the authority of Sir William Scott, and praise and repeat the arguments of Mr. Ward.

It may be thought, that some notice ought to be taken of a

discourse of the present Earl of Liverpool, prefixed to his collection of treaties. It would be injustice to the distinguished author of that defence of the maritime principles of Great Britain, to deny it the merit of learning, ingenuity, and a vein of candor more than is always found in such discussions. His attention, however, was almost wholly directed to the question whether free ships make free goods, a question not within the limits of this investigation. He has, indeed, a few cursory observations, such as could not be here noticed without going into unnecessary repetitions, in favor of the doctrine that a trade not customary in peace cannot be lawful in war. These observations, he concludes, with one referred to by Mr. Ward as of great force, on the general question between belligerent and neutral nations; namely, "that if this right were admitted, it would be the interest of all commercial States to promote dissensions among their neighbors."

If there be any plausibility in this argument, it is certainly all the merit that can be claimed for it. The wars which afflict mankind, are not produced by the intrigues or cupidity of the weaker nations, who wish to remain in peace, whilst their neighbors are at war. They are the offspring of ambitious, and not unfrequently commercial rivalships, among the more powerful nations themselves. This is a fact attested by all history. If maxims of public law are to be tested, therefore, by their pacific tendency, such maxims, it is evident, must be favored as circumscribe, not the rights and interests of neutral nations, but the belligerent and commercial interests, of their more powerful and warlike neighbors.

As a further answer to the observations of this noble author, and as a final answer to all the arguments which are drawn from the intrinsic equity or conveniency of this principle, the following considerations must have weight with all candid and competent judges.

In the first place it may be repeated, that on a question which is to be decided, not by the abstract precepts of reason, but by rules of law positively in force, it is not sufficient to show on which side an intrinsic reasonableness can be traced. It is ne-

cessary to shew, on which side the law as in force, is found to be. In the present case, it has been shewn that this law is not for, but against, the British side of the question.

But secondly, it is denied that if reason, equity, or conveniency, were alone to decide the question, the decision would be different from that which the law in force pronounces on it.

War imposes on neutral commerce a variety of privations and embarrassments. It is reasonable, therefore, as well as lawful, that neutrals should enjoy the advantages which may happen to arise from war.

1. In the case of contraband, the articles of which, especially according to the British catalogue, may compose an important branch of exports in time of peace, the commerce of particular nations remaining at peace may suffer material defalcations from the exercise of the rights of war.

2. In the case of enemy's property carried by neutral ships, (as Great Britain, at least, understands and enforces the law of nations,) a branch of trade more or less important to all commercial nations, and constituting the most profitable branch of trade with some in times of peace, becomes an object of belligerent interruption and confiscation.

3. In the case of blockades the abridgment and embarrassment to which the trade of neutrals, especially those at a distance, is subjected by war, form other important items of loss on their side. This is a belligerent claim, on which much might be said, if the notoriety of its effects, to say nothing of its extravagant abuses, did not render it unnecessary.

4. The interruptions, proceeding from searches of neutral vessels on the high seas, the erroneous suspicions and inferences which send them into port for trial, the difficulty of obtaining all the requisite proofs thereon by the claimant, the delays and expences incident to the judicial proceedings, more especially where the trial is at a great distance, and above all when appeals still more distant become necessary, the changes in the state of markets during all these delays, which convert into loss the gains promised by the expedition, the suspension of the mercantile funds, the heavy sacrifices, and sometimes bankrupt-

cies thence ensuing; all these injuries, which war brings on neutral commerce, taken together, must surely, during war, require a very great weight in the opposite scale to balance them, and the weight of these injuries is sometimes not a little increased by the piracies which a state of war generates and emboldens.

The injuries, besides, which are here enumerated, are limited to such proceedings as the laws of war may be thought to authorize. To a fair estimate of the evils suffered by neutral commerce, must be added all those abuses which never fail to be mingled with the exercise of belligerent rights on the high seas; the protracted interruptions, the personal insults, the violent or furtive spoliations, with a thousand irregularities, which are more or less inseparable from the proceeding, and which can seldom be so far verified and prosecuted to effect against the wrong-doers, as to amount to a reparation.

If the evils, brought on neutrals by a state of war, were to be traced to their full extent, a long list of a distinct kind ought moreover to be thrown into the same scale. How many condemnations are made either directly contrary to the law of nations, or by means of unjust presumptions, or arbitrary rules of evidence, against neutral claimants! How often and how severely are the neutral appellants aggrieved by measuring the restitution awarded to them, not according to the actual loss, but according to the deficient estimates, or the scanty proceeds of sales, decreed by ignorant or corrupt vice admiralty courts,* in places and under circumstances, which reduce the price to a mere fraction of the value! Examples of this sort might easily be multiplied; but they may be thought of the less weight in the present case, as they furnish a just ground of resort from

* The character of these courts may be estimated by a single fact stated on the floor of the British House of Commons, 29th April, 1801,—that out of three hundred and eighteen appeals, thirty-five only of the condemnations were confirmed by the superior court. Notwithstanding this enormity of abuses, and the strong remonstrances against them, no change was made in the courts till about four months before the war was over. They were then put on an establishment somewhat different, but which still leaves them a scourge to the fairest commerce of neutrals.

the ordinary tribunals of justice, to those ulterior remedies, which depend on negotiations and arrangements between the belligerent and neutral governments. But whatever may be the provisions for indemnity, obtained in these modes, it remains an important truth on the present subject, that besides the intermediate disadvantage to neutral traders from the mere delay of diplomatic and conventional remedies, the justice stipulated is always rendered very incomplete, by the difficulties in verifying the losses and damages sustained.

The principle urged against a neutral trade in time of war, not permitted in peace, is the more unreasonable, because it gives to a tribunal established by the belligerent party only, a latitude of judgment improper to be confided to courts of justice, however constituted.*

* The English courts of municipal law are much celebrated for the independent character of the Judges, and the uniformity of their decisions. The same merit has been claimed for the prize courts. In answer to the objection made in a Prussian remonstrance against the condemnation of Prussian vessels during the war of 1739, viz: that the Admiralty courts were *ex parte* tribunals, and their decisions not binding on other nations, the Duke of Newcastle, in his letter enclosing the report of the four law officers, observes, "that these courts, both *inferior* courts and courts of appeal, always decide according to the universal law of nations only; except in those cases where particular treaties between the powers concerned have altered the dispositions of the law of nations." In the Report itself it is declared, "that this Superior court [Lords of Appeal] judges by the same rule which governs the court of Admiralty, viz: the law of nations and the treaties subsisting with that neutral power whose subject is a party before them;" "that in England the crown never interferes with the course of justice. No *order* or *intimation* is ever given to *any judge*;" that "had it been intended, by agreement, to introduce between Prussia and England a variation, in any particular, from the law of nations, and consequently a new rule for the court of Admiralty to decide by, it could only be done by a solemn *treaty in writing*, properly authorized and *authenticated*. The memory of it could not otherwise be preserved; the parties interested, and the *courts of admiralty*, could not *otherwise* take notice of it." In the judgment pronounced by Sir Wm. Scott, in the case of the Swedish convoy, [1 Rob., 295,] the independent and elevated attributes of his judicial station are painted with his usual eloquence. "In forming that judgment," says he, "I trust that it has not escaped my anxious recollection for one moment, what it is that the duty of my station calls for from me, namely, to consider myself as stationed here not to deliver *occasional* and *shifting* opinions to serve present purposes of particular *national interest*; but to administer with indifference that justice which the law of nations holds out without

In cases, even where the tribunal has an equal relation to both the parties, it has ever been deemed proper, that the rules of decision should be as plain and as determinate as possible; in order not only, that they might be the surer guide to those who are to observe them; but also a better guard against the partialities and errors of those who are to apply them. Say, then, whether it be not an abandonment of every reasonable

distinction to independent States, some happening to be neutral and some to be belligerent. The seat of judicial authority is indeed locally here in the belligerent country, according to the known law and practice of 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; to assert no pretension on the part of Great Britain, which he would not allow to Sweden in the same circumstances; and to impose no duties on Sweden, as a neutral country, which he would not admit to belong to Great Britain in the same character. If, therefore, I mistake the law in this matter, I mistake that which I consider, and which I mean should be considered, as the *universal law* upon the question."

Does the judge either sustain these lofty pretensions, or justify the declaration of his government to Prussia, when, a few months after, in the case of the *Immanuel*, [2 Rob., 169,] he observes to the bar, "that much argument has been employed on grounds of commercial analogy; this trade is allowed; that trade is not more injurious; why not that to be considered as equally permitted? The obvious answer is, that the *true rule* to this court is, the *text* of the instructions. What is not found therein permitted, is understood to be prohibited, upon this general plain principle, that the colony trade is generally prohibited, and whatever is not specially relaxed continues in a state of interdiction."

He is not extricated from these inconsistencies by alleging that the instructions, the text of which was taken as his rule, was a relaxation of the law of nations within the prerogative of the crown, and favorable to the interests of the neutral parties.—1. Because it was incumbent on him, if he meant to keep himself above all executive interference with the course of justice, to have reserved to him the right to test the instructions by the law of nations, instead of professing so ready and so unqualified a submission to the text of them. 2. Because, without examining the extent of the royal prerogative, which depends on the local constitution and laws, it has been shewn that, in some respects, the instructions have extended the belligerent claims against neutral commerce *beyond* the law of nations, as asserted on the part of Great Britain.

How far the authority of the instructions has been pursued by the High court of Admiralty, in opposition to precedents of the Superior court settling the law of nations, is a fit subject of enquiry, for which the adequate means are not possessed.

The opinion has long and generally prevailed, that the Admiralty courts in England were not those independent and impartial expositors of the law of na-

precaution, while the judges have, in their national prejudices, in the tenure of their official emoluments, and in their hopes of personal advancements, an exclusive relation to one of the parties; say whether it be not unreasonable to leave to the opinion, perhaps to the conjectures of a tribunal so composed, the questions whether in a distant quarter of the globe a particular trade* was or was not allowed before the war, whether if not allowed before the war, its allowance during the war, proceeded from causes distinct from the war, or arising out of the war; whether the allowance had or had not been common to all wars; whether again, if resulting from the particular pressure

tions which they have professed to be; but rather the political organs of the government, so constituted as to deliver its *occasional* and *shifting* views, with reference to the occasional and shifting interests of the nation, belligerent and commercial. And it is to be regretted that this opinion is but too much countenanced by the series of royal orders and judicial decisions which the last and present war have produced. It would be an unjustifiable sacrifice of truth to complaisance, not to say, on the present occasion, that with all the merits of the illustrious civilian who presides in the high court of Admiralty, the Englishman at least is often discerned through the robes of the judge.

This want of confidence in the impartiality of the admiralty courts is the less surprizing, when it is considered that the Lords of Appeal, who decide in the last resort, are frequently statesmen, not jurists; that they not only hold their seats in that court at the most absolute pleasure of the crown, but are members of the cabinet, and it may be presumed, are, in that capacity, the original advisers and framers of the very instructions, which in their judicial capacity they are to carry into effect.

With respect to the inferior prize courts, orders directly addressed to them are neither unusual nor concealed. As an example, take the orders communicated to Mr. King by Lord Hawkesbury, above cited. Another example is furnished by the orders communicated to this government through Mr. Merry in 1804, as having been addressed to the vice admiralty courts in the West Indies, as a rule on the subject of blockades.

* See the case reported by Robinson, vol. 4, p. 267, of a vessel in the trade to Senegal, and the difficulty, expence, and delay in ascertaining whether the trade was or was not open before the war. A case (of Coffin, an American citizen) is now depending, which involves the question, whether the trade from the island of Java in the East Indies, to Muscat in the Persian gulph, was or was not open before the war. This question was decided in the first instance by a vice-admiralty court at Ceylon; and will probably be removed to Great Britain for a re-examination. The case, therefore, will have for its space three quarters of the globe. Through what period of time it may extend, is a problem to be decided. There are precedents, as has been already seen, for ten years at least.

of the war, the pressure amounted to a necessity; whether if amounting to a necessity, the necessity resulted from an impossibility, imposed by a decided predominance and superiority at sea, of the adverse party? These are not questions of fancy or of unfairness. They are questions which it has been seen, that the enlightened judge in the British high court of admiralty has himself recognized as involved in the principle for which he contends. But they are questions in their nature improper to be decided by any judicial authority whatever; and in their importance, they are questions too great to be left even to the sovereign authority of a country where the rights of other sovereigns are to be the object of the decision.

Finally:—The belligerent claim, to intercept a neutral trade in war not open in peace, is rendered still more extravagantly preposterous and pernicious, by the latitude which it is now assuming. According to late decisions in the British courts, it is in future to be a rule, that produce of an enemy's colony, lawfully imported into a neutral country, and incorporated into its commercial stock, as far as the ordinary regulations of a sovereign State can work such an effect, is to be subject on re-exportation to capture and condemnation; unless it can be shewn that it was imported in the preceding voyage, with an intention that it should not be re-exported. Consider for a moment the indignity offered to a neutral sovereign in subjecting the integrity of its internal regulations to the scrutiny of foreign courts, and to the interested suspicions of belligerent cruizers; consider the oppression on the individual traders, inseparable from a trial in a distant court, and perhaps an appeal to another court still more distant, where the intention of an antecedent voyage is to be traced through all the labyrinth of mercantile transactions. A neutral vessel goes to sea with a cargo consisting, in whole or in part, of colonial produce. It may be the produce of a *neutral* colony. It may be the produce of the country exporting it: The United States already produce cotton, sugar, rice, &c., as well as the West Indies. The cruizer does not forget, that the proof will probably be thrown on the claimants; that besides the possibility that it may be a licensed capture,

the difficulty of proof may have the same effect in producing condemnation. He recollects also that in the event of an acquittal the costs* will, where there is the least color for seizure, be thrown on the claimants; and that, at the worst, he can only be put to the inconvenience of giving up a few men to take charge of the prize, in exchange for a few others, not unfrequently *impressed into the vacancy*. In a word, his calculation is, that he may gain, and cannot lose. Will not, under such circumstances, every hogshead of sugar, or bale of cotton, or barrel of rum, &c., be a signal for detention? Could ingenuity devise a project holding out a more effectual premium for the multiplication of vexatious searches and seizures, beyond even the ordinary proportion of condemnations? A project, in fact, more unjust in itself, more disrespectful to neutral nations, or more fatal to the liberty and interests of neutral commerce? Would Great Britain be patient under such proceedings against her, if she held in her hands, the means of controuling them? If she will not answer for herself, all the world will answer for her, that she would not, and what is more, that she ought not.

* It is well known to be the practice to favor the activity of cruizers against the colonial trade. Sir William Scott in the case of the *Providentia*, in which the ship and cargo were restored—2 Rob., 128, says “Cases respecting the trade of neutrals with the colonies of the enemy are of considerable delicacy; and I therefore think it has been properly brought before the court.”

BURR'S CONSPIRACY:—BOLLMAN'S COMMUNICATION.

Substance of a communication made on the 23 of Jan^y, 1807, by Doctor Bollman to the President: J. M., at the request of the President, attending:

Doctor Bollman having just arrived from N. Orleans under the charge of L^t Wilson, in pursuance of an order from Gen^l W., had conveyed to the P. his desire of an opportunity, which was immediately allowed, to disclose to him certain interesting particulars relating to the plans of Col. Burr, in which the Doc^r was charged with a criminal participation.

Previous to the disclosure, the P. assured him that nothing which he might say or acknowledge should be made use of against himself; and it was further observed to him that it was a settled rule in Court, that no communication confidentially made to an officer of the Gov^t, in his official capacity, could be extorted from him as a witness.

The Doc^r opened himself by observing that he had known Col. Burr for some years, and that he had reason to believe that his thoughts had for five or six been turned to Mexico, as an object of enterprize worthy of his preparatory researches; but that his confidential intercourse with Burr on the subject commenced at Washington during a visit which he, Bollman, made there, with a view to effectuate, through the Marquis de Yrujo, a share in the royal licences from Spain to trade with her

American Colonies; in which licences his House was, with others, included; all of them, however, being in fact suppressed in favour of that of Craig, of Philadelphia, in which it was well known that Yrujo was a partner of the prodigious gains made; and this House itself being since shut out by a later arrangement of the Spanish Government with the Hopes and Barings, who had been able to afford advances of money, as well as more satisfactory provisions for transferring the treasures of New Spain to Europe.

During his stay in Washington he had occasional interviews with Burr. They were chiefly at night, and very transient, owing to the constant occupations of Burr with others, and with his plans and papers. In consequence, however, of what passed between them, and of further explanations of Burr at Philadelphia, he was induced to enter into his views; and under the colour of an arrangement with a farming brother on the Ohio, who wished to gain a better establishment for himself, on lands held out for settlement by Mr. D. Clark, near the Washeta, he proceeded to New Orleans, where he arrived in September, with the duplicate letter from Burr to Wilkinson, which he delivered on the arrival of W. at New Orleans.

He stated that what he knew of Burr's plans and views was derived entirely from Burr himself; Burr, as he believed, having an unbounded confidence in him, and making of course no other the depository of what was not disclosed to him.

In explaining these plans and views, he stated that Burr had taken great pains to acquire a knowledge of Mexico in all its circumstances, which might invite an attempt to revolutionize it; that he had been successful in gaining information, and was made very sanguine by it; that he considered such an enterprize as under every aspect happy for Spanish America; as highly beneficial to the United States; as extremely favorable even to Europe; and as promising a glorious place in the history of magnificent events. He more particularly stated that Burr had obtained abundant proofs of the hatred of Spain to the United States, her aversion to the transfer of Louisiana to them,

and her hopes of undoing that transaction; that France was also unfriendly, considered the sale of Louisiana as little more than a loan on mortgage, had views of getting it back on the return of peace in Europe, and, ultimately, of bringing all Spanish America under her sway; that for this purpose it was not to be doubted that the present feeble and degenerate Government of Spain would be set aside in favor of a French dynasty, under the tutelage of France, and thereby all the wealth and power of Spanish America be turned into French resources for accomplishing the objects of France in Europe, as well as on this Continent; that even now the money of New Spain was a fund essential to the operations and victories of that scourge of Europe and humanity; and that in cutting it off, all the world would share the happy effect; that under all these circumstances it was equally just, necessary, and honorable for the U. S. to enter into war against Spain, and to separate from her her most wealthy possessions, as was easy to be done; and that the most expedient mode of beginning and conducting hostilities would be under the auspices of an individual who might find the means independently of the Gov^t for the purpose; that Burr was able to provide these means; that he had accordingly engaged in so doing; that he would be able, as he had latterly written to his friends at N. O.; that he could and should be at Natchez about the 20 December with about 2,000 volunteers, to be followed by about 4,000 more, to whom he could superadd two or three times as many, if necessary, and he had possessed the pecuniary resources; that his plan then was to proceed to N. O., avoiding as much as he could violence and the invasion of private rights, but that it was his intention to seize for his use the French Artillery deposited there; and using force as far as necessary, to lay under requisition all the shipping there, expected, that season, to be sufficient to convey to Vera Cruz in a few days six or seven thousand men, a force which, once effectually landed, could easily march to Mexico, and, with the aid of the discontented, bear down all opposition.

Was it understood that any of the officers, particularly the

higher ones of the Spanish Government, would join in the revolutionary project? No. Influential characters only, not in office, were understood to be ready to co-operate.

He professed to be unacquainted with much of the detail of the project, and seemed to be so of both the proceedings of Burr and those against him, which have lately taken place in the W. Country. He denied any knowledge of an intention to seize the money in the Bank at N. O.

The part which Wilkinson had taken, he said, was contrary to all Burr's calculations, and would so embarrass him that it was difficult now to know the course it would produce. As a proof of the reliance of Burr on Wilkinson's joining him, and according to the belief of Burr of the good grounds for it, he said that just before he parted from Burr at Philadelphia, in July, Burr told him he had just received a letter from Wilkinson pledging himself to the enterprize, which he (Wilkinson) applauded with an enthusiasm. On being asked what was meant by Wilkinson's joining Burr, he said, [by] resigning his commission in the Army of the United States and taking a command under Burr. Was it expected that Wilkinson would carry over with him the army, or any part it? No; it was only thought probable that a certain portion of the individuals might desert and join the corps of Burr. Was it not apprehended that the army would be an obstacle to the progress of Burr? Very little, if at all; and it was expected that the army would be either engaged in hostilities with the Spaniards, or detained by the unsettled state of things on the Sabine; or so scattered into detachments that they could not make head against such a superior and collected force.

On being asked whether he was himself to have gone with Burr to Mexico, he said, no; that he was allotted for another, a sort of diplomatic service. What was that? It was the intention of Burr, as soon as he had embarked at N. O. for the execution of his plan, that he, Bollman, should be sent to Washington, charged with such communications and representations to the Government as might induce it to espouse the enterprize, to concert measures with Burr, and thus, by a war, to consum-

mate and extend its objects. These communications and representations were to consist of documents, facts, discourses, and arguments, which, taken together, could not fail to convince Congress and the Executive that such was the deadly hatred and the dangerous designs of Spain and France, and such the opportunity of frustrating them by securing all we wished and must have with respect to Louisiana and the Floridas, and at the same time of effecting a glorious revolution in the Spanish provinces, and depriving Bonaparte of the resource which principally supports him in his irresistible career, that the whole Gov^t would readily accede to his propositions.

What was the intention of Burr, in case of his success in Mexico, with respect to the political establishment to be made there? This was to partake of monarchy, the people not being fit for a republican Government; but the most influential and most intelligent of the well-disposed persons of the Country were to be consulted, and proper use made of their advice and co-operation.

Were there now, or had there been, with Burr, any persons of consequence belonging to Mexico? He did not know that any were now; or that more than one Spaniard had been with him on the business. There was one who had given him information as to the state of things there.

How could it be supposed that so extraordinary and illegal an enterprize as that undertaken could proceed with the acquiescence or without the knowledge of the Government? Or, if presumed to be not disagreeable to it, why was it, instead of being communicated, so industriously concealed? He had often discussed this point with Burr; who supposed that the measures were so taken and would be executed with such rapidity, that the enterprize would get beyond the reach of the Government; and that it was more expedient in every view that this course should be pursued, even on the supposition that the dispositions of the Government were in his favor. Burr, he said, would have not concealed his views from the President, if the necessary authority had laid with him; but he, the President, could do nothing, or would be obliged to oppose them; and to make the com-

munication to Congress would have produced a ruinous publicity.

Whence have the funds been obtained or expected for purposes so far beyond those of individuals, such as the enlistment, equipment, subsisting, and transporting, even to New Orleans, a body of 6 or 7,000 men? No other than private funds, contributed by the friends of Burr, with the use of Bills at long sights, had been employed; many of these bills were drawn at 120 to 150 days' sight, and Burr had expected, by the rapidity of his successes, to be able to provide for the discharge of them. He repeated that he was not acquainted with such details of the plan; and particularly disowned a knowledge of the contributing friends of Burr, or any circumstances affecting his son-in-law, Alston.

Had no pecuniary success been obtained or attempted from foreign Governments, and what were Burr's prospects or connections with those Governments? Had nothing taken place with the Government of Great Britain, or [of] Spain, through their Ministers here, or by agents of Burr abroad? Yrujo, whom Burr, in order to lull, had duped into a belief that his object was to revolutionize Louisiana, and separate the Western States from the Union, entered eagerly and zealously into the plan; visited him continually, and *pestered* him with his advice and exhortations; offered him the use of 10,000 stand of arms, and money to any necessary amount; was, in fact, so full of zeal, that he would have gone to Spain in order to put his Government in the course of effectual co-operation. Burr, however, despised the dirty character of Yrujo, and never would accept either money or any thing else from that quarter.

Did it appear that Yrujo acted merely from himself, under a general confidence in the dispositions of his Government, or that he had applied for and obtained particular instructions on the subject? He did not know that there had been, or was time for, any communication of Yrujo with his Government subsequent to the first communication of Burr with him.

He dwelt here on what he had very early intimated, that it never was a part of Burr's plan to detach the Western Coun-

try, or to revolutionize Louisiana; Burr's sole view in his intercourse with Yrujo was to keep him from watching him and sounding alarms to the Government, by letting him enjoy the pleasing belief that the operations of Burr were levelled against the U. S., not against Spain. Yrujo was not without jealousy. He one evening posted himself for two hours opposite Burr's lodging, to ascertain the coming out of Merry; after this, Burr was obliged to take measures for duping him thoroughly, and succeeded.

Did Burr contemplate a union of Mexico with the United States; or did he not rather intend a union of Louisiana and Mexico in an Independent State? Neither; he had in view a connection of friendship, but Mexico was too distant. The idea appeared to be absurd. If Burr had wished to unite Mexico and Louisiana, it would also have been folly to attempt it; because he must, in that case, have left part of his force to guard Louisiana, and thereby have ruined his expedition to Mexico. But might not the plan be to proceed with the whole force to Mexico, and after success there to re-act with its resources on Louisiana? He could not see any grounds for such a plan.

Had Burr any, and what, communication with the British Government? He communicated freely with Merry, who entered warmly into his views, assured him that its dispositions could not but be entirely favorable, and that he would make such representations to it that it could not fail to see its interest in the event too clearly not to be active, provided it could be done without cause of umbrage to the United States. He (Bollman) understood that no doubt was entertained, previous to the death of Pitt, that decisive measures would have been taken for espousing the plan of Burr, not with unfriendly views towards the U. S., but to promote the interests of Great Britain, and eventually to unite more closely both against the Enemy of the latter. The death of Pitt changed the face of things so much, that he could not say whether Burr had taken any steps since, as to that Government, or what his hopes from it were, further than that it would not oppose him, and that its ships of war in that quarter might keep off those of Spain and France.

He had understood that Truxton would go to Jamaica to make some favorable arrangement with the British Commander there, and spoke of him as being there at this time.

What kind of aid was it understood was to be derived from the British Government? was it money, a regular expedition of ships and troops fitted out for the occasion, or merely the incidental protection of ships of war, as in the case of *Miranda*? He could not be precise on this subject. He presumed all these aids, if requisite, would be furnished: money, as well as the rest. How would the money probably be brought into the use of Burr? In the usual mode, he presumed, of bills drawn on Great Britain. Was it understood that the measures of Great Britain were to be the effect of an arrangement particularly expected between Burr and that Government, or at least of a mutual understanding of the parties resulting from the communications between Burr and Merry? He could not say any thing particularly on this head. He presumed that the measures of both would be guided by the understanding at least between them, which commenced between Burr and Merry. He took pains, at the same time, to impress the idea that Merry had no wish to injure the interests or infringe the authority of the United States, but solely to advance those of Great Britain, and to draw as much as possible the two nations into a common interest on this occasion.

Burr, he said, had sent a person to the British Court. On being asked his name, he wished to know whether the assurances that his communications should not be used against himself extended to others, and being told not, he professed scruples at giving the name; intimating, however, that he was not a native, was of the mercantile class, and not a conspicuous character; and that having arrived in England after the death of Pitt, had probably never disclosed or done any thing in his mission.

Had Burr's plans any relation to those of *Miranda*? No. Not the least. Burr thought meanly of *Miranda*, of his plans, and of his prospects.

The primary object of Burr in wishing to see the Presi-

dent seems to have been to explain his own conduct, which he supposed to have been viewed as blended more with Burr's transactions than was the fact: his next object, to present Burr's plans and proceedings in a light as little criminal as possible. He manifested a bitterness towards Yrujo and Spain—the reverse towards Merry and Great Britain.

He betrayed, also, the strongest resentment against Wilkinson, but tempered his remarks with a respect to his relation to the Government, and to the presumed sentiments of the President. He complained, however, of Wilkinson's conduct towards him as harsh—insinuated as the motive a conscious treachery of Wilkinson towards Burr, and expressed a confidence that many were suspected at New Orleans, and some denounced, without cause. He particularly acquitted E. Livingston and Prevost. The latter, he said, Burr, who avowed the maxim of trusting nothing to any body, beyond the necessity of the case and the measure of discretion, never would unbosom himself to, because Prevost was not considered as possessing the requisite discretion.

LETTERS, ETC.

TO JAMES MONROE.

WASHINGTON, March 20, 1807.

DEAR SIR,—You will receive herewith a letter for yourself and Mr. Pinkney, acknowledging the receipt of your communications by Mr. Purviance, and suggesting the intermediate course to be pursued, until the further instructions contemplated by the President can be matured. The delay will be short; but it is desirable to accommodate the instructions to the result of some enquiries as to certain facts, and the probable operation of certain arrangements.

The President writes you by this conveyance, and touches, I presume, on the particular difficulties which restrain him from closing the bargain with G. Britain on the terms which she so obstinately insists on. In general, she has indulged a hard and spirit, of which it is probable Mr. Fox would never have been the Minister. But in refusing an explicit pledge against the horrible practice of impressments, and in giving to the declaratory note the form and face chosen for it, she has, in the view of the President, laid him under the necessity of recurring to the course and chance of negotiation. The declaration, if not put aside by the turn of events, may be put into some candid and delicate shape which would remove that difficulty. But the case of impressments consists altogether of thorns. Considering that the public mind has reached a crisis of sensibility, and that this object essentially contributed to the Extraordinary Mission, as well as to the non-importation act, there is every motive to seek in every mode an effectual remedy. For reasons already hinted, the promise in the note of Lords* H. and A., of Nov^r 8, is not such a remedy, in the view

* Holland and Auckland.

produced here by circumstances which could not be so well appreciated where you are. In several other points the terms insisted on by G. Britain are liable to all the objections which you opposed to them, and it is the wish of the President that they may undergo revision, on grounds which will be stated in my letter by Mr. Purviance.

The President and all of us are fully impressed with the difficulties which your negociation had to contend with, as well as with the faithfulness and ability with which it was supported, and are as ready to suppose, in as far as there may be variance in our respective views of things, that in your position we should have had yours, as that, in our position, you would have ours. What may be the effect of further efforts in another form, or on other grounds, if these can be devised, remains to be seen. The President has, doubtless, given you to understand as well the choice left you as to a participation in these efforts, as the satisfaction which will be felt in case your arrangements admit of your stay for the purpose. If he has been silent, it is because he assures himself that his sentiments cannot be misconstrued by you. The uncertainty whether you may not have carried into effect the purpose intimated in your private letter by Mr. P., before this reaches London, concurs with the urgency of the opportunity in rendering it shorter than it would otherwise be.

TO GEORGE JOY.

WASHINGTON, May 22d, 1807.

DEAR SIR,—I duly received your favor of Feb^y 10. Not recollecting the precise sentiments which you were induced to communicate, first to Mr. Fox and then to Lord Holland, I cannot fully appreciate the step taken. I know only that I felt the dispositions expressed, that I did not look beyond your own perusal of the letter, and that I am entirely persuaded of the laudable motives which governed the use of it. You will, I am equally persuaded, be sensible that the very consideration which promised advantage from the communication would not permit a repetition.

The Treaty signed with the British Commissioners has not received the approbation of the President. Full justice is done to the talents and exertions of ours, but the terms admitted on the other side do not satisfy the expectations on this. The case of impressments, particularly, having been brought to a formal issue, and having been the primary object of an Extraordinary Mission, a Treaty could not be closed which was silent on that subject—a subject which, whenever it shall no longer be seen through the mist with which practice enveloped right, must excite wonder that the patience of the United States has remained so long unexhausted. That an officer from a foreign ship should pronounce any person he pleased, on board an American ship on the high seas, not to be an American citizen, but a British subject, and carry his interested decision on the most important of all questions to a freeman into execution on the spot, is so anomalous in principle, so grievous in practice, and so abominable in abuse, that the pretension must finally yield to sober discussion and friendly expostulation. Our Commissioners are accordingly instructed to resume the negotiation, with a view to cure this and some other essential defects; and to revise several articles into which the British Commissioners pressed advantages too unilateral. It is truly to be desired that the result may establish a perfect cordiality between the two Countries, founded on solid justice and fair reciprocity. But it is not to be overlooked, that so happy a state of things will be of short continuance, if the arrangements on paper be not accompanied with a suppression of the outrages which the Naval Commanders of G. Britain are so much in the habit of practicing on our shores, and even within our harbours. Insults have just been received which rouse feelings that are only controuled by a confidence that such atrocious conduct will be elsewhere avenged.

Will you accept a statistical publication which contains some interesting views of the progressive faculties of this Country? with assurances of the respect and esteem with which I remain,

Y^r mo. ob^t servt.

TO JAMES MONROE.

WASHINGTON, May 25, 1807.

DEAR SIR,—Although it is not certain that this will find you in London, I cannot commit to Mr. Purviance the official despatches without a few private lines.

It has been a painful task with the President to withhold from the joint work of yourself and Mr. Pinckney the sanction which was expected, as it has been to me to communicate the event, with the considerations which produced it. I console myself with an assurance that you will see in both the same conscientious discharge of duty which is stamped on your proceedings, and with a hope that your further efforts, aided by the new proposition which is authorised, may yet close our common labours with success and satisfaction. An adjustment with G. Britain continues to be rendered important by the state of our affairs with Spain, &c., as well as by the danger which a failure threatens to the peace between the two nations. This danger may be increased, too, by the late change in the British Councils, if the new administration should be able to keep its legs, and not be checked in its inclinations by the fear of encountering the consequences to themselves of a rupture with the U. States. But it is not consistent with the judgment of the Executive, or, as is believed, with the temper of the nation, to purchase an adjustment at a higher price than is explained in the instructions of which Mr. Purviance is now the bearer.

We shall soon learn, I presume, whether a supersedeas to Mr. Erskine will be among the minor changes proceeding from the change in the Cabinet. It may be said with truth, that it would be difficult to find a successor who would give or feel more pleasure in the station than the present incumbent. The latter consideration may, however, be a motive, whilst the former may not be a sufficient objection to his removal.

I could on no occasion so properly refer to the bearer of a letter for information as to Mr. P. on the present. He has been long enough here to know every thing worth telling you, and will be sure to tell it as he knows it. He returns in the

character which he brought with him; to which the commissioners of the sinking fund have added a trust, the value of which he will explain. The opportunity of giving him that mark of esteem was embraced with the greater pleasure, as it would have been difficult to find another, especially an equivalent.

TO JAMES MONROE.

WASHINGTON, July 25, 1807.

DEAR SIR,—Since the communications by the *Revenge*, which sailed on Monday last, nothing very material has occurred. The British squadron, on receiving the Proclamation, fell down to the Capes, near which, (in Lynhaven Bay,) several of the same or substituted ships remain. It is not known whether any orders have been received from the Admiral relative to their conduct under the Proclamation. They continue to defy it, not only by remaining within our waters, but by chasing Merchant vessels arriving and departing. They make efforts, also, to get in small parties on shore, for the purpose, as supposed, of obtaining water and provisions. In a late instance, two officers and three men, said to be from the *Leopard*, were surprised and taken. It became a question whether they were to be considered as prisoners of war. The Executive council of Virginia were for so viewing them, and for retaining them. The Governor was not of the same sentiment. The President has decided that it is expedient, under all considerations, not to enforce the principle that a war *de facto* exists, in this first instance; but leaves himself free to proceed according to expediency, if like instances occur. To release indiscriminately will be to invite landing parties, and insults to the public authority.

The public mind is settling itself every where into a determined stand at the present crisis. The Proclamation is rallied to by all parties. Reparation or war is proclaimed at every meeting, or rather by every mouth, which is not British; and the reparation must be such as ought to satisfy the just feelings

of a nation which values its honor, and knows its importance. I anxiously hope that the British Government will not mislead itself into a belief that it can evade our demand, or attempt to abridge or disguise the satisfaction rendered, by the mode and circumstances of rendering it. If, for example, a minister specially sent to disavow and repair the insult should supersede the ordinary Minister, and remain here, it would be regarded as a species of subterfuge. His immediate return will be necessary, to shew to the world that his mission was for the purposes avowed.

I have been unwell for several days, and am much fatigued by the business I have been lately obliged to go through, and by the heat of the weather. I must, therefore, however abruptly, add only that I remain, D^r Sir, your sincere friend and servant.

TO JUDGE PETERS.

Sept^r 5, 1807.

I wish you had been led to a more thorough development of the principles which enter into the subject now engaging the public attention—I mean the desertion of seamen. Although the question produced between this and a Foreign nation by the late outrage against one of our Frigates does not turn on that point, there would be an advantage, in several views, in placing the questions incident to the desertion of seamen on the true ground. Judging from what is seen and heard, few subjects of importance stand more in need of elucidation; although few, one would suppose, could less require it.

Desertions from Merchantmen are merely breaches of private contract; and when the parties and the contract are wholly alien, it may or may not be enforced within our jurisdiction, as the policy of the Country may dictate. As an encouragement to commerce, and as a claim to reciprocity, there is sound policy in enforcing the contract; and there are special considerations for enforcing it specifically here, even where this would not be done in the Country to which the parties belong. Still, the

Law of nations leaves us free to provide or omit the means necessary for the purpose. In G. Britain no such provision has been made. In several cases applications have been made in vain for the restoration of seamen deserting our Merchant vessels in British ports; the magistrates alledging that it was not authorized by law. I recollect particularly that on the late renewal of the war with Spain, by the seizure of the Spanish treasure, so many of our seamen at Liverpool were tempted to desert and enlist on board British Privateers, that our trade was seriously embarrassed, in consequence of which the Consul thought it his duty to appeal to the magistracy. He received for answer that the law afforded no relief in such cases.

Desertions from ships of war are of a character essentially different. The deserters in such cases are on the common footing of exiles, liable to punishment, even to capital punishment, for violating the law. It is well understood that no nation is bound to surrender them to the angry Sovereign, unless by some positive stipulation. G. Britain never does it otherwise. Her laws do not authorize it; nor is the Prerogative of the King competent to it. It is, perhaps, sometimes done, indirectly and covertly, by the instrumentality of impressments and the courtesy of Naval commanders; but always then of favor, not of duty. With us there is not only no obligation, but less than with other nations the policy of inviting reciprocity, our navy being so small, and so little resorting to Foreign ports. It is rather our policy to discourage the resort of Foreign ships of war to our ports; and as far as humanity can be justly consulted, it does not plead for the surrender of men to vengeance for leaving a situation such as that of a British ship of war, into which they had been engaged by a mode such as that of impressment. All these considerations, however, amount to no more than that a gratuitous surrender of such deserters ought not to be expected. There are certainly views of the subject which would authorize an article for the purpose in a convention, combining with it other articles providing for objects desirable to this Country. The only distinctions between deserters from National ships and other fugitive offenders is—1. That in the

former case, the flight itself constitutes the offence; in the latter, it is the consequence of a preceding offence. This being a circumstantial distinction, does not affect the sameness of the principle. 2. The offence committed by deserters from ships of war generally takes place within the Country affording a refuge; whereas the offences of other fugitives generally take place in their own Country. But this, again, is a distinction not affecting the principle. Ships of war in a Country not their own are, with respect to the discipline on board, a part of their own Country, not of the Foreign Country where they happen to be; desertions violate the laws of the former, not of the latter; and Tribunals deriving authority from the former, not the latter, inflict the punishment incurred.

TO JAMES MONROE.

WASHINGTON, Jan^y 5, 1808.

DEAR SIR,—Nothing has occurred since you left us worth detailing to you. We are still uninformed of the precise circumstances which have detained Mr. Rose on board the frigate. There is a report that he will either pass up the bay to Annapolis, or possibly engage a vessel to bring him immediately to this place. As a precaution for the former event, an express carried yesterday an instruction to the collector similar to the one sent to Norfolk. Be so good as to keep in mind your promise to note to me the passages in your correspondence proper to be withheld from Congress, in the event of a communication of our affair with G. Britain.

TO THOMAS JEFFERSON.

DEPARTMENT OF STATE, Jan^y 7th, 1808.

The Secretary of State, in compliance with the note of the President, relating to the public property at New Orleans, as reported by Governor Claiborne to the Secretary of the Treasury, begs leave to state that no part of that property appears

to fall in any respect under the purview of the Department of State, unless it be the Government House, and the lot on which it stands. This, it is inferred from the representation given by Governor Claiborne, might be disposed of for a greater sum than would provide accommodations for the Governor of the Orleans territory, in a part of the city more eligible for his residence. It would require, however, further knowledge of the local circumstances, to enable the Secretary of State to judge of the expediency of such a proceeding. And it is presumable, from the character given of the lot in question, that delay will not be attended with less advance in its value than will be incident to the spot which might be substituted; so that the proposed sale and substitution may probably at any time be carried into effect, without loss to the public.

NEGOTIATIONS WITH MR. ROSE.

Friday, 1st Feb^y, 1808.

General object of interview.

Explain causes of Proclamation—~~the~~ continuation of attack—by seamen detained—officers recalled—Ships in Harbors doing illegal things.

Grounds of prelim^y. 1. Disavowal by L^d G. due to G. B. even if war—2. General assurance and personal conviction.

Impossible for means of judging for ourselves see Mr. E. Object of proclⁿ—precaution—not merely as to the Chesapeake.

2. Errors. 1. In supposing reparation object—which an item then only—2. Precaution vs. Chesapeake.

Disavowal—due to G. B.—even if war meant—honor, interest, principle so much against her—disavowed by L^d Grenville—disavowal no reparation—shews a disposition only to repair—project of explⁿ—particulars and contemporary acts.

Mr. Rose—suggests idea of his friendly return with rep^t of the diff^y.

J. M. reports this to P., who, on consultation on Monday, decides vs. this idea, and prefers informal disclosure by R. of atonement and repeal of proclⁿ to be contemporary acts.

Tuesday, Feb^y.

J. M. states to Mr. R. objection to adjournment of subject to G. B., which Mr. Rose admits—and in conversation as *between two private Gentⁿ* enquires whether U. S. will agree to a mutual discharge from *public ships* of all *natural-born* subjects and Citizens, it appearing to be implied that this might contribute to diminish difficulties and prepare way for something further—willing to *wait* for answer.

Wednesday, Feb^y 3.

Idea of Cabinet that the mutual discharge not inadmissible, if extended to Merchant Vessels; considering the advantage to naturalized subjects, of being kept out of danger from being taken into the jurisdiction of their former Sovereign; and that Mr. R. be sounded as to his powers and dispositions.

Thursday, Feb^y 4.

Conversation of J. M. with Mr. Rose—explained himself on the subject of Tuesday's conversation, by signifying that his suggestion was a hasty thought, and that it was most consonant to his situation to limit the enquiry to the case of deserting subjects natural born. He was told this was already provided for by the rules prescribed to our Naval Commanders. Occasion was taken to express the desire of the U. States to remove all causes of danger to the harmony, &c., as well as that exemplified in affair of Chesapeake, which was evidently of a nature not likely to recur after disavowal, &c. He did not open himself as to any thing beyond the limit to which he reduced the enquiry, acquiescing generally in the desirableness of a general adjustment, &c. The objections to the delay of seeking further instructions, &c., was dwelt on by both, and ended in a frank and direct suggestion by J. M. to let the satisfaction, accept-

ance, and recall of proclamation, be executed on same day, and so as not to shew on the face of the proceeding a priority, leaving this to be assumed respectively, as might be agreeable. He, Mr. Rose, would take into consideration with best wishes, but was not sure that his instructions could bend to it. He held out the idea of exhibiting without editing the revoking proclamation, as an expedient to save him. He was told nothing would be admitted that would expose the Executive to appearance of having yielded to his preliminary; and it was remarked that Mr. Canning, if he had not supposed the Proclamation to be a retaliation, and that the aggression had been *discontinued*, which could not be during the detention of the men, would have approved this course at least. Mr. Rose glanced at idea of disclosing his terms, &c., through Mr. Erskine and Mr. Rob^t Smith. He went away under an arrangement for another interview to-morrow, 12 o'clock.

Feb^y 5th.

Conversation.

Mr. Rose appeared to have taken a view of the proposed contemporary signing and adjustment of the Proclamation, which required him to decline it definitively. On my restating it, he resumed the conversation, and agreed to see me in the evening at my house, in order to hold frank and informal communications and explanations.

Evening of Feb^y 5.

He brought Mr. Erskine with him. The conversation was free. The tenor of a suitable proclamation disclosed, and the terms he meant to offer, viz: recall of Admiral Berkley; restoration of [the?] three men; and provision for families of the killed and wounded. The idea of restoration to the *same ship* was stated to him, which he seemed willing to favor; also punishment of Berkley, which he said would be difficult by his co-officers, and be in the result, perhaps, an obstacle to a permanent exclusion from actual employment. Agreed to see one another at 1 o'clock to-morrow, at office of State.

Friday, Feb^y 6.

Conversation.

Mr. Rose starts the idea of a disavowal on our part of conduct of Agents, &c., in encouraging and not discharging deserters—*natural-born* subjects. This was combated as going out of the case of the Chesapeake and leading to other subjects of complaint; and particularly as justifying a demand of British disavowal of—&c., &c. The difficulty, also, as to natural born, was stated, in cases of naturalization. He was reminded, too, that orders had been issued and circulated to officers against recruiting deserters, &c., which was amply sufficient. He retired under doubts as to the possibility of his satisfying his instructions without obtaining this point.

Monday, Feb^y 8th, appointed to meet again.

Monday, Feb^y 8.

Instead of the expected matter, Mr. Rose very soon introduced, as a point enjoined in his instructions, the necessity of some disavowal on the part of the U. States as to the conduct of their agents in encouraging, harbouring, and retaining, deserters, *natural-born* subjects of H. B. M.; as what had preceded the affair of the Chesapeake, and was but a reasonable satisfaction to his Majesty preparatory to the adjustment intended by him.

As this was a new and unlooked-for preliminary ultimatum, though it had been glanced at in a former conversation, when it was supposed to have been answered in a way putting it entirely aside, it was proposed to him to reduce it to paper, so that there might be no possible misconception, with a general intimation only that it would not be admitted into the adjustment, and that it would be impossible for the U. States to view natural-born subjects of G. Britain, who had been naturalized here, in any other light than as American Citizens whilst within American jurisdiction. Mr. Rose agreed to see me the next day, (Tuesday, Feb^y 9,) with his idea put into writing, to be informally read to me.

Tuesday, Feb^y 9, 1808.

Mr. Rose read from his paper, in substance, that with a view to remove impressions made by recent events on the mind of H. B. M., the U. States should disavow the conduct of their Agents in encouraging, harbouring, and *not discharging*, natural-born deserters—a case different from *not surrendering*, which was not claimed.

He was reminded of the difficulty as to natural-born subjects naturalized by the U. States; that if impressions were to be removed on one side, so on the other, where they were much greater, from the course of indignities offered by British Ships in our harbours and on our coasts; that the proposal was not reciprocal in itself—a thing essential to the honor of the U. States, [here he remarked that this had not escaped him, reading a reservation to the U. States of their right to claim from G. Britain a like disavowal; to which the reply was, that there was no reciprocity between an actual disavowal and a right to ask a disavowal;] and, finally, that it could not enter into the Chesapeake business, unless other things as much connected with it were also to be admitted.

Being myself much indisposed, the conversation was soon ended, with an understanding that I would take the orders of the President, and see him as soon as convenient.

Sunday, Feb^y 14.

This was the earliest that I had health enough to see Mr. Rose, who was invited to call at my house for the purpose. I preferred the irregularity, both as to time and place, to a delay, which was becoming very disagreeable on all sides, and was rendered to him, as he had indicated, peculiarly distressing, by his having two British Packets detained till he could say something on the subject of his mission.

Having previously obtained the sanction of the President, I repeated the insuperable objections to his proposal, (adding, in fact, that there had been no refusal to discharge deserters, the demand being always to surrender,) and, in place, suggested a

mutual disavowal—1. As to receiving deserters into naval service. 2^d. As to claiming a surrender of them. This would agree with the principles now maintained on both sides, would be reciprocal, and might be useful. He admitted that the surrender was not claimed, but that his instructions did not authorise any such general or separate arrangements being restricted to the case of the Chesapeake.

It was observed that this was at least as much connected with that as the case of the discharge; and it was signified that a mutual, general, and separate disavowal of this case alone would not be inadmissible, with a saving, by the form of expression, of the principle as to naturalized Citizens. This also was declined, as not within his instructions.

He was finally told, as had been on former occasions intimated, that it would be easy to write a letter on some pretext to Mr. Erskine, explaining the principles of the U. States as to Deserters; that if mere assurance of these principles was the object of his Government, that object would thus be attained as well as in his mode; if not that, but an expiatory act on the part of the U. States was the object, it was absolutely inadmissible.

He dwelt with expressions of great regret on the situation in which he found himself, tied down, as he was, by his instructions, and knowing, as he did, the impressions of his Government. To all which it was simply remarked that the attack on the Chesapeake was a detached, flagrant insult to the flag and Sovereignty of the U. States on the high seas, in face of the world; that the plain course was to repair that, according to usage public and private, and to the examples of his own Government; that reparation made, the way was open to any demands of redress on other points, if any existed, where it might be due to the redressing party, and a general example was the best mode of securing liberal satisfaction.

In course of this conversation, he mentioned, with an apology for omitting it before when he intended to do it, that a disavowal of Commodore Barron's denial that he had such men on board as were required made a part of his instructions.

After remarking that it was impossible in any view that that circumstance could be admitted, and that it was merely noticed for the sake of truth, which could never do harm where the manner did not imply something improper, I told him that Barron was responsible to his Government for his conduct in that instance; that his reply was wholly unbecoming his station; that it was probable, however, that he said what he believed to be true; and, indeed, was true, the demand of Humphreys being for deserters from other ships than that to which the men taken from the Chesapeake belonged. This he admitted, except as to one Jenkins Radford, stated to be a deserter from the Halifax. I told him that, even as to him, we had the authority of the British Consul at Norfolk that he was a deserter from a Merchantman. This he seemed not to be aware of, and said that if the fact was wrong, he could not found a proceeding on it. He retired with an intimation that he would revolve the subject and his instructions still further, and see me when I pleased to intimate, which was promised as soon as health permitted. His manner and concluding remarks left it uncertain what determination he would bring to the interview.

Tuesday, Feb^y 16.

Conversation.

Mr. Rose, in consequence of an offer to see him to-day, called about 2 o'clock. It appeared that he did not consider himself authorized to accede to either proposal for getting over the difficulty respecting the disavowal required from the U. States of the conduct of our agents in harbouring, encouraging, and not discharging deserters. He was reminded that this disavowal, as stated by him, was as much a departure from the specific case of the Chesapeake as the mutual disavowals proposed by me, being general as to deserters, and not restricted to those entering on board the Chesapeake. He seemed sensible of this, and manifested a disposition to make it rather more limited; but proposed nothing; nor did he revive the subject of disavowing Barron's answer; seeming to be prepared for abandoning further informal conversations, and leaving me to answer in form his

note of the 26th ult. This was promised as soon as my health, and some urgent business, [meaning the despatch of the vessel waiting at New York to carry letters, &c., to France and G. Britain,] would permit; it being remarked to him that the hopes that an answer would have been rendered unnecessary had prevented me from particularly revolving even a suitable answer.

Monday, Feb^y 22.

Mr. Rose having signified by a note last evening a wish for an interview to-day, 2 o'clock was named, when he called for the purpose.

His object appeared to be to express his hopes that a failure of our negociations might be still consistent with a future adjustment, either here or in England, and to speak of the difficulty under which he should find himself in making known to his Government the points on which the failure would have taken place; as he could not give this explanation, after a refusal of his preliminary, without showing that he had departed from his instructions. With these remarks he mingled expressions of much solicitude that no unfavorable inferences might be drawn from the obstacles arising from his instructions, and that he might be instrumental in promoting a removal of them, which he thought he could best do by personal communications at London.

It was observed to him, that without meaning to express more than an abstract opinion, it would seem not difficult to let his Government understand the points on which the business failed, by intimating that there were sufficient indications that if the preliminary had been complied with or got over, the views entertained by the Government on those points would have necessarily produced a failure. It was intimated, also, that the place most proper in itself for adjusting the matter was *here*, not in *G. Britain*, and that the propriety was strengthened by what had passed. If, in the first instance, London had been proposed, it was with a view to hasten the result.

Mutual observations were made pointing out the inconveni-

ences of referring the subject to a settlement under new instructions. His attention was drawn to the experiments which had been made to avoid delay, and it was repeated to him that there was still a willingness to write a letter, detached from, and subject to, an acceptance of the reparation, in which the principles and practice of the U. States in the case of Deserters could be stated, with the addition now authorised, that an order had issued for discharging from the *public* Ships all British subjects. It was remarked that could not be mentioned but in a certain way, such as such a letter would admit, because the order was not the result of either legal obligation, or of example; his Government instantly refusing to discharge Americans voluntarily accepting a bounty.

He manifested satisfaction at this course, and signified that it could not fail to make agreeable impressions and promote salutary objects. He was reminded that this was more than his instructions aimed at; and it was for him to decide how far it would balance the objections to a departure from the letter of them.

He professed to be gratified with the spirit of the conversation, but without any apparent change in the course he was to pursue, and retired with an understanding that I would see him at any time he might wish to resume it.

Feb^y 25.

Mr. Rose having yesterday asked an interview, was afforded one to-day. He seemed to have in view to prevent any expectation that he would, instead of the disavowal required as to deserters, accept the information proposed to be given of the principles and policy of this Government on that subject, by suggesting, that as this course would be inconsistent with his powers, he should not act with candor towards us in so doing. He reiterated his regret that his powers were so limited, and his belief that the orders issued to discharge all British subjects from our public ships would make great impression on his Government. Little was said in reply, further than repeating the

inconveniences resulting from such an issue to his mission, and remarking on our disappointment at the tenor of his instructions, and the length we had prevailed on ourselves to go in order to surmount the difficulties they occasioned. It was intimated as one of the inconvenient effects of the actual posture of the business, that the President was sending a Message to Congress recommending an extension of precautionary measures, necessarily attended with expence, &c.

Points for Mr. Rose. Wednesday, [Feb^y 24.]

Evils of degradation mutually to be shunned after acceding to the mode of separation cases of impressment and of the Chesapeake, the demand of such preliminary the less looked for, so categorical and precise.

The recall of Proclⁿ founded on disavowal, &c., &c.

What is disavowed? Act of unauthorised officer—and principle of d^o, an avowal never presumed—but the contrary.

What to be recalled? Act of Gov^t itself, an act not of aggression or of reparation; but wholly of precaution—and referring to wrongs prior to, and wholly distinct from, the affair of Chesapeake.

To revoke the proclamation in face of the world, under such circumstances, would acknowledge it to be aggressive, and would originate a reparation on our part instead of receiving one— a degradation, in fact, the worst of all evils, and which a nation determined never to be degraded could never suffer to be imposed on it. Do not wish to require, cannot, therefore, perform, degrading conditions. Unless, therefore, some new turn to the subject, must proceed from oral to written communications. If a precise and categorical preliminary shuts the door against all chance and prospect, delay is fruitless.

But if door not shut, it will be agreeable to find that the consequences of a failure are not suspended on an ultimatum of such a character.

The revocation of the Proclⁿ impossible without extending

the disavowal, and assurances, to the several cases which led to it, and referred to in it, and many of them long lying before your Government without notice or promise of future security to the U. States.

Tho' the time unexpected by the P—, no purpose, by hasty issue on a particular point not perfectly understood, to preclude amicable explanations, and which might possibly lead to a favorable result.

General and mutual reasons vs. war—interest, harmony, &c., &c.

With this view, U. S. desired to settle everything.

Union of Impressments and Chesapeake favorable thereto, and facilitates latter.

Separation yielded, to the views taken of the subject by G. B. and to his Mission.

Surprize at; at splitting the case of Chesapeake—entirely statu quo. Talk Proclamation—precaution vs. other wrongs—Bradly—Whitby—Love—French ship burnt—Doug^l seiz. of Norfk—Continental disobedience to Proclⁿ.*

* The following appears to have been intended for a contingent Proclamation of the President, recalling his Proclamation of 2 July, 1807:—

“His B. M. having manifested his disposition to re-establish, by an honorable reparation of the aggression committed in the month of June last on the frigate Chesapeake of the U. States, by the Leopard, a British ship of war, the good understanding affected by that incident; and this evidence of his disposition to maintain amity with the U. States being considered as a pledge that such effectual measures will be taken on his part as shall ensure from his naval Commanders an entire respect for the laws and the jurisdiction of the U. States, whilst within their waters or on their coasts, and render unnecessary the precautionary measures provided by my proclamation of the 2d of July, 1807: on these considerations, and with a view to manifest a corresponding desire to promote a return of entire harmony between the two nations, I have thought proper to issue this my proclamation, discontinuing all the provisions of the said former proclamation; and hereby declaring that the same shall become void, cease, and have no further effect; of which all officers, civil and military, of the U. States, and all citizens and others within the same, are requested to take notice and act accordingly.”

TO JAMES MONROE.

WASHINGTON, Feb 6, 1808.

DEAR SIR,—I received last night your favor of the 3d, and lose no time in forwarding the papers which it requests. I am sorry that they have been so long delayed; but, in truth, our hands have been so full in one way or other of late, that the transcripts which were to be taken for the office could not be readily attended to. I am not sure that there may not yet be some omissions, and must, therefore, ask the favor of you to return such of the papers as you may have copies or not wish copies of. Should any particular paper wanted not be now sent, be so good as to drop a hint, and it shall be immediately attended to.

TO JAMES MONROE.

WASHINGTON, March 18, 1808.

DEAR SIR,—I duly received your favor of the 5th, and with it your observations, addressed to the Department of State, on the subject of the Treaty of December, 1806, which will be communicated to Congress with the documents relating to the negociations, &c., connected with the Treaty; it being understood that such a disposition of the paper will conform to your wishes.

Mr. Rose's mission is abortive. Communications on the subject will be made to Congress in a day or two. He made it an indispensable preliminary to his entering on a negociation, or even disclosing the terms of satisfaction he had to offer, that the Proclamation of the President should be put out of force. This being inadmissible, it was proposed that on his disclosing his terms, and their appearing to be satisfactory, a repeal of the Proclamation and the act of reparation might bear the same date. His instructions being a bar to this, the correspondence was closed, with an intimation that it rested with his Government to decide on the case. He will depart, I understand, without delay.

TO JAMES MONROE.

WASHINGTON, March 21st, 1808.

DEAR SIR,—In the joint letter from you and Mr. Pinkney, of October, a project on impressments is referred to which does not appear. I forget what passed with you in conversation on the subject. You will oblige me by dropping me the state of the case, and if there be any document in your hands, that you will be so good as to forward it, or a copy of it. It can, if necessary, be thrown into the mass which will be before Congress. This will be communicated to-morrow, probably, and will include the proceedings in the case of the Chesapeake, and in relation to the general negociations preceding it. I regret much that you could not afford your aid in selecting from your correspondences the parts proper for Congress, and the separation of these, again, into the parts proper and improper for the public at large. I have found the task extremely laborious, and being infirm in health, and otherwise hard pressed on important subjects, I have been obliged to let it devolve in a good measure on others. You would have executed it with a better apprehension than many of us of the bearings of many passages, especially on the feelings and way of thinking in the British negociations, &c. I am not without fear that errors both of omission and of commission may have happened. I will take the liberty of forwarding by to-morrow's mail a list of the letters from you and Mr. P., joint and several, which have not been allotted for communication, and will thank you, if there be any, or parts of any, which your judgment would have added, that you would note them to me. Occasion, perhaps, may be found to get them thrown into Congress before the business be completed. I wish I could, with the same ease, give you a view of the distinction between the parts of the papers communicated; which are confidential within Congress, and which are not so.

TO JAMES MONROE.

WASHINGTON, March 30, 1808.

DEAR SIR,—I received last evening your favour of the 26th, and now enclose the promised list of the communications to Congress, which gives as much information as can be done in that form. Where extracts were made, they generally extended, I believe, to nearly the whole of the letters, it being intended that the residue should be reduced as much as motives of prudence and delicacy would permit. On examining the papers inclosed, the project concerning impressments does not appear. Will you be so good as to correct the omission? A copy of the original project accompanying your letter of Nov. 11th went to Congress in its proper place. Of course, the renewal of it at the latter period does not appear, as the communications now stated. Being unable to distinguish which of the papers you wished to be returned, I send the whole, with a request that after taking them out, the rest may come back to the office. The inclosed paper contains the correspondence with Mr. Rose, produced by his Mission.

TO JAMES MONROE.

WASHINGTON, April 18th, 1808.

DEAR SIR,—Your favour of _____ came duly to hand, accompanied by the papers now returned, and by a note on the correspondence communicated to Congress. It appears that in most instances the parts allotted for publication coincide with your wishes. In the excepted instances, an attempt will be made to have the confidential parts conformed also to these, by being included in the publication ordered by the House of Representatives, and by being made a supplement to that ordered by the Senate, which is already out of the Press. With respect to the two letters of August 4th and September 13, 1806, which were not communicated to Congress, the object could not be effected without a new communication to Congress, to which

the President would be disinclined. They were omitted in the original communication as not within the general subject of it, as were my letters relating to such cases. And it would be somewhat awkward to take up a distinct subject now, even if the whole correspondence relating to it were embraced.

Will you accept a copy, herewith sent, of the documents, as complete as they have yet come from the press?

TO WILLIAM PINKNEY.

WASHINGTON, Nov^r 9, 1808.

DEAR SIR,—I find, by the receipt of your last private letter by Mr. Attwater, that there has been no miscarriage of any preceding one.

The conduct of the British Cabinet in rejecting the fair offer made to it, and even sneering at the course pursued by the United States, prove at once a very determined enmity to them, and a confidence that events were taking place here which would relieve it from the necessity of procuring a renewal of commercial intercourse, by any relaxations on its part. Without this last supposition, it is difficult to believe that, with the prospects at home and abroad in Europe, so great a folly would have been committed. As neither the public nor Congress have yet had time to disclose the feelings which result from the posture now given to our relations with G. Britain, I cannot speak positively on that subject. I shall be much disappointed, however, if a spirit of independence and indignation does not strongly reinforce the past measures with others, which will give a severity to the contest, of privations, at least, for which the British Government would seem to be very little prepared, in any sense of the word. It was, perhaps, unfortunate that all the intelligence from this country, previous to the close of your correspondence with Mr. Canning, was from a quarter and during a period most likely to produce miscalculations of the general and settled dispositions. You will see in the newspapers sufficient evidence of the narrow limits to which discontent

was confined, and it may reasonably be expected that the counter current will be greatly strengthened by the communications now going forth to the public.

Among the documents communicated *confidentially* to Congress, I hope you will excuse us for including (with the exception of some small passages) your private letter of Sept^r 21. The excellent views which it appeared to take of our affairs with G. Britain were thought to justify the liberty. They coincided, indeed, so entirely with the sentiments of the Executive, and were so well calculated to enlighten the Legislative Body, that it was confidently presumed the good effects would outweigh the objections in the case. A like liberty was taken with a private letter to Gen^l Armstrong.

The President's Message mentions that no answer was given by the French Government, &c. It may not be inexpedient to intimate, in order to appreciate this omission, that the note of Gen^l Armstrong, in consequence of the arrival of the S^t Michael, bears date August 6, whilst he was absent from Paris; that the Court did not return thither till about the middle of that month; that no succeeding note on that subject was sent in, the experiment being declined under an idea that it would be injurious; and that the last letter from Gen^l Armstrong to the Department of State, acknowledging the despatches by the Hope, bears date the 30th of August, at certain mineral Springs between two and three hundred miles from Paris, to which Gen^l Armstrong had not returned when the Messenger left it. These circumstances will shew that the French Government may easily, if reflection or events should induce, still take up the relations with the United States in a favorable view. Gen^l Turreau fosters such an expectation, and talks of the probability of soon receiving favorable answers to his representations, whether with sincerity or from policy is best known to himself.

TO WILLIAM PINKNEY.

WASHINGTON, Dec^r 5, 1808.

DEAR SIR,—I have little to add to the printed information accompanying my official letter of this date. Congress seemed to be sufficiently determined, as you will perceive, to resist the unjust and insulting Edicts of the Belligerents, and differ only as to the mode best suited to the crisis. The disposition to prefer war to the course hitherto pursued is rather gaining than losing ground, and is even promoted by the efforts of those most opposed to war with Great Britain, who concur in deciding against submission, and at the same time contend that withdrawing from the Ocean is submission. It is very questionable, however, whether a preference of war, to be commenced within the present session, is so general in Congress, or so much looked for by the nation, as to recommend the measure. Whether, in case the measure should be _____, any such substitute providing for war during the recess, as I have communicated in one of my last letters, will be acceptable, is more than I can undertake to say; nothing of the sort having been even brought into conversation.

I find by conversation with Mr. _____, that he is himself favorably impressed by the documents laid before Congress as to the fairness of our conduct towards the two belligerents, and that he is willing I should believe that the impression will be the same on his Government. As it may be conceived by him, however, to be politic to lull our feelings and suspicions, I am the less sure that he calculates on any change in the Councils of his Government likely to do justice to those of this Government.

As to the state of the public mind here, you will sufficiently collect it from the printed information now forwarded. I cannot believe that there is so much depravity or stupidity in the Eastern States as to countenance the reports that they will separate from their brethren, rather than submit longer to the suspension of their commerce. That such a project may lurk within a junto ready to sacrifice the rights, interests, and honor,

of their Country, to their ambitious or vindictive views, is not to be doubted; but that the body of an intelligent people, devoted to commerce and navigation, with few productions of their own, and objects of unceasing jealousy to G. Britain on account of their commerce and navigation, should be induced to abandon the Southern States, for which they are the Merchants and carriers, in order to enter into an alliance with G. Britain, seems to be impossible. What sort of a Commercial Treaty could be made between such parties? In truth, the obstacles to one between the United States and that Nation arise almost wholly from the patronage by the former of the maritime rights and interests of the Eastern States, as a portion of the Confederacy. A Treaty between such parties, if made at all, must be political, not commercial, and having in view modifications of Government and aggrandizement of individuals, not the public good.

TO JOEL BARLOW.

WASHINGTON, February 7, 1809.

DEAR SIR,—I have received your favor of ———, and valuing, as I do, the friendly and favorable expressions it contains, I cannot but be truly gratified by them.

I perceive that I did not impress Mr. Fulton as distinctly as I meant to do with the circumstance that, previous to the receipt of his letter, I had, as far as might lie with me, not only fixed, in my thoughts, on a person for the approaching vacancy in the department of State, but had taken a step towards an understanding with him on the subject, which closed it against reconsideration.

This being the case, delicacy will, in every view, be best consulted by not entering into the particular considerations which led to that selection. But I owe it to my high respect for your talents, and my confidence in your principles, and the purity of your patriotic zeal, to say that no abatement in the continuance of either of those sentiments is implied by the course which I

have deemed, under all circumstances and combinations, most advisable for the public service.

With the greatest esteem, I remain, Dear Sir, your friend and h^{ble} serv^t.

TO WILLIAM PINKNEY.

WASHINGTON, Feb 11, 1809.

DEAR SIR,—My official letter by this conveyance leaves little of importance to be added to its contents. You will see with regret the difficulty experienced in collecting the mind of Congress into some proper focus. On no occasion were the ideas so unstable and so scattered. The most to be hoped for at present is, that a respectable majority will finally concur in taking a course not essentially dishonoring the resolution not to submit to the foreign Edicts. The last vote taken, as stated in report of their proceedings, sixty odd against fifty odd, implies that a non-intercourse with G. Britain and France, including an Embargo on exports to those two nations, [should?] be substituted for the general Embargo existing, and it is not improbable that 8 or 10 of the minority, who prefer a simple adherence to the latter, will, on finding it cannot be retained, join in the non-intercourse proposed. It is impossible, however, to foretell the precise issue of such complicated views.

If the non-intercourse, as proposed, should be adopted, it will leave open a trade to all the *Continent* of Europe, except France. Among the considerations for not including the other Continental powers with France were—1st, the certainty that the Russian Edict, of which I inclose a copy, does not violate our neutral rights; and, 2^{dly}, the uncertainty as to most of the others whether they have in force unlawful Edicts or not. Denmark, it is ascertained, though not officially notified, is under the same description as Russia. Holland and Spain are the only two Countries which are known to have copied the several decrees of France. With respect to Holland, it is understood that she

will favor as far as she can an intercourse with neutrals, in preference to a co-operation with France. It would be imitating the cruelty of the Belligerents to retaliate the reluctant injuries sustained from such a quarter. With respect to Spain, the same remark is applicable, even if her decrees should not have been revoked. Besides this, it is particularly important not to extend the non-intercourse to the Spanish Colonies, which, whilst a part of Spain, would be within the effect of the Spanish Decrees on the question. It is probable, also, that if G. Britain should lose or withdraw her armies from Spain, she will endeavour to mitigate the odium by conniving at least at neutral supplies; or, rather, not to increase the odium and the evil by subjecting them to the famine threatened by the exhausted state produced by the war. As another motive, she may be expected to consult the sympathies with the parent nation of the Spanish Colonies, to which her attention will doubtless be turned in the event of a subjugation of Spain. As to Portugal, there can be little doubt that the British Cabinet will have prudence, if not humanity enough, not to oppose a trade supplying that Country with the necessaries of life.

On what principle is it that G. Britain arrests our trade with Russia, or even Denmark? Neither of these powers have edicts to countenance her pretended retaliations; nor can the former be regarded as under the sway of France, in the sense applied to some others. Is it that Russia excludes the British flag? That she has the right to do. England does the same. Is it that she prohibits a trade with England under a neutral flag? That she has an equal right to do, and has equally examples in the British code justifying it. I have been frequently asked whether trade from the United States to Russia would be captured. I have been obliged to answer, that as it came under the letter of the British orders, though excluded by what you held out as the principle of them, it was to be inferred, from the spirit and practice of British cruisers and Courts, that such would be the fate of vessels making the experiment.

The repeal of the Embargo has been the result of the opinion of many that the period prescribed by honor to that resort

against the tyrannical Edicts against our trade had arrived, but principally from the violence excited against it in the Eastern quarter, which some wished to assuage by indulgence, and others to chastise into an American spirit by the lash of British spoliations. I think this effect begins to be anticipated by some who have been most clamorous for the repeal. As the Embargo is disappearing, the orders and decrees come into view, with the commercial and political consequences which they cannot fail to produce. The English market will at once be glutted, and the Continental markets, particularly for the sugar and coffee in the Eastern warehouses, will be sought at every risk. Hence captures, and clamours against the authors of them. It cannot, I think, be doubted, that if the Embargo be repealed and the orders be enforced, war is inevitable, and will, perhaps, be clamored for in the same quarter which now vents its disappointed love of gain against the Embargo.

There is reason to believe that the disorganizing spirit in the East is giving way to the universal indignation of all parties elsewhere against it. It is repressed in part, also, by the course of events abroad, which lessens the prospect of British support in case of a civil war.

The mode in which Canning's letter got to the press is not ascertained. I have seen it stated, on what authority I know not, but with some probability, that the copy was obtained from the Minister here, and was to have been published in the first instance at Halifax; but being shewn by the bearer to certain British partisans, of more zeal than discretion, at Boston, he was prevailed on to hand it at once to the Palladium, the paper in which it first appeared.

TO MESS^{RS} ROCHESTER AND BRENT.

Mar. 17th, 1809.

GENTLEMEN,—I have duly received your letter of the 6th instant, conveying the resolutions of a portion of my fellow-citizens of Washington County, in the State of Maryland.

The situation of our Country justly awakens the anxious attention of all good citizens. Whether an adherence to the just principles which have distinguished the conduct of the United States towards the belligerent powers will preserve peace, without relinquishing independence, must depend on the conduct of those powers; and it will be a source of deep regret, if a perseverance in their aggressions should be encouraged by manifestations among ourselves of a spirit of disaffection to the public authority, or disobedience to the public measures. To any who may yield to such a spirit, there cannot be a more instructive example than is found in the animating pledges of support to both, flowing from the sensibility of the Citizens of Washington County, for the rights of the nation and the efficacy of the laws.

TO THO^S T. KENNEY.

WASHINGTON, March 18, 1809.

SIR,—I have received the address conveyed through you, from “The Republican citizens of the County of Essex, in the State of New Jersey,” with equal sensibility to the friendly motives which suggested it, and to the patriotic sentiments which it expresses.

Persuaded that the true interests of our Country, not less than the precepts of Religion and humanity, make it the duty of those entrusted with public authority to cherish peace, as long as more imperious calls will permit, I see, with much pleasure, the approbation given to the moderate and prudent course which has been employed for prolonging its blessings.

Among the means best calculated to diminish the risk which threatens an interruption of these blessings, is a cordial union of every description of Citizens in supporting their Government in its necessary authorities, and in promoting the execution of the laws with an exemplary vigilance. Nothing, therefore, could be more reproachful than efforts to open one of the most baneful sources of discord, by arraying the interest of one sec-

tion of our Country against that of another; nor would any thing be more to be dreaded than such efforts, were not so effectual an antidote to the poison to be found in that liberal spirit, that brotherly disposition, and those comprehensive views, which pervade our fellow-citizens at large, and of which so honorable a sample is now before me.

For the kind prayers which have been offered in my behalf, I am truly thankful; and I pray, in return, that the authors of them may experience the choicest tokens of divine favor.

TO EDWARD HALL AND THO^S YARROW.

WASHINGTON, March 18, 1809.

GENTLEMEN.—The proceedings of “the Republican Delegates of the several Townships of the County of Salem, in New Jersey, on the 3d instant,” transmitted by you, have been duly received.

It is highly agreeable to find in these proceedings our internal embarrassments traced to their true source, in the injustice and aggressions of foreign powers; and equally so, to see the measures for counteracting them so entirely approved. It cannot be doubted that these measures have had many salutary effects, and the efficacy of them would have been still greater, if the perseverance of those powers in their wrongs had been less encouraged by unworthy citizens, who have shewn themselves ready to sacrifice their duty and their Country to the spirit of party, or the thirst of gain. There could not be a more honorable contrast than is presented in the sentiments and determinations of the meeting in the County of Salem; nor pledges more animating to those charged with the maintenance of the rights and interests of the nation.

Having borne a part, though less distinguished than your partiality ascribes to me, in establishing the system of Government under which we live, I may well be presumed to feel a solicitude for its success, as well as a conviction of the soundness of its principles. Thus far we have all had reason to be

gratified with its fruits; and nothing could make me more happy than to be among the instruments of divine Providence in rendering it conducive, in the highest possible degree, to the welfare of our Country.

TO THOMAS JEFFERSON.

WASHINGTON, March 19, 1809.

DEAR SIR,—Mr. Coles left us this morning. The mail of yesterday brought a letter from Armstrong of Dec^r 25, and Paris papers of the 27th. No change had taken place in our affairs. The occurrences and prospects in Spain will appear in the National Intelligencer. No letter from Short, nor is he named by Armstrong. I conclude he had set out for S^t Petersburg.

TO WILLIAM HAYWARD.

WASHINGTON, March 21, 1809.

SIR,—I have received your letter of the 14th instant, conveying an address from the "Democratic Republican Citizens of Talbot County, Maryland," and through you return my thanks for the favorable sentiments which they have expressed of the principles and purposes by which my public life has been and will be governed.

The solicitude which they manifest for the preservation of peace well becomes virtuous citizens of a free Country, which, placing its glory in doing justice to others, and its ambition in a pre-eminent happiness within itself, regards national degradation as the only calamity which is not greater than those of war. To avoid, if it be possible, amidst the unbridled passions which convulse other Nations, both of these alternatives, is our true wisdom, as well as our solemn duty; and among the essential means of doing so, are that attachment to the Union, that zeal for the authority of the laws, and that readiness to devote

life and fortune in the cause of their Country, which are so laudably avowed by the Citizens of Talbot County. I tender them my sincere respects and friendly wishes.

TO CORNELIUS COMEGYS.

WASHINGTON, March 21, 1809.

SIR,—I have received your letter of the 16th instant, inclosing the proceedings of "The Democratic citizens of Kent County, on the 4th instant."

I am certainly obliged by the kind expressions towards me which have a place in those proceedings; and the more so, as the value of them is enhanced by the patriotic spirit which characterizes the meeting.

In preferring peace, though prepared for a suspension of its blessings, when the national rights cannot be otherwise maintained; and in doing justice to the measures and motives by which those blessings have been cherished, without an abandonment of those rights; they have shewn themselves worthy of the Country and Government of which they are citizens.

It is a grateful reflection that a like disposition prevails throughout the great mass of our countrymen; and it may reasonably be hoped that the number forming an exception will every day diminish, under the influence of truth and of the general example.

I tender to the citizens of Kent County, to whom I am indebted for the address transmitted by you, my sincere respects and friendly wishes.

TO TIMOTHY SKINNER.

WASHINGTON, March 22d, 1809.

SIR,—The Resolutions transmitted through you, as unanimously adopted by a meeting of the "Republicans of the Town of Litchfield," have been duly received.

The conduct, as unexampled as unprovoked, by which the belligerent powers have trampled on the rights of neutral nations, and in some instances added peculiar insults to the injuries done to the United States, naturally excite the feelings which these resolutions manifest.

In such a state of things, whilst it is the duty of the Government to take its measures with the impartiality and prudence best calculated to save both our peace and our honor, it is incumbent on its constituents to reflect that the efficacy of these measures must essentially depend on the support which can only be found in their enlightened patriotism.

It affords pleasure, therefore, to observe, in the proceedings of the Meeting at Litchfield, sentiments and pledges so well corresponding with this duty.

In inculcating the vital importance of the Union, and a faithful maintenance of its Constitution and laws, they have evinced a knowledge of the true sources of the public welfare, as well as a laudable zeal in promoting it.

Happily, the union of these States is founded on so clear a reciprocity of interests, and the most important constitutional relations between the general and local authorities is now so far illustrated by practice, that it may always be expected that involuntary errors on those subjects will quickly yield to reflection, and that voluntary ones, being confined to a few, will not long resist the general impulse.

I tender to my fellow-citizens who were associated at Litchfield my sincere respects and friendly wishes.

TO THOMAS JEFFERSON.

March 28, 1809.

DEAR SIR,—I have yours of the 24. The inquiry as to will be made as soon as an opportunity offers. F. Page had been appointed before your letter was received, and his commission forwarded.

We have letters from Erving to January 28. He was at

Cadiz, intending, it appears, to adhere to the *Junita Suprema*, till the drama should close, and then leave Spain, by way of Gibraltar, or England, if no other course offered itself. I fear he has run from one extreme to another, under the influence of the existing atmosphere. His view is pretty much like that in the paper inclosed. Yrujo was at Cadiz, going on with his mills, which, involving a monopoly, were odious, and not likely to survive popular fury in the only turn of things that could preserve his patent. He says he has sacrificed his fortune in promoting the patriotic cause.

TO THOMAS JEFFERSON.

April 9, 1809.

DEAR SIR,—A Secretary of Legation, with a sort of *Extra* establishment, has just arrived from England, with despatches for Erskine. I have a private letter only from Pinkney. The Ministry of G. Britain are pretty certainly shaken with respect to this Country. The catastrophe in Spain, and the new policy to which it leads, have doubtless contributed towards it. But it is unquestionable that the documents communicated to Congress, and the countenance presented by their earlier resolutions, afford the true explanation. Erskine has not yet opened much of his budget to Mr. Smith. The contents of it were not disclosed to Pinkney; perhaps from an unwillingness to risk a discovery by France, or a use of them by Armstrong. Private letters from individuals in England leave no doubt that a great dread prevailed of our perseverance in the Embargo.

Among the faux pas of Erving, he has brought about an arrangement between Izuardi and Hackley, much to be regretted on account of the latter. It is a sort of Simoniacal contract, by which H. gives I. 600 dollars a year, and receives from him the appointment of Vice Consul; Izuardi retaining the title, without the responsibility of Consul. The contract, with sundry details apportioning the functions and formalities, is executed in due form, with the sanction of Erving as a witness, and

transmitted hither for that of the Government. Erving (who appears to have become a little aware of the folly committed) was to have applied to the Spanish authorities for an [exequatur?] to the vice Consulate, but has suspended the application till he hears from us. In the mean time, the contract is in operation. No time was lost by the Department of State in giving notice of the nullity and impropriety of such a transaction. I am persuaded, from what appears, that Mr. Hackley has been betrayed into it by his confidence in the judgment and experience of others. Erving remarks particularly that his conduct was unexceptionably delicate. It becomes a serious question, nevertheless, whether the contemplated appointment of him at Cadiz would not leave suspicions that the bargain with Izuardi was secretly in fulfilment, and of course furnish a handle to a disappointed candidate for injurious attacks on the Government, as well as Mr. Hackley. If it were certain that Jarvis would not remain at Lisbon, it would mitigate the difficulty by transferring H. thither. It is not probable that Jarvis would be willing to remove to Cadiz, which, I believe, is not rated as high as Lisbon as a Consular birth. I recollect no other vacancy that would bear a comparison with Cadiz.

TO GOVERNOR SNYDER.

WASHINGTON, Ap^l 13th, 1809.

SIR,—I have received your letter of the 6th instant, accompanied by certain acts of the Legislature of Pennsylvania, which will be laid before Congress, according to the desire expressed.

Considering our respective relations to the subject of these communications, it would be unnecessary, if not improper, to enter into any examination of some of the questions connected with it. It is sufficient, in the actual posture of the case, to remark that the Executive of the U. States is not only unauthorized to prevent the execution of a Decree sanctioned by the Supreme Court of the U. States, but is especially enjoined by

statute to carry into effect any such decree, where opposition may be made to it.

It is a propitious circumstance, therefore, that whilst no legal discretion lies with the Executive of the U. States to decline steps which might lead to a very painful issue, a provision has been made by the Legislative act transmitted by you adequate to a removal of the existing difficulty; and I feel great pleasure in assuring myself that the authority which it gives will be exercised in a spirit corresponding with the patriotic character of the State over which you preside.

Be pleased, Sir, to accept the assurances of my respectful consideration.

TO THOMAS JEFFERSON.

WASHINGTON, Ap^l 24, 1809.

DEAR SIR,—I have received your favor of the 19th. You will see in the newspapers the result of the advances made by G. Britain. Attempts were made to give shapes to the arrangement implying inconsistency and blame on our part. They were, however, met in a proper manner, and readily abandoned, leaving these charges in their full force, as they now bear on the other side. The British Cabinet must have changed its course under a full conviction that an adjustment with this country had become essential; and it is not improbable that this policy may direct the ensuing negociation, mingling with it, at the same time, the hope that it may embroil us with France. To this use, it may be expected, the federalists will endeavour to turn what is already done, at the coming session of Congress. The steps deemed proper to give the proceeding a contrary turn will not be omitted. And if France be not bereft of common sense, or be not predetermined on war with us, she will certainly not play into the hand of her enemy. Besides the general motive to follow the example of G. Britain, she cannot be insensible of the dangerous tendency of prolonging the commercial sufferings of her Allies, particularly Russia, all of them

already weary of such a state of things, after the pretext for enforcing it shall have ceased. She must be equally aware of the importance of our relations to Spanish America, which must now become the great object of Napoleon's pride and ambition. Should he repeal his decrees with a view to this object, the most probable source of conflict will be in his extending the principle on which he required a *prohibition* of the Trade with St Domingo to the case of the Spanish Colonies. Nor is it improbable that he may couple such a requisition with an offer to cede the Floridas, which would present a dilemma not very pleasant.

TO THOMAS JEFFERSON.

WASHINGTON, May 1, 1809.

DEAR SIR,—I am just favored with yours of the 27th. Young Gelston is here, preparing to take his passage for France as bearer and expositor of despatches, in the Syren, sloop of war, which is waiting for him at Baltimore. He leaves this to-morrow morning. Mr. Gallatin has had a conversation with Turreau at his residence, near Baltimore. He professes to be confident that his Government will consider England broken down by the example she has given in repealing her orders, and that the French decrees will be repealed as a matter of course. His communications by the Syren will, if he be sincere, press the policy of an immediate repeal. No official accounts have been received from the French letters of Marque arrived at Boston. The difficulty most likely to threaten our relations with France lies in the effort she may make to render us in some way subservient to the reduction of Spanish America; particularly by withholding our commerce. This apprehension is corroborated by the language of Turreau. He alluded to his conversations with you relating to Cuba, on which he builds jealousies which he did not conceal. Cuba will, without doubt, be a cardinal object with Napoleon.

The spirit which England will bring into the ulterior negotiations must differ much from that which influenced former

Treaties, if it can be moulded to our just views; and we must be prepared to meet it with a prudent adherence to our essential interests. It is possible, however, that the school of adversity may have taught her the policy of substituting for her arrogant pretensions somewhat of a conciliating moderation towards the United States. Judging from the tone lately used; a change of that sort would be the less wonderful. If she can be brought to a fair estimate of her real interest, it seems very practicable to surmount the obstacles, which have hitherto kept us at variance, and, until surmounted, must continue to do so. The case of impressments, hitherto the great obstacle, seems to admit most easily of an adjustment, on grounds mutually advantageous.

TO THOMAS EVANS.

WASHINGTON, May, 1809.

SIR,—I have duly received from you a copy of the proceedings of the meeting of Citizens at Accomac Court House, the 1st instant, on the subject of the late negotiation with G. Britain, and of the Proclamation by which it was followed.

Next to the consciousness of a faithful discharge of public duty, is the satisfaction afforded by a public approbation of it. I cannot be insensible, therefore, to the favorable views of my conduct expressed by my fellow-citizens, at whose meeting you presided; however feeble the title is felt to be which is limited to the honest execution of a duty contemplated by law, and enjoined by the policy which has been uniformly exemplified by our public Councils.

It will be happy, if, as we hope, the further negotiation with G. Britain should be equally successful, as the means of fixing on a liberal and lasting basis friendship and commercial intercourse between the two Countries; and still more happy, if, in addition, a spirit of justice in other Governments with whom differences exist should concur with the conciliatory disposition of the United States in such a termination of them as will guar-

anty our tranquillity and commercial interests against future interruptions.

In promoting this desirable state of our foreign relations, I trust there will be no failure of becoming endeavours on my part, and in that event only will the support be merited which is promised to the Administration of our Government.

I tender to my fellow-citizens, who have made their communication through you, and to yourself, assurances of my respect and friendly wishes.

TO THOMAS JEFFERSON.

WASHINGTON, May 30, 1809.

DEAR SIR,—Your favor of the 22d did not come to hand till the day before yesterday.

The new-fangled policy of the Federal party, you will have noticed, has made a considerable figure in the newspapers. Some of the Editors are resuming the old cant, and the others will doubtless soon follow the example. Nothing could exceed the folly of supposing that the principles and opinions manifested in our foreign discussions were not, in the main at least, common to us; unless it be the folly of supposing that such shallow hypocrisy could deceive any one. The truth is, the sudden and unlooked-for turn of the British Cabinet has thrown the party entirely off the centre. They have at present no settled plan. There is reason to believe that the leaders are sound towards England, and much less disposed than heretofore to render our interests subservient to hers. Expressions have been used by one, at least, of the Essex Cabinet, whether sincerely or insidiously may not be absolutely certain, from which it is inferred that a disposition exists in that quarter not even to continue the non-intercourse act against France. Certain it is, that the desire of war with her is no longer manifested; that the deficiency of the English markets excites a keen appetite for a trade with the Continent; and that a real uneasiness is felt lest the negotiations with G. Britain should end in sacrifices on our

part, which they have been reproaching the administration for not being ready to make. As one proof of their present feelings, the federal leaders shew a marked alienation from Erskine. The elections in Massachusetts, as well as in New Hampshire and New York, have issued unfavorably. But the smallness of the majority, and the overstrained exertions it has required, seem to repress rather than flatter the successful party. No confidence is felt in the permanency of the triumph.

Not a line has been received of late from any one of our foreign agents. All that is known is, therefore, to be gathered from the ordinary and fallacious channels.

TO THOMAS JEFFERSON.

WASHINGTON, June 12, 1809.

D^R SIR,—The Pacific has just returned from G. Britain, bringing the accounts to be seen in the newspapers. The communications from Pinkney add little to them. The new orders, considering the time and that the act was known, on the passage of which the instructions lately executed by Erskine were predicated, present a curious feature in the conduct of the British Cabinet. It is explained by some at the expense of its sincerity. It is more probably ascribed, I think, to an awkwardness in getting out of an awkward situation, and to the policy of withholding as long as possible from France the motive of its example to have advances on her part towards adjustment with us. The crooked proceeding seems to be operating as a check to the extravagance of credit given to Great Britain for the late arrangement with us; and so far may be salutary.

TO THOMAS JEFFERSON.

WASHINGTON, June 20, 1809.

DEAR SIR,—Yours of the 16th came to hand yesterday. The Gazette of yesterday contains the mode pursued for reanima-

ting confidence in the pledge of the British Government given by Mr. Erskine in his arrangement with this Government. The puzzle created by the order of April struck every one. Erskine assures us that his Government was under such impressions as to the views of this, that not the slightest expectation existed of our fairly meeting its overtures, and that the last order was considered as a seasonable mitigation of the tendency of a failure of the experiment. This explanation seems as extraordinary as the alternatives it shews. The fresh declarations of Mr. Erskine seem to have quieted the distrust, which was becoming very strong; but has not destroyed the effect of the ill grace stamped on the British retreat, and of the commercial rigor evinced by the new and insidious duties stated in the newspapers. It may be expected, I think, that the British Government will fulfil what its Minister has stipulated; and that if it means to be trickish, it will frustrate the proposed negotiation, and then say their orders were not permanently repealed, but only withdrawn, *in the mean time*.

The only question likely now to agitate Congress will be on the Bill which opens our ports to *French* as well as British *ships of war*. The Senate have passed it *unanimously*. Whether the Federalists were sincere, or wished the debate, &c., to take place in the House of Representatives, remains to be seen.

TO THOMAS JEFFERSON.

WASHINGTON, June 27, 1809.

D^R SIR,—I have received a private letter of March 30 from Gen^l Armstrong, in which he desires me “to present him most respectfully and cordially to you, and inform you that, by the next public Ship that goes to America, he shall have the pleasure to send you an alteration of Mr. plough, which, in light soils, is a great improvement upon the old one.”

To me, he adds: “By the same vessel, I propose consigning, &c., a machine of prodigious consequence under present circumstances, combining great usefulness and little expence, and

meant to take the place of the common, small spinning-wheel in the manufacture of flax, tow, and hemp. It occupies little more room than the old spinning-wheel, is put and kept in motion by any old or young negro wench, gives you twelve threads instead of one, and those of better texture, and (if you chuse it) of greater fineness than can be given by fingers. The maker, who is an American, will probably accompany it."

On public affairs, he says that the French Government had made several favorable regulations; among them, one for restoring the cargoes, suggested under the municipal operation of the Berlin Decree: all of which had been arrested by a belief, founded on language used in the British Parliament, that the United States were about to make war on France. The Mentor, which is said to have arrived the latter end of April, will have given more correct, though possibly not satisfactory information, of the policy prevailing here. Nothing more is known of the late Battle in Germany than you will see in the newspapers. The Senate passed unanimously the Bill of non-intercourse with France, with a paragraph admitting French Ships of War, in common with British, into our waters. The House of Representatives rejected yesterday, by a large majority, a motion to discriminate in favor of the British ships.

TO THOMAS JEFFERSON.

July 4, 1809.

DEAR SIR,—The inclosed letter accompanied the skin of an Animal, not named by the writer, which belongs to the Region of the Rocky Mountains. The bundle being too large for the Mail, I shall forward it by some other opportunity; perhaps as far as Orange by a wagon. I shall soon leave on the return thither.

You will have seen that a renomination of J. Q. Adams for Russia has succeeded with the Senate. In framing his credence, it will be proper to adapt it to that given to Mr. Short, which deviated from the beaten form; and it appears that the original

in that case passed on to Mr. Short, without being opened at the office of State. No copy, therefore, exists, but the one retained by yourself. Will you be so good as to lend me that, sending it to Orange Court House to await my arrival there, which will probably be at an early day next week? We continue without news from Europe later than the rumour from Holland of a defeat of the Austrians.

TO THOMAS JEFFERSON.

WASHINGTON, July 7, 1809.

DEAR SIR,—The inclosed letter from Mr. Short came under cover to me. It was brought by the vessel lately arrived at Philadelphia from Dunkirk. It appears that he had not left Paris for Petersburg, nor meant to do so until he should hear further from the United States, as he has probably explained to you. Mr. Coles had reached Paris, but in the absence of the French Court nothing could be said very interesting on the subject of his errand. From a paragraph in a letter from Gen^l Armstrong to Mr. Gallatin, it would seem that the French Ministers were disposed to patronize a relaxation of the commercial policy of the Emperor, and that he was disposed to listen to any expedient that would save him from the appearance of inconsistency, and retreat from his stand against G. Britain. There is some ground, therefore, to hope that the previous retreat of the latter may have a good effect, unless his new successes should inspire a pertinacity in his old projects. It is certain that great inconveniences are felt in France from the want of external commerce, and that the opening presented by the repeal of the British orders, not only for a reasonable trade with the United States, but through that between the different parts of the Continent itself, must render a continuance of the blockading system peculiarly grating every where. The arrival of Dashkoff makes it proper that I should not leave Washington before he reaches it, which I fear will not be for some days. My purpose was to have set out to-morrow, or on Monday at farthest.

TO THE CITY COUNCIL OF NEW ORLEANS.

July 23d, 1809.

I have received, fellow-citizens, your act of June 10th with the sensibility due to the kindness of its expressions towards me personally, and with all the gratification which the just and patriotic view it takes of the public welfare ought to inspire.

The peace and plenty which have distinguished our Country, amid the convulsions and calamities forming the general character of the times, and under the perplexities resulting to our affairs, claim for the policy which has preserved those blessings the approbation you bestow on it. Such marks of attachment to the solid interest of our Country, and of confidence in the public Councils, are the more to be valued, as the trials imposed on us by foreign injustice have not yet ceased, and as it is among those who are most averse to war whilst it can be honourably avoided that we are, at all times, to look for the most *unyielding* support of the national rights when peace can no longer be preserved.

I behold with the truest satisfaction the advantages which the Territory and City of New Orleans have reaped from their incorporation with the United States, and especially that you are so fully sensible of the degree in which they are the fruits of our free system of Government, administered in the spirit which belongs to it. The Nation into whose bosom you have been received must always rejoice in your prosperity, because it at once indicates and promotes the general prosperity. *Never* was such a connection more distinctly pointed out by nature herself, nor can the reciprocal benefits of it ever cease whilst the laudable and enlightened sentiments which you proclaim shall continue to pervade the great body of our fellow-citizens.

I tender you my sincere respects and my best wishes.

TO THE REPRESENTATIVES OF THE MISSISSIPPI TERRITORY.

July, 1809.

I have duly received your address of July 5, and cannot be the less impressed by your friendly confidence in my principles and views, that it is entertained by a portion of my political brethren, under the circumstances incident to the Mississippi Territory.

The Constitution of the United States is well entitled to the high character you assign to it. It is among the proofs of its merit that it is capable of inspiring with admiration and attachment the most distant members of the comprehensive family over whom its guardianship extends. And it is equally honorable to their enlarged patriotism to cherish those sentiments, whilst the immaturity of their situation suspends a part of the advantages common to their fellow-citizens of the elder communities.

With my cordial respects, I offer a return of my best wishes for the prosperity and happiness of yourselves, and of the community which you represent.

TO THOMAS JEFFERSON.

MONTPELLIER, July 23d, 1809.

DEAR SIR,—On my arrival at Orange Court House on Thursday, I found your favor of the 12th instant, with the document expected, and the letters from Short and Warden inclosed. The whole are now returned. No copy of the document was in the office of State, as you suppose must have been the case. This was owing to the letter being written by your own hand at Monticello, and being sent on to Mr. Short without being opened at Washington. Mr. Short's idea of leaving commerce to shift for itself is not as new as he seems to think; and is liable to greater objections in the case stated, at least. A decisive objection would have been, that the expedient would have given all the trade wanted to the power commanding the Sea, whilst

this would have cut off the commerce with its enemy; and thus have found an adequate motive to keep in force its obnoxious orders, as answering all its purposes. It was to be considered, also, as a further objection, that such an expedient would have involved our ignorant and credulous mariners in the penalties incurred by the mercantile adventurers, without the indemnifying advantages which the latter would secure to themselves. It may be added, that so formal an abandonment of the national rights would not have borne an honorable appearance; though the discredit would have been mitigated by examples of powerful nations, and still more by the peculiarities of the actual state of the world.

I have not received a line from any quarter, nor even a newspaper, since I left Washington. I can say nothing, therefore, on the score of news. I was detained at Washington some days, by an unwillingness to leave it at the moment Dashkoff was to be expected. Although titularly not more than a Chargé, he brought a letter of Credence from the Emperor himself. His conversation was in the spirit of this evidence of the respect and good will of his Sovereign towards the United States. Adams has accepted his appointment, and will embark as soon as practicable. Dashkoff was extremely anxious for an interview with him before his departure; and had proposed one at New York, if consistent with Mr. Adams' arrangements.

It is a part of our plan to pay our respects to Monticello, but we can say nothing as yet of the time. It will afford us much gratification to welcome you here, and with all of your family that can accompany you.

TO THOMAS JEFFERSON.

MONTPELLIER, Aug. 3, 1809.

DEAR SIR,—Herewith you will receive a packet, which being wrapt up in a large one for me, from the Department of State, was taken out of the mail yesterday, and not observed before the rider had set out.

I find myself under the mortifying necessity of setting out to-morrow morning for Washington. The intricate state of our affairs with England, produced by the mixture of fraud and folly in her late conduct, and the important questions to be decided as to the legal effect of the failure of the arrangement of April on our commercial relations with her, are thought by the Heads of Department to require that I should join them. The main question is, whether the non-intercourse act, as continued at the last session, comes into force against England, thereby putting her on the same footing with France.

You will see by the instructions to Erskine, as published by Canning, that the latter was as much determined that there should be no adjustment as the former was that there should be one. There must, however, have been other instructions, comprehending the case of the Chesapeake, and other communications from Canning accompanying the British orders of April 26, as referred to in Erskine's quieting declaration last made to Mr. Smith. I believe, also, that Erskine's letter to Canning, not disclosed by the latter, will not warrant his ascribing to Erskine the statement of conversations with Mr. Gallatin, Mr. Smith, and myself. Pinkney will also disavow what Canning has put in his mouth.

I presume, from letters which reached me yesterday, that Mr. Smith has communications from Paris as late as the 10th or 12th of June; whether by the return of Mr. Coles or another conveyance is uncertain. The disavowal in England reached Paris the day after the arrival of the arrangement transmitted by Mr. Gelston. Our affairs with France had taken no decided turn; owing, as *alleged*, to the absence and occupation of the Emperor. The return of Gelston will probably put us in possession of a final estimate.

TO THOMAS JEFFERSON.

MONTPELLIER, Aug. 16, 1809.

DEAR SIR,—I got home from my trip to Washington on Saturday last, having remained there three days only. You will have seen in the Proclamation issued the result of our consultations on the effect of what has passed on our commercial relations with G. Britain. The enforcement of the non-intercourse act against her will probably be criticized by some friends, and generally assailed by our adversaries, on the ground that the power given to the Executive, being special, was exhausted by the first exercise of it; and that the power having put out of force the laws to which it related, could, under no possible construction, restore their operation. In opposition to this reasoning, it was considered that the act of the last session continuing the non-intercourse no otherwise excepted G. Britain than by a proviso that it should not affect any trade which had been or might be permitted, in conformity with the section of the original act authorising a proclamation in favor of the nation revoking its Edicts; and that the proclamation in favor of G. Britain was not conformable to that section. It was not so in substance, because the indispensable prerequisite, a repeal of the Orders in Council, did not take place. It was not so even in form; the law requiring a past and not a future fact to be proclaimed, and the proclamation, on its face, pointing to a future, not a past fact. This difficulty was felt at the time of issuing the first proclamation; but it yielded to the impossibility of otherwise obtaining, without great delay, the coveted trade with G. Britain, and an example that might be followed by France; to the idea that the mode in which the repeal, though future, of the orders and of the law, was coupled by the proclamation, might, on the occurrence of the former, give a constructive validity to the latter; and to the opportunity afforded by an intervening session of Congress for curing any defect in the proceeding. In one respect, it would have been clearly proper for Congress to have interposed its authority, as was frequently intimated to members; that is, to provide

for the contingency, not so much of a disavowal by G. Britain, which was never suspected, as of her not receiving the act of her Minister till after the 10th of June. Congress, however, never could be brought to attend to the subject, although it was pressed by several members, I believe, certainly by _____, on the general ground, that the Proclamation, however acceptable, was not in a form, nor under the circumstances, contemplated by law. In some of the instructions given by Mr. Gallatin's circular, a liberty has been taken having no plea but manifest necessity, and as such will be before Congress.

Erskine is in a ticklish situation with his Government. I suspect he will not be able to defend himself against the charge of exceeding his instructions, notwithstanding the appeal he makes to sundry others not published. But he will make out a strong case against Canning, and be able to avail himself much of the absurdity and evident inadmissibility of the articles disregarded by him. He can plead, also, that the difference between his arrangement and the spontaneous orders of April 26 is too slight to justify the disavowal of him. This difference seems, indeed, to limit its importance to the case of Holland, and to consist in the direct trade admitted by the arrangement, and an indirect one through the adjoining ports, required by the orders. To give importance to this distinction, the Ministry must avow, what, if they were not shameless, they never would avow, that their object is not to retaliate injury to an enemy, but to prevent the legitimate trade of the United States from interfering with the London smugglers of sugar and coffee.

TO THOMAS JEFFERSON.

MONTPELLIER, Aug. 23, 1809.

DEAR SIR,—I see by the papers that Mr. Smith has probably received despatches from Mr. Pinkney by a late arrival; but being in Baltimore, I have not yet heard from him on the subject. The newspaper dates from London were not later than the 3d of July; of course give nothing from the Continent. It

appears only, in confirmation of late accounts, that Russia, as well as Holland, adhere with rigor to the means of excluding British Trade. Colonial produce, even Dutch in neutral vessels, is to be warehoused in Holland.

TO WILLIAM EUSTIS, SECRETARY OF WAR.

MONTPELLIER, August 30, 1809.

DEAR SIR,—Several considerations appearing to render it expedient that the Commander-in-Chief, now in the Territory of Orleans, should be at the seat of Government, as soon as the prerequisites to his setting out will permit, you will please to transmit him instructions to that effect.

Should the correspondence between the Navy Department and Captain Porter not have been otherwise communicated to you, the enclosed copy of it will give information proper to be possessed by you. Accept my respects and best wishes.

TO THOMAS JEFFERSON.

MONTPELLIER, Sep^r 11, 1809.

DEAR SIR,—I send herewith a few papers which have come to my hands, along with those addressed to myself.

Jackson, according to a note sent from Annapolis, to Mr. Smith, was to be in Washington on Friday evening last. The letters from Mr. Pinkney, brought by him, were dated June 23, and merely rehearsed a conversation with Canning; from which it would seem that Canning readily admitted that his second condition (Colonial trade) had no connection with the subject, and that it was not to be expected the United States would accede to the 3^d, (G. Britain to execute our laws.) Why, then, make them ultimate? or if not ultimate, why reject the arrangement of Erskine for not including them? For as to the first article, if he does not fly from his language to Pinkney, the continuance of the non-intercourse against France cannot be denied to be a substantial fulfilment of it. From this view of the matter, it

might be inferred that Jackson comes with a real olive in his hand. But besides the general slipperiness of his superior, some ideas fell from him in his conversation with Pinkney justifying distrust of his views.

TO DOCTOR DAVID RAMSAY.

September 20, 1809.

SIR,—I have received the Resolutions of the meeting of citizens in Charleston, on the 5th instant, covered by your favor of the same date.

These Resolutions comprise too many circumstances enhancing the value of the patriotism they breathe not to afford particular satisfaction.

However a difference of views may be indulged on subordinate questions of policy, a union of all, on such as evidently affect the Sovereignty, the honor, or the essential interests of the nation, is a duty to which every denomination of citizens will rally, whose love of Country elevates them above a spirit of party. Of this genuine patriotism, the meeting at which you presided has given a conspicuous example.

The occasion which led to this proceeding of your fellow-citizens is as much regretted as it was little to be anticipated. It could the less have been anticipated, as, besides the respect due to an arrangement solemnly entered into by a plenipotentiary Minister, and not only strictly, but irrevocably, carried into execution by the other party, the arrangement itself was of a nature to claim a ready sanction, even if, contrary to every ground of confidence, it had not been within the scope of previous instructions.

Whether the sequel may better correspond with the wishes and hopes of the United States, founded on that attachment to peace which they have proclaimed, and on that exemplary justice which they have practised, remains to be seen. In no event can the citizens of Charleston lose the merit of having evinced a unanimity and zeal not less calculated to avert than to meet

aggressions prompted by a misconception of the American character.

For the confidence which the meeting has been pleased to express in my faithful pursuit of the public good, I feel all the obligations which it demands. In tendering this acknowledgment of them, I beg, at the same time, that you will accept for yourself assurances of my particular esteem.

TO THE GENERAL REPUBLICAN COMMITTEE OF THE CITY AND COUNTY OF NEW YORK.

Sept^r 24, 1809.

I have received, fellow-citizens, your address, bearing date the 15th instant, with a due sense of the kind sentiments it expresses, and of the favorable light in which it views my advancement to the Executive trust, and the several considerations which led to it.

In proportion as the present situation of our Country is interesting, it is consoling to find the conviction becoming universal, that the difficulties rendering it so have resulted from the accumulated wrongs committed by the principal belligerent nations, in spite of the justice and forbearance of the United States, which ought to have averted them; and that the only remedy is to be found in a firm and patriotic support of the measures devised and pursued by the Constituted Authorities.

The pledge and example of this duty presented in your address is entitled to the highest praise. Devoutly praying that a sympathy and emulation every where may, under the divine blessing, have the happy effect of preserving to our Country the advantages of peace, without relinquishing its rights or its honor, I tender to you, and to those whose sentiments you conveyed, my cordial respects and my best wishes.

TO THE WASHINGTON AND JEFFERSON ARTILLERY, AT RICHMOND,
VIRG^A, COMMANDED BY JOHN H. PRICE.

SIR,—I have received your letter of the 18th instant, communicating the unanimous resolution of the Washington and Jefferson Artillery, under your command, making a tender of their services, in case the exigencies of their Country should call for them.

The best resource for the security of our Country, and the maintenance of its rights, being in the unanimity and patriotic zeal of its Citizens, no greater satisfaction can be afforded to a Government, faithful to its trust, than results from the confidence which is felt in that public spirit of which your communication presents so laudable a specimen.

Should the painful necessity of appealing to the military virtues of the nation be rendered unavoidable by the future conduct of those whose past has been so little amicable or just, the services now proffered cannot fail to receive the attention due to them.

With my thanks for the kind expressions for which I am personally indebted, I tender my respects and good wishes.

SEPT^R 26, 1809.

TO MATTHEW WALTON.

Sept^r 27, 1809.

SIR,—I have duly received the resolutions of the inhabitants of Washington County, in Kentucky, assembled on the 28th of August.

The determination evinced by these Resolutions to maintain the National rights and honor, against aggressions from whatever quarter, cannot but be acceptable to those to whose responsibility those essential objects are in a material degree committed.

Persuaded that the difference in the views taken on some points from those which may prevail in the Executive Councils

is combined with the purest zeal for the public good, I perceive in such a motive, and in that reasonable confidence which is expressed in the constituted authorities, a sufficient assurance that the conduct of my fellow-citizens, at whose meeting you presided, will adapt itself to the course of measures which may result from a further development and a comprehensive survey of our foreign relations.

For the expressions of personal regard and confidence towards me I tender my sincere thanks, and a return of my friendly wishes.

TO THOMAS JEFFERSON.

WASHINGTON, Oct. 6, 1809.

DEAR SIR,—I inclose, for perusal, a letter from Mr. Dupont D. N. What does he mean by his desire "to contribute" to the execution of his project of Education? You will observe that he has sent for you a copy of the works of Turgot, as far as edited. Be so good as to point out the mode in which you wish them to be transmitted. I expect a wagon here next month which can take them to Orange, if you prefer that conveyance to a water one to Richmond.

The late news from Europe will be found in the newspapers. Jackson has been presented, and is on the threshold of business. He is not deficient in the diplomatic professions, but nothing appears to contradict the presumption that he is so in the requisite instructions.

TO JOHN M. CREYON.

October 17, 1809.

SIR,—I have received the Resolution unanimously entered into by the Citizens of Columbia, and covered by your letter of the 20th of September.

The very unexpected and inauspicious turn given to our relations with G. Britain by the disavowal of the friendly arrange-

ment concluded by her accredited Minister, could not fail to excite a lively sensibility among a people conscious of their own just purposes, and satisfied of the reasonable views and good faith which have been evinced by their own Government.

In such a posture of our affairs, it is a happy consideration that a disposition more and more prevails to review the course which has been pursued in our foreign relations, with a due attention to the causes which have produced and prolonged the embarrassments which have distinguished them, and to unite in support of the public authorities in the measures which may be best adapted to the peculiarity of the crisis.

Such a union alone can be wanted to command respect from foreign nations to our rights, or to vindicate them with success.

I tender to my fellow-citizens of Columbia my respects and friendly wishes.

TO COL. JOHN M^cINTOSH.

WASHINGTON, October 28, 1809.

SIR,—I have just received, under your cover of September 25, the unanimous Resolutions of a Meeting of the Inhabitants of M^cIntosh County.

In the present unsettled state of our external affairs, and particularly in that produced by the refusal of the British Government to fulfil an engagement, characterized as was that of its Minister Plenipotentiary, faithful citizens of every section of their Country cannot but be warmly alive to the multiplied wrongs which it has suffered, and to the important duty of supporting the Constituted Authorities in the discharge of theirs.

The Resolutions which you have transmitted are a proof that the Citizens of the County of M^cIntosh are animated by such feelings. As far as these may be seconded by a confidence in the principles and views which guide the Executive Department, it becomes me to express the sensibility which is due to it, to which I add my respects and friendly wishes for those at whose meeting you presided.

TO THOMAS JEFFERSON.

WASHINGTON, Oct^r 30, 1809.

DEAR SIR,—In the operation of removing from my former quarters, the Digest of the City Code and business, which you had been so good as to furnish me, has, by some unaccountable accident, been lost, or possibly so thrown out of place as not to be found. I have written to Capt. Coles to take Monticello in his way, and ask the favor of you to permit him to take another copy from your original. As that letter, however, may not reach him, I must beg you to signify my wishes to him, in case he should call on you, as he probably will.

I inclose the latest accounts from Europe. Onis has returned to Philadelphia. The reality or degree of his disappointment is not easily ascertained. His last conversation with Mr. Smith did not manifest ill humour. How could he expect a different result, in the actual state of things? And what motive can Spain or the Colonies have, in any state of things, to make enemies of the United States? I see nothing to change the view of Jackson, which I formerly hinted to you.

TO THOMAS JEFFERSON.

WASHINGTON, Nov^r 6, 1809.

DEAR SIR,—I received your letter from Eppington. I had not heard that either the Attorney General or the Governor of Illinois meant to resign.

Inclosed are several letters for you, received from France by the return of the Wasp. You will see the propriety of my adding one to myself from Mr. Short, to be returned after perusal. Our information from Paris, of the 19th of September, gives no countenance to the rumoured renewal of hostilities in Austria. The delay of peace in form alone keeps alive such rumours. But why should such an event flatter the hopes of G. Britain? According to all the lessons of experience, it would quickly be followed by a more compleat prostration of her Ally.

Armstrong had forwarded to the French Court the measure taken here in consequence of the disavowal of Erskine's arrangement, but there had not been time for an answer. The answer to the previous communication had been, let England annul her illegal blockade of France, and the Berlin decree will be revoked; let her then revoke her orders of November, and the Milan decree falls, of course. This state of the question between the two powers would promise some good, if it were ascertained that by the blockade of France previous to the Berlin decree was meant that of May, extending from the Elbe to Brest, or any other specific act. It is to be feared that there is an intentional obscurity, or that an *express* and general renunciation of the British practice is made the condition. From G. Britain we have only newspaper intelligence. The change in the Ministry seems likely to make bad worse, unless we are to look for some favorable change in the extremity to which things must rapidly proceed under the quackeries and corruptions of an administration headed by such a being as Perceval. Jackson is proving himself a worthy instrument of his patron, Canning. We shall proceed with a circumspect attention to all the circumstances mingled in our affairs, but with a confidence, at the same time, in a just sensibility of the nation to the respect due to it.

TO THOMAS JEFFERSON.

WASHINGTON, Dec^r 11, 1809.

DEAR SIR,—I duly received your two letters of the 26 and 30 ult. The state of Col. Monroe's mind is very nearly what I had supposed. His willingness to have taken a seat in the Cabinet is what I had not supposed. I have written to Major Neely, according to your suggestion, and shall follow it, also, as to the distribution of Gov^r Lewis' papers when they arrive. Fayette, in a letter to me, has been equally urgent on the subject of his land titles, which are required as the basis of a loan. Owing to delays incident to the distance and the nature of the

proceedings in consummating land titles, and more particularly to the miscarriage of a mail containing instructions from Mr. Gallatin, which was long unknown to him, the business has never been completed. I have renewed my efforts to accelerate it, and have so written to Fayette, by the Ship John Adams, which carries a remittance from the Treasury to Holland, and will touch at France and England for collateral purposes. It was found cheaper to make the remittance in this way than by Bills of Exchange, at their present rate. The papers will tell you what Congress are about. There is not, as yet, any appearance by which their course can be foretold. The Republicans, as usual, are either not decided, or have different leanings. The Federalists are lying in wait to spring on any opportunity of checking or diverting the tide now setting so strongly against them.

TO THOMAS HERTELL, N. Y.

Dec^r 20, 1809.

DEAR SIR,—I have been some time a debtor for your favor of Nov^r 11th, accompanied by a copy of your Exposé. It reached me at a [time?] when my attention had some particular calls on it; and I was so unlucky as to lose, by an accident, the answer which I had prepared for a late mail.

I now repeat the thanks it contained for your communication. I have read with pleasure the interesting lights in which you have placed a subject which had passed through so many able hands. The task of abolishing altogether the use of intoxicating, and even exhilarating drinks, is an arduous one. If it should not succeed in the extent at which you aim, your mode of presenting the causes and effects of the prevailing intemperance, with the obligation and operation of an improved police and of corrective examples, cannot fail to recompense your efforts, though it should not satisfy your philanthropy and patriotism.

A *complete* suppression of every species of stimulating indulgence, if attainable at all, must be a work of peculiar difficulty,

since it has to encounter not only the force of habit, but propensities in human nature. In every age and nation some exhilarating or exciting substance seems to have been sought for, as a relief from the languor of idleness, or the fatigues of labor. In the rudest state of Society, whether in hot or cold climates, a passion for ardent spirits is in a manner universal. In the progress of refinement, beverages less intoxicating, but still of an exhilarating quality, have been more or less common. And where all these sources of excitement have been unknown, or been totally prohibited by a religious faith, substitutes have been found in opium, in the nut of the betel, the root of the ginseng, or the leaf of the tobacco plant.

It would doubtless be a great point gained for our country, and a great advantage towards the object of your publication, if ardent spirits could be made only to give way to malt liquors, to those afforded by the apple and pear, and the lighter and cheaper varieties of wine. It is remarkable, that in the countries where the grape supplies the common beverage, habits of intoxication are rare; and in some places almost without example.

These observations, as you may well suppose, are not made for notice in a new edition of your work, of which they are certainly not worthy, even if they would not too much vary from your own view of the subject. They are meant merely as an expression to yourself of that respect for the laudable object of the Exposé, and for its author, of which sincere assurances are tendered.

THE REV^D WILLIAM BENTLEY.

WASHINGTON, December 27th, 1809.

SIR,—In consequence of your favor of the 11th instant I have addressed the few lines* enclosed to General Stark. If the possession of this sincere testimony of my esteem be entirely satisfactory, it may, perhaps, be as well that it should not be

* See the copy on file.

followed by a publication; the sole object being to contribute in that form whatever gratification may be afforded him by learning the sentiments of one of whom he has been pleased to think and speak so favorably. With an entire confidence in your judicious estimate of the case, I limit myself to this intimation.

Accept, Sir, assurances of my friendly respects.

TO PLANTAGENET ECCLESTON.

1810.

SIR,—I have duly received the Medallion of General Washington accompanying your favor of Jan^y 1, and return my thanks for it. The high veneration in which his memory is held in his own Country renders such tokens of respect to it in others at once grateful in themselves, and just titles to esteem in those who, looking beyond a national horizon, can do justice to the worthies and benefactors of mankind, wherever seen or however distant.

TO THE GENERAL ASSEMBLY OF THE STATE OF NORTH CAROLINA.

January, 1810.

The Address of the General Assembly of the 23d of December could not but be received with a satisfaction much enhanced by the unanimity with which they approve the course pursued by the Executive of the United States for maintaining the rights of the Nation, and the respect due to its Government.

Whilst the unyielding injustice of Foreign Powers continues to render our situation perplexing, and the preservation of peace more and more uncertain, the Councils of the General Government must find their confidence in the spirit and faculties of the Nation greatly fortified by the co-operating patriotism of the States. Nor could this resource be more honorably or acceptably pledged than in the example now given.

In the stress which the General Assembly have been pleased to lay on my capacities and endeavours to promote the welfare of our country, I perceive a partiality which claims the return of my affectionate acknowledgments; along with which I tender assurances of my high consideration and best wishes.

TO THE SURVIVING MILITARY CHARACTERS OF THE LATE REVOLUTIONARY ARMY AND NAVY, RESIDING IN THE CITY AND COUNTY OF PHILADELPHIA.

January, 1810.

I have received, fellow-citizens, with particular satisfaction, the sentiments you have thought fit to address to me at a moment so interesting to the honor and well-being of our country. The unjust proceedings of Foreign Governments have long been witnessed by the nation with feelings repressed only by a love of peace, and by hopes founded on appeals to those principles of law and right which have been exemplified in its own conduct. These hopes having continually failed, our situation retains its perplexity, and the preservation of peace becomes more and more uncertain. At such a period, it is a precious consideration that the Government of the United States, instead of having provoked this inauspicious state of our foreign relations, has been as persevering as it has been sincere in efforts to avert it; and that as our wrongs become aggravated, the readiness to maintain our rights becomes more universal. From none was this patriotic spirit more to be looked for than from those who, knowing most, experimentally, the price paid for our Independence, must be the last to suffer its attributes to be impaired in its descent to their posterity. A free people, firmly united in a just cause, can never despond of either inspiring respect for their rights, or of maintaining them against hostile invasions. Should this last alternative, in spite of all our conciliatory endeavours, be forced upon us, it may well be expected, that however the capacity of our revolutionary champions for active service may be impaired by the infirmities of age, the deficiency

will be amply made up by the animation given by their former example and present zeal to their fellow-citizens who have not before been compelled to rally to the banners and the defence of their Country.

Accept assurances of my respects and friendly wishes.

TO GEORGE JOY.

WASHINGTON, Jan^y 17th, 1810.

DEAR SIR,—I have received your favor of the 10th. Your anxiety that our Country may be kept out of the vortex of war is honorable to your judgment as a patriot, and to your feelings as a man. The same anxiety is, I sincerely believe, felt by the great body of the nation, and by its public councils; most assuredly by the Executive branch of them. But the question may be decided for us, by actual hostilities against us, or by proceedings leaving no choice but between absolute disgrace and resistance by force. May not, also, manifestations of patience under injuries and indignities be carried so far as to invite this very dilemma?

I devoutly wish that the same disposition to cultivate peace by means of justice, which exists here, predominated elsewhere, particularly in G. Britain. But how can this be supposed, whilst she persists in proceedings which comprize the essence of hostility; whilst she violates towards us rules which she enforces against us in her own favor; more particularly whilst we see her converting the late reconciliation, through one of the Ministers, into a source of fresh difficulties and animosities through another? For in this light must be viewed her disavowal of Mr. Erskine, and the impressions made through his successor. Had the disavowal been deemed essential to her interests, a worse plaster could not have been devised for the wound necessarily inflicted here. But was the disavowal essential to her interests? was it material to them, taking for the test her own spontaneous change of system, and her own official language? By the former, I refer to her orders of April, re-

stricting their original orders against neutrals to a trade with France and Holland; by the latter, to the conversation of Mr. Canning with Mr. Pinkney, in which he abandons, as he could not but do, two of the conditions which had been contemplated; and admits that a non-intercourse law here against Holland was not a *sine qua non*. So that the arrangement of Mr. Erskine was disavowed essentially for want of a pledge that our non-intercourse would be continued against France and her dominions. But why disavow absolutely, why at all, on this account? The law was known to be in force against France at the time of the arrangement. It was morally certain that, if put in force against France whilst she was pleading the British orders, it would not be withdrawn if she should persist in her decrees after being deprived of this plea. And there would be no fair ground to suppose that the condition would not be pledged and stipulated, if required, as soon as the requisite authorities here should be together. The disavowal is the more extraordinary, as the arrangement was to be respected till the 20th July, and, therefore, with the addition of four or five weeks only, would have afforded an opportunity of knowing the sense of this Government, and of supplying all that was wanted to satisfy the British ultimatum. This course was so obvious, and that pursued so opposite, that we are compelled to look to other motives for an explanation, and to include among these a disinclination to put an end to differences from which such advantages are extracted by British commerce and British cruisers.

Notwithstanding all these grounds of discontent and discouragement, we are ready, as the British Government knows, to join in any new experiment, and through either our diplomatic channel there, or hers here, for a cordial and comprehensive adjustment of matters between the two countries.

Let reparation be made for the acknowledged wrong committed in the case of the Chesapeake—a reparation so cheap to the wrong-doer, yet so material to the honor of the injured party; and let the orders in Council, already repealed as to the avowed object of retaliation, be repealed also, as an expedient for substituting an illicit commerce in place of that to which neutrals

have, as such, an incontestable right. The way will then be open for negotiation at large; and if the British Government would bring into it the same temper as she would find in us, and the same disposition to insist on nothing inconsistent with the rule of doing as she would, or rather as she *will*, be done by, the result could not fail to be happy for both.

Permit me to remark that you are under a mistake in supposing that the Treaty concluded by Messrs. Monroe and Pinkney was rejected because it did not provide that free ships should make free goods. It never was required, nor expected, that such a stipulation should be inserted. As to deserting seamen, you will find that G. Britain practises against us the principles we assert against her, and in fact goes further; that we have always been ready to enter into a convention on that subject, founded on reciprocity; and that the documents long since in print shew that we are willing, on the subject of impressment, to put an end to it, by an arrangement which most certainly would be better for the British Navy than that offensive resource; and which might be so managed as to leave both parties at liberty to retain their own ideas of right. Let me add that the acceptance of that Treaty would have very little changed the actual situation of things with G. Britain. The orders in Council would not have been prevented, but rather placed on stronger ground; the case of the Chesapeake, the same as it is; so, also, the case of impressments, of factitious blockades, &c.; all, as at present, pregnant sources of contention and ill humour.

From this view of the subject, I cannot but persuade myself that you will concur in opinion, that if, unfortunately, the calamity you so benevolently dread should visit this hitherto favored Country, the fault will not lye where you would not wish it to lye.

TO WILLIAM PINKNEY.

Jan^y 20, 1810.

DEAR SIR,—I received some days ago a letter of the 10th instant from Doctor Logan, containing observations on the posture and prospect of our foreign relations. Before the answer was out of my hands, I received another dated four days after, in which he merely informed me that he should embark for England in about eight days, with an offer to take charge of any communications for you. As his first letter did not glance at any such intention, it must be presumed to have been very suddenly formed. And as his last is silent as to the object of the trip, this is left to conjecture. From the anxiety expressed in his first letter for the preservation of peace with England, which appeared to him to be in peculiar danger, and from his known benevolence and zeal on the subject, it may reasonably be supposed that his views relate, in some form or other, to a mitigation of the hostile tendencies which distress him; and that his silence may proceed from a wish to give no handle for animadversions of any sort on the step taken by him.

You will receive from the Secretary of State, unless, indeed, opportunity fail through the shortness of the notice, such communications and observations as may be thought useful to you. You will find that the perplexity of our situation is amply displayed by the diversity of opinions and prolixity of discussion in Congress. Few are desirous of war; and few are reconciled to submission; yet the frustration of intermediate courses seems to have left scarce an escape from that dilemma. The fate of Mr. Macon's Bill, as it is called, is not certain. It will probably pass the House of Representatives, and, for aught I know, may be concurred in by the Senate. If retaliated by G. Britain, it will operate as a non-importation act, and throw exports into the circuit of the non-intercourse act. If not retaliated, it may be felt by the British navigation, and, thro' that interest, by the Government, since the execution of the law which relates to the ship, and not to the merchandize, cannot be evaded. With respect to the E. Indies, the proposed regulation will have the

effect of compelling the admission of a direct and *exclusive* trade for our vessels, or a relinquishment of this market for India goods, farther than they can be smuggled into it. It just appears that a proposition has been made in the House of Representatives to employ our ships of war in convoys, and to permit merchantmen to arm. However plausible the arguments for this experiment, its tendency to hostile collisions is so evident, that I think its success improbable. As a mode of going into war, it does not seem likely to be generally approved, if war was the object. The military preparations which have been recommended, and are under consideration, are what they profess to be, measures of precaution. They are not only justified, but dictated by the uncertainty attending the course which G. Britain may take, or, rather, by the unyielding and unamicable traits in her Cabinet and her countenance. Measures of that sort are also the more adapted to our situation, as, in the event of accommodation with G. Britain, they may possibly be wanted in another quarter. The long debates on the Resolution of Mr. Giles, on the subject of Mr. Jackson, have terminated in affirmative votes, by large majorities. This, with the refusal of the Executive to hold communication with him, it is supposed, will produce a crisis in the British policy towards the United States; to which the representations of the angry Minister will doubtless be calculated to give an unfavorable turn. Should this happen, our precautionary views will have been the more reasonable. It is most probable, however, that instead of expressing resentment by open war, it will appear in more extended depredations on our commerce; in declining to replace Mr. Jackson; and, perhaps, in the course observed with respect to you, in meeting which your own judgment will be the best guide. Should a change in the composition or calculations of the Cabinet give a favorable turn to its policy towards this country, it is desirable that no time may be lost in allowing it its effect. With this view, you will be reminded of the *several* authorities you retain to meet in negotiation, and of the instructions by which they are to be exercised; it being always understood, that with the exception of some arrangement touch-

ing the orders in Council, reparation for the insult on the Chesapeake must precede a general negotiation on the questions between the two countries. At present, nothing precise can be said as to the condition on our part for the repeal of the orders in Council; the existing authority in the Executive to pledge one being expirable with the non-intercourse act, and no other pledge being provided for. As it is our anxious desire, however, if the British Government should adopt just and conciliatory views, that nothing may be omitted that can shew our readiness to second them, you may offer a general assurance that, as in the case of the Embargo and the non-intercourse acts, any similar power with which the Executive may be clothed will be exercised in the same spirit. You will doubtless be somewhat surprised to find among the communications to Congress, and in print, too, the confidential conversations with Mr. Canning, reserved from such a use by your own request. It was, in fact, impossible to resist the pointed call for them, without giving umbrage to some, and opportunity for injurious inferences to others. The difficulty was increased by the connection between those and other communications necessarily falling within the scope of the rule of compliance in such cases. Finally, there did not appear to be any thing in the conversations which could warrant British complaint of their disclosure, or widen the space between you and the British Ministry.

As it may not be amiss that you should know the sentiments which I had expressed to Doctor Logan, and which, though an answer to his letter written previous to the notification of his intended trip, he will of course carry with him, I enclose a copy of the answer.

The file of newspapers from the Department of State will give you the debates on the case of Jackson. I enclose, however, a speech I have just looked over, in a pamphlet form. Although liable to very obvious criticisms of several sorts, it has presented a better analysis of some parts of the subject than I have observed in any of the speeches.

TO _____.

WASHINGTON, JAN 31, 1810.

SIR,—I have received your letter of the 25th, inclosing the unanimous resolutions of a meeting of Citizens of Washington County, at Hager's Town on the 20th instant, approving the course lately taken by the Executive of the United States with respect to the British Minister Plenipotentiary, and pledging their support of the constituted authorities in such measures as may be required by the unjust conduct of the belligerent Powers. It must be agreeable at all times, to responsible and faithful functionaries, to find their proceedings attended with the confidence and support of their fellow-citizens. And the satisfaction cannot but be increased by unanimity in declarations to that effect. Among the means of commanding respect for our National character and rights, none can be more apposite than proofs that we are united in maintaining both; and that all hopes will be vain which contemplate those internal discords and distrusts from which encouragement might be derived to foreign designs against our safety, our honor, or our just interests.

TO THE REPUBLICAN CITIZENS OF THE 1ST CONGRESSIONAL DISTRICT OF THE STATE OF PENNSYLVANIA.

I have received, fellow-citizens, your Address of the 14th instant, with the impressions which its assurances of approbation and attachment could not fail to make; and with every participation in your sensibility to the extraordinary circumstances which continue to distinguish our foreign relations.

You do no more than justice, as well to my predecessor as to myself, in referring the course which has been pursued to a steady purpose of withholding from each belligerent a pretext for disturbing our rightful intercourse with the other, by observing towards both the strictest impartiality in exercising our neutral rights, and in fulfilling our neutral obligations.

This unexceptionable conduct, which ought to have shielded us from aggressions of every sort, has been followed by a perseverance in multiplying them, which no appeals to law, to reason, or to that policy which alone accords with the true interest of Nations, as of individuals, have succeeded in averting or arresting.

In this state of things, it lies with the Legislative Councils to decide on the measures adapted to it. That their decision will duly consult the sense of the Nation, and faithfully pursue its best interests, is what I feel great satisfaction in presuming; as I do in witnessing the patriotism which, in your example, unites with a manly expression of your particular sentiments a confidence in the Constituted Authorities, and a determination to support them. Accept, fellow-citizens, my respects and friendly wishes.

WASHINGTON, Feb^y 21, 1810.

TO THOMAS JEFFERSON.

WASHINGTON, April 23, 1810.

DEAR SIR,—Yours of the 16th has been received. Congress remain in the unhinged state which has latterly marked their proceedings, with the exception only that a majority in the House of Representatives have stuck together so far as to pass a Bill providing for a conditional repeal by either of [the] belligerents of their edicts; laying, in the mean time, 50 per cent. to the present duties on imports from G. Britain and France. What the Senate will do with the Bill is rendered utterly uncertain by the policy which seems to prevail in that branch. Our last authentic information from G. Britain is of the 28 February, and from France of the 2d of Feb^y. The information in both cases has an aspect rather promising, but far from being definite; and subsequent accounts, through the ordinary channels, do not favor a reliance on general professions or appearances. Bonaparte seems not to have yet attended to the distinction between the external and internal character of

his decrees, and to be bending his augmented faculties for annihilating British Commerce with the Continent, with which our corrupt traders have confounded the American flag. And it will be a hard matter for Wellesley, should he be well disposed, to drag his anti-American colleagues into a change of policy; supported, as they will be, by the speeches and proceedings of Congress. From those, the inference will be that one party prefers submission of our trade to British regulation, and the other confesses the impossibility of resisting it. Without a change of Ministry, of which there is some prospect, it would be imprudent to count on any radical change of policy. For the moment, I understand that the Merchants will not avail themselves of the unshackled trade they have contended for; a voluntary Embargo being produced by the certainty of a glutted market in England, and the apprehension of British blockades and French confiscations. The experiment about to be made will probably open too late the eyes of the people to the expediency and efficacy of the means which they have suffered to be taken out of the hands of the Government, and to be incapacitated for future use.

TO THOMAS JEFFERSON.

WASHINGTON, May 7, 1810.

DEAR SIR,—The inclosed letter from Jarvis accompanied one to me, on the subject of the Merinos. I learn that they have arrived safe, but the vessel is aground a few miles below Alexandria. Jo^s Doherty is gone to bring them up, making the selections warranted by Mr. Jarvis. As the means I shall employ to have my pair conveyed to Virginia will suffice for yours, it will be unnecessary for you to attend to the matter till you hear of their arrival in Orange. Although there have been several late arrivals from England, we remain in the dark as to what has passed between Wellesley and Pinkney. The same as to the French Government and Armstrong. You will notice the footing on which Congress has left our relations with these

powers. Unless G. Britain should apprehend an attempt from France to revive our non-intercourse against her, she has every earthly motive to continue her restrictions against us. She has our trade, in spite of France, as far as she can make it suit her interest, and our acquiescence in cutting it off from the rest of the world, as far as she may wish to distress her adversaries, to cramp our growth as rivals, or to prevent our interference with her smuggling monopoly. New England and New York are rallying to the Republican ranks. In New Jersey, every branch of the Government is again sound. The election in Massachusetts, now going on, will probably have a like issue with their late one. There is some danger, however, from the federal artifice of pushing the federal towns to their maximum of Representation. Boston is to send forty.

TO WILLIAM PINKNEY.

WASHINGTON, May 23d, 1810.

DEAR SIR,—You will learn from the Department of State, as you must have anticipated, our surprise that the answer of Lord Wellesley to your very just and able view of the case of Jackson corresponded so little with the impressions of that Minister manifested in your first interviews with him. The date of the answer best explains the change; as it shows that time was taken for obtaining intelligence from this Country, and adapting the policy of the answer to the position taken by the advocates of Jackson. And it must have happened that the intelligence prevailing at that date was of the sort most likely to mislead. The elections which have since taken place in the Eastern States, and which have been materially influenced by the affair of Jackson, and the spirit of party connected with it, are the strongest of proofs that the measure of the Executive coincided with the feelings of the Nation. In every point of view, the answer is unworthy of the source from which it comes.

From the manner in which the vacancy left by Jackson is provided for, it is inferred that a sacrifice is meant of the re-

spect belonging to this Government, either to the pride of the British Government, or to the feelings of those who have taken side with it against their own. On either supposition, it is necessary to counteract the ignoble purpose. You will accordingly find that on ascertaining the substitution of a Chargé to be an intentional degradation of the diplomatic intercourse on the part of Great Britain, it is deemed proper that no higher functionary should represent the United States at London. I sincerely wish, on every account, that the views of the British Government, in this instance, may not be such as are denoted by appearances, or that, on finding the tendency of them, they may be changed. However the fact may turn out, you will, of course, not lose sight of the expediency of mingling in every step you take as much of moderation, and even of conciliation, as can be justifiable; and will, in particular, if the present despatches should find you in actual negotiation, be governed by the result of it in determining the question of your devolving your trust on a Secretary of Legation.

The act of Congress, transmitted from the Department of State, will inform you of the footing on which our relations to the belligerent powers were finally placed. The experiment now to be made, of a commerce with both, unrestricted by our laws, has resulted from causes which you will collect from the debates and from your own reflections. The new form of appeal to the policy of Great Britain and France, on the subject of the Decrees and Orders, will most engage your attention. However feeble it may appear, it is possible that one or other of those powers may allow it more effect than was produced by the overtures heretofore tried. As far as pride may have influenced the reception of these, it will be the less in the way, as the law in its present form may be regarded by each of the parties, if it so pleases, not as a coercion or a threat to itself, but a promise of attack on the other. Great Britain, indeed, may conceive that she has now a compleat interest in perpetuating the actual state of things, which gives her the full enjoyment of our trade, and enables her to cut it off with every other part of the world; at the same time that it increases the chance of such

resentments in France at the inequality as may lead to hostilities with the United States. But, on the other hand, this very inequality, which France would confirm by a state of hostilities with the United States, may become a motive with her to turn the tables on G. Britain, by compelling her either to revoke her orders, or to lose the commerce of this country. An apprehension that France may take this politic course would be a rational motive with the British Government to get the start of her. Nor is this the only apprehension that merits attention. Among the inducements to the experiment of an unrestricted commerce now made, were two which contributed essentially to the majority of votes in its favor; first, a general hope, favoured by daily accounts from England, that an adjustment of differences there, and thence in France, would render the measure safe and proper; second, a willingness in not a few to teach the advocates for an open trade, under actual circumstances, the folly as well as degradation of their policy. At the next meeting of Congress, it will be found, according to present appearances, that instead of an adjustment with either of the belligerents, there is an increased obstinacy in both; and that the inconveniences of the embargo and non-intercourse have been exchanged for the greater sacrifices, as well as disgrace, resulting from a submission to the predatory systems in force. It will not be wonderful, therefore, if the passive spirit which marked the late session of Congress should at the next meeting be roused to the opposite point; more especially as the tone of the nation has never been as low as that of its Representatives, and as it is rising already under the losses sustained by our commerce in the Continental ports, and by the fall of prices in our produce at home, under a limitation of the market to G. Britain. Cotton, I perceive, is down at 10 or 11 cents in Georgia. The great mass of Tobacco is in a similar situation. And the effect must soon be general, with the exception of a few articles which do not at present glut the British demand. Whether considerations like these will make any favorable impression on the British Cabinet, you will be the first to know. Whatever confidence I may have in the justness of them, I must for-

get all that has past before I can indulge very favorable expectations. Every new occasion seems to countenance the belief that there lurks in the British Cabinet a hostile feeling towards this Country, which will never be eradicated during the present reign; nor overruled, whilst it exists, but by some dreadful pressure from external or internal causes.

With respect to the French Government, we are taught by experience to be equally distrustful. It will have, however, the same opportunity presented to it, with the British Government, of comparing the actual state of things with that which would be produced by a repeal of its Decrees, and it is not easy to find any plausible motive to continue the former, as preferable to the latter. A worse state of things than the actual one could not exist for France, unless her preference be for a state of war. If she be sincere, either in her late propositions relative to a chronological revocation of illegal Edicts against neutrals, or to a pledge from the United States not to submit to those of Great Britain, she ought at once to embrace the arrangement held out by Congress, the renewal of a non-intercourse with Great Britain being the very species of resistance most analogous to her professed views.

I propose to commit this to the care of Mr. Parish, who is about embarking at Philadelphia for England; and finding that I have missed a day in my computation of the opportunity, I must abruptly conclude, with assurances of my great esteem, &c.

TO THOMAS JEFFERSON.

WASHINGTON, May 25, 1810.

DEAR SIR,—I have duly received your favor of the 13th. The general idea of disposing of the supernumerary Merino Rams for the public benefit had occurred to me. The mode you propose for the purpose seems well calculated for it. But as it will be most proper, as you suggest, to let our views be developed to the public by the execution of them, there will be

time for further consideration. When the sheep came into my hands, they were so infected with the scab that I found it necessary, in order to quicken and ensure their cure, to apply the mercurial ointment. I hope they are already well. One of the ewes has just dropt a ewe lamb, which is also doing well. I expect my overseer every day to conduct them to Orange. As he will have a wagon with him, the trip, I hope, may be so managed as to avoid injury to his charge.

A former National Intelligencer will have given you our last communications from G. Britain. That of this morning exhibits our prospects on the side of France. The late confiscations by Bonaparte comprise robbery, theft, and breach of trust, and exceed in turpitude any of his enormities not wasting human blood. This scene on the continent, and the effect of English monopoly on the value of our produce, are breaking the charm attached to what is called free trade, foolishly by some, and wickedly by others. We are hourly looking for the "John Adams." There is a *possibility* that the negotiations on foot at Paris may vary our prospects there. The chance would be better, perhaps, if the last act of Congress were in the hands of Armstrong; which puts our trade on the worst possible footing for France but, at the same time, puts it in the option of her to revive the non-intercourse against England. There is a *possibility*, also, that the views of the latter may be somewhat affected by the recent elections; it being pretty certain that the change in the tone of Wellesley from that first manifested to Pinkney was, in part, at least, produced by the intermediate intelligence from the United States, which flattered a fallacious reliance on the British party here,

TO THOMAS JEFFERSON.

WASHINGTON, June 4, 1810.

DEAR SIR,—I have received your two letters of the 25 and 30 ultimo. I have not yet seen any of the Secretaries to whom you have written on the subject of the papers relating to the

Batture. I take for granted they will readily comply with your request. Mr. Gallatin is absent on a visit to his farm, in the western part of Pennsylvania. But his chief Clerk will, I presume, be able to furnish the papers, if any, lying in that Department. The argument of Moreau de Lislet has never been printed, nor, as I believe, fully translated. The original manuscript, if not in the hands of Mr. Rodney, will be forwarded from the Department of State. What Poydras has said on the subject is herewith inclosed. Although the ground to be taken in the suit against you is not disclosed, I think it not difficult to conjecture it. The act of Congress will be represented as unconstitutional, and the case of the Batture as not within its scope; and misconstructions as too obvious to be resolvable into official error of judgment. In any event there will be the chance of an obiter opinion of the Court on the merits of the case, strengthening the cause of Livingston. Till I received your letter, I had scarcely yielded my belief that a suit had been really instituted. If the Judiciary should lend itself for such a purpose, it cannot fail, I think, to draw down on itself the unbounded indignation of the Nation, and a change of the Constitution, under that feeling, carried, perhaps, too far in the opposite direction. In a Government whose vital principle is responsibility, it never will be allowed that the Legislative and Executive Departments should be completely subjected to the Judiciary, in which that characteristic feature is so faintly seen.

TO THOMAS JEFFERSON.

WASHINGTON, June 15, 1810.

DEAR SIR,—The inclosed letters were brought, together with the separate packet now forwarded, by the John Adams. The official communications received by her from France and G. Britain you will find in the National Intelligencer of this date. The Editor, I perceive, passes over the obnoxious refusal of G. Britain to comply with the reasonable course of putting an end to the predatory Edicts of both Nations; and it is not improb-

able that a like sensibility to the atrocity of the French Government may direct the public attention from what would otherwise strike it with due force.

TO THOMAS JEFFERSON.

WASHINGTON, June 22, 1810.

DEAR SIR,—On the first publication of the despatches by the John Adams, so strong a feeling was produced by Armstrong's picture of the French robbery, that the attitude in which England was placed by the correspondence between Pinkney and Wellesley was overlooked. The public attention is beginning to fix itself on the proof it affords that the original sin against Neutrals lies with G. Britain, and that, whilst she acknowledges it, she persists in it.

Have you received a copy of Cooper's (the Pennsylvania Judge) masterly opinion on the question whether the sentence of a foreign Admiralty Court in a prize cause be conclusive evidence in a suit here between the Underwriter and Insured? It is a most *thorough* investigation and irrefragable disproof of the British doctrine on the subject, as adopted by a decision of the Supreme Court of the United States. If you are without a copy, I will provide and forward one.

TO GOVERNOR SNYDER.

WASHINGTON, July 5th, 1810.

SIR,—I have duly received your letter of June 9, covering the Resolutions of the General Assembly of the Commonwealth of Pennsylvania, adopted at their last session.

The principles and purposes avowed in these Resolutions are such as were to be expected from a State which has given so many proofs of its readiness to maintain the rights and honor of the nation against foreign aggressions and insults.

In this renewed pledge of their co-operation, whenever, in the opinion of the National Councils, an appeal to the patriotism

and force of the American people becomes necessary, the General Assembly afford an example equally animating to those charged with the interests of the Union and worthy the emulation of every member of it.

Accept, sir, assurances of my high respect.

TO THOMAS JEFFERSON.

MONTPELLIER, July 17, 1810.

DEAR SIR,—Among the papers relating to the Convention of 1787, communicated to you, that copies in your hands might double the security against destructive casualties, was a delineation of Hamilton's plan of a Constitution. On looking for it among the Debates, &c., which were returned to me, this particular paper does not appear.* I conclude, therefore, that it had not then been copied, or was at the time in some separate situation. I am very sorry to trouble you on such a subject, but being under an engagement to furnish a copy of that project, I must ask the favor of you to see whether it be not among your papers, and if so, to forward it by the mail.

TO THOMAS JEFFERSON.

DEAR SIR,—Yours of the 13th was duly received. I cannot account for your not getting Moreau's Memoir. I have given a hint for it now to be sent from the Department of State. His view of the case ought certainly to be comprized in your examination of it. I shall peruse this, when received, with pleasure, though not for all the reasons you enumerate, and for some which you do not; and I shall be particularly happy in the visit with which you flatter me.

* Afterwards found.

TO MR. GALLATIN.

MONTPELLIER, August 29, 1810.

DEAR SIR,—Your letter of the 8th instant came duly to hand, and I have since been favored with that of the 17th.

It seems that in the decreasing amount of the Treasury deposits, any distributive transfer of them to the State Banks would not be convenient to the public, and must soon become unimportant to them. Nothing better, therefore, is practicable in that mode than a temporary relief of particular Banks, particularly affected by the demands of the National Bank. Application has been made, on this ground, in behalf of the Bank of Columbia, and equal attention would be due to any other applications.

The Spaniard who dined with me last winter, and was lately executed at the Havanna, was not the one introduced by Doct^r Thornton. His particular title to my civilities was a letter of strong recommendation from Doct^r Rush. The other Spaniard was never at my table.

If the French decree releasing the American property in the warehouses of Holland be authentic, may it not be the result of apprehended reprisal here?

TO JUDGE TOULMIN.

MONTPELLIER, Sep^r 5, 1810.

DEAR SIR,—Your favor of July 28 has been duly received. The particulars which it communicates are of a nature to claim the attention of the Executive, and I thank you for yours in transmitting them. I am glad to find, by subsequent information, that the indications of a purpose to carry into effect the enterprise on Florida had become less decisive. There can be no doubt of its unlawfulness, nor as to the duty of the Executive to employ force, if necessary, to arrest it, and to make examples of the authors. These are the less to be excused, as there never was a time when private individuals should more

distrust their competency to decide for the Nation, nor a case in which there was less ground to distrust the dispositions of the Government, regulated as they must be by the limits of its authority, and by the actual state of its foreign relations.

Be pleased to accept my esteem and friendly wishes.

TO J. Q. ADAMS.

WASHINGTON, October 16th, 1810.

DEAR SIR,—Previous to my return to this city, I received a letter from Mrs. Adams, your highly respectable mother, communicating your anxiety to leave a situation rendered insupportable by the ruinous expenses found to be inseparable from it, and taking for granted that you had written, or would write, to the Secretary of State to the same effect. The answer to her was, that as it was not the intention of the Executive to expose you to unreasonable sacrifices, it could not withhold a permission to retire from them, and that you would be so informed from the Department of State. You will accordingly receive a letter of leave, and a blank commission, providing for the care of our affairs till a successor may be appointed. As no communication of your wishes, however, has yet been received from yourself, I cannot but hope that the peculiar urgency manifested in the letter of Mrs. Adams was rather hers than yours, or that you have found the means of reconciling yourself to a continuance in your station. Besides that confidence in the value of your services which led to the call upon them, there are considerations, which you will readily appreciate, bearing against a sudden return from a short mission, the occasion for which has been made the subject of so much lucubration. Among them, is the difficulty of shielding the step against unfavorable conjectures as to its cause in the mind of the Emperor; and the evil might become the greater, from the possibility of a protracted intermission, if not entire discontinuance, of a representation of the United States at S^t Petersburg, corresponding with the grade of the Russian Minister here. It will, for this

reason, be particularly expedient, in case you should make immediate use of the document sent you, to spare no pains in guarding against a misconstruction of your departure, and in preparing the Russian Government for a delay in filling the vacancy, which may be unavoidable, notwithstanding the purpose of preventing it. As far as assurances of unabated friendship here can be of aid to you, they may be given with every emphasis which the sincerity of these sentiments can warrant.

I will add, that whilst I do not disguise my wish that the continuance of your valuable services may be found not inconsistent with your other and undeniable duties, I cannot, on the other hand, wish that the latter should be sacrificed beyond a reasonable measure, and within that measure I am entirely persuaded that your patriotism will cheerfully make the sacrifice.

TO THOMAS JEFFERSON.

WASHINGTON, October 19, 1810.

DEAR SIR,—I have received your favor of the 15th. All we know of the step taken by France towards a reconciliation with us is through the English papers sent by Mr. Pinkney, who had not himself received any information on the subject from Gen^l Armstrong, nor held any conversation with the British Ministry on it, at the date of his last letters. We hope from the step the advantage at least of having but one contest on our hands at a time. If G. Britain repeals her orders, without discontinuing her mock blockades, we shall be at issue with her on ground strong in law, in the opinion of the world, and even in her own concessions. And I do not believe that Congress will be disposed, or permitted by the Nation, to a tame submission; the less so as it would be not only perfidious to the other belligerent, but irreconcilable with an honorable neutrality. The crisis in West Florida, as you will see, has come home to our feelings and our interests. It presents, at the same time, serious questions as to the authority of the Executive, and the adequacy of the existing laws of the United States for territorial

administration. And the near approach of Congress might subject any intermediate interposition of the Executive to the charge of being premature and disrespectful, if not of being illegal. Still, there is great weight in the considerations that the Country to the Perdido, being our own, may be fairly taken possession of, if it can be done without violence; above all, if there be danger of its passing into the hands of a third and dangerous party. The successful party at Baton Rouge have not yet made any communication or invitation to this Government. They certainly will call in either our aid or that of G. Britain, whose conduct at the Caraccas gives notice of her propensity to fish in troubled waters. From present appearances, our occupancy of West Florida would be resented by Spain, by England, and by France, and bring on not a triangular, but quadrangular contest. The vacancy in the Judiciary is not without a puzzle in supplying it. Lincoln, obviously, is the first presented to our choice, but I believe he will be inflexible in declining it.

TO WILLIAM PINKNEY.

WASHINGTON, October 30, 1810.

DEAR SIR,—Your letter of August 13 was duly received. Its observations on the letter and conduct of Lord Wellesley are an interesting comment on both. The light in which the letter was seen by many in this Country was doubtless such as gave to its features an exaggerated deformity. But it was the natural effect of its contrast to the general expectation founded on the tenor of your private letter to Mr. Smith, and on the circumstances, which, in the case of Jackson, seemed to preclude the least delay in repairing the insults committed by him. It is true, also, that the letter, when viewed in its most favorable light, is an unworthy attempt to spare a false pride on one side at the expence of just feelings on the other, and is in every respect infinitely below the elevation of character assumed by the British Government, and even to that ascribed to Lord Welles-

ley. It betrays the consciousness of a doubt, with a wish to discharge it in false coin. Had the letter been of earlier date, and accompanied by the prompt appointment of a successor to Jackson, its aspect would have been much softened. But every thing was rendered as offensive as possible by evasions and delays, which admit no explanation without supposing a double game, by which they were to cheat us into a reliance on fair promises, whilst they were playing into the hands of partizans here, who were turning the delays into a triumph over their own Government. This consideration had its weight in the decision last communicated, with respect to your continuance at London, or return to the United States.

The personal sensibilities which your letter expresses are far greater than I can have merited by manifestations of esteem and confidence which it would have been unjust to withhold. As a proof of your partiality, they ought not, on that account, to excite less of a return. As little ought your readiness to retire from your station, from the honorable motives which govern you, to be viewed in any other light than as a proof of the value which attaches itself to your qualifications and services. It is not to be denied that a good deal of dissatisfaction has issued through the press against some of your intercourse with the British Government. But this could have the less influence on the Executive mind, as the dissatisfaction, where not the mere indulgence of habitual censure, is evidently the result of an honest misconstruction of some things, and an ignorance of others, neither of which can be lasting. I have little doubt that if your sentiments and conduct could be seen through media not before the public, a very different note would have been heard; and as little, that the exhibitions likely to grow out of the questions and discussions in which you are at present engaged will more than restore the ground taken from you.

The sole question on which your return depends, therefore, is whether the conduct of the Government where you are may not render your longer stay incompatible with the honor of the United States. The last letter of the Secretary of State has so placed the subject for your determination, in which the fullest

confidence is felt. Waiving other depending subjects, not of recent date, a review of the course pursued in relation to Jackson and a successor excites a mixture of indignation and contempt, which ought not to be more lightly expressed than by your *immediately* substituting a Secretary of Legation for the grade you hold; unless the step be absolutely forbidden by the weighty consideration which has been stated to you, and which coincides with the sound policy to which you allude, of putting an adversary compleatly in the wrong. The prevailing opinion here is, that this has been already abundantly done.

Besides the public irritation produced by the persevering insolence of Jackson in his long stay, and his conduct during it, there has been a constant heart-burning on the subject of the Chesapeake, and a deep and settled indignation on the score of impressments, which can never be extinguished without a liberal atonement for the former, and a systematic amendment of the latter.

You have been already informed that the Proclamation would issue giving effect to the late act of Congress, on the ground of the Duke de Cadore's letter to Gen^l Armstrong, which states an *actual* repeal of the French Decrees. The letter of W. to you is a promise only, and that in a very questionable shape; the more so, as G. Britain is known to have founded her retaliating pretensions on the *unprecedented mode* of warfare against her; evidently meaning the exclusion of her trade from the Continent. Even the blockade of May, 1806, rests on the same foundation. These considerations, with the obnoxious exercise of her sham blockades in the moment of our call for their repeal, backed by the example of France, discourage the hope that she contemplates a reconciliation with us. I sincerely wish your next communications may furnish evidence of a more favorable disposition.

It will not escape your notice, and is not undeserving that of the British Government, that the non-intercourse, as now to be reviewed, will have the effect of giving a monopoly of our exportations to G. Britain to our own vessels, in exclusion of hers; whereas, in its old form, G. Britain obtained a substantial mo-

nopoly for hers through the entrepots of N. Scotia, E. Florida, &c. She cannot, therefore, deprive our vessels, which may now carry our exports directly to G. Britain, of this monopoly, without refusing the exports altogether, or forcing them into difficult and expensive channels, with the prospect of a counteracting interposition of Congress, should the latter experiment be resorted to. Nothing would be necessary to defeat this experiment but to prohibit, as was heretofore contemplated, the export of our productions to the neighboring ports belonging to Great Britain or her friends.

The course adopted here towards West Florida will be made known by the Secretary of State. The occupancy of the Territory as far as the Perdido was called for by the crisis there, and is understood to be within the authority of the Executive. East Florida, also, is of great importance to the United States, and it is not probable that Congress will let it pass into any new hands. It is to be hoped G. Britain will not entangle herself with us by seizing it, either with or without the privity of her allies in Cadiz. The position of Cuba gives the United States so deep an interest in the destiny, even, of that Island, that although they might be an inactive, they could not be a satisfied spectator at its falling under any European Government, which might make a fulcrum of that position against the commerce and security of the United States. With respect to Spanish America generally, you will find that G. Britain is engaged in the most eager, and, if without the concurrence of the Spanish authority at Cadiz, the most reproachful grasp of political influence and commercial preference. In turning a provident attention to the new world, as she loses ground in the old, her wisdom is to be commended, if regulated by justice and good faith; nor is her pursuit of commercial preferences, if not seconded by insidious and slanderous means against our competitions, as are said to be employed, to be tested by any other standard than her own interest. A sound judgment of this does not seem to have been consulted in the specimen given in the Treaty at Caraccas, by which a preference in trade over all other nations is extorted from the temporary fears and neces-

sities of the Revolutionary Spaniards. The policy of the French Government at the epoch of our Independence, in renouncing every stipulation against the equal privileges of all other nations in our trade, was dictated by a much better knowledge of human nature, and of the stable interest of France.

The elections for the next Congress are nearly over. The result is another warning against a reliance on the strength of a British Party, if the British Government be still under a delusion on that subject. Should France effectually adhere to the ground of a just and conciliatory policy, and G. Britain bring the United States to issue on her paper blockades; so strong is this ground in right of opinion here, and even in the commitment of all the great leaders of her party here, that G. Britain will scarce have an advocate left.

TO THOMAS JEFFERSON.

WASHINGTON, Dec^r 7, 1810.

DEAR SIR,—The letter inclosed came to me as you see it; and though probably meant more for me than you, is forwarded according to its ostensible destination.

We have nothing from abroad more than has been made public. The latest date from Pinkney is the 3d of October. The arrival of November will have been some test, positive or negative, of the views of England. Her party here seems puzzled more than usual. If they espouse her Blockades, they must sink under the odium. And this course is the more desperate, as it is possible that she may abandon them herself, under the duress of events.

Lincoln does not yield to the call I made in a private and pressing letter. Still, some wish him to be appointed, hoping he may serve for a time.

TO THE SOCIETY OF ARTS, PHILADELPHIA.

WASHINGTON, Jan^y 28, 1811.

GENTLEMEN,—I have received your letter of the 27th instant, communicating, in the name of the Society of Artists established at Philadelphia, its appointment of me as Patron of the Institution. I accept it with due sensibility to the value the Society has attached to my friendship for its laudable objects; but not without regret that this will consist more in favorable inclinations than in the usefulness, which would be the best title to the distinction. I can only, therefore, return my thanks, through you, for a flattering testimony, made the more so by the terms in which you have presented it, with an assurance to the Society, that regarding the Arts which it cherishes as among the endowments and enjoyments which characterize human Society under its highest and happiest destinies, it is one of my ardent wishes, that the tendency of our free system of Government may be portrayed, as well in what may contribute to embellish the mind and refine the manners, as in those primary blessings of which it already affords so many grateful proofs and presages.

 TO THOMAS JEFFERSON.

WASHINGTON, March 18, 1811.

DEAR SIR,—I have received yours inclosing two letters improperly addressed to you.

A sketch, in manuscript, was brought by yesterday's mail from New York, saying that a vessel just arrived stated that the Prince Regent had appointed his Cabinet; that Lord Holland was Prime Minister, Grenville Secretary of State, Moira Commander-in-Chief, &c., and that a new Parliament was to be called. Whether these details be correct or not, it is highly probable that some material change in the general policy of the Government, in relation to this Country, as well as in other respects, will result from the change of the men in power. Nor is it improbable that a repeal of the Orders in Council will be

accompanied by a removal, in some form or other, of the other condition required by the act of May last. Still, the attachment to maritime usurpations on public law, and the jealousy of our growing commerce, are sources from which serious difficulties must continue to flow, unless controuled by the distress of the Nation, or by a magnanimity not to be expected even from the personification of Fox in Lord Holland. Grenville is known to be very high in his notions of British rights on the Ocean; but he has never contended for more on the subject of Blockades than that cruising squadrons, creating a manifest danger in entering particular ports, was equivalent to a stationary force, having the same effect. His principle, however, though construable into an important restriction of that modern practice, may be expanded so as to cover this abuse. It is, as you remark, difficult to understand the meaning of Bonaparte towards us. There is little doubt that his want of money and his ignorance of Commerce have had a material influence. He has also distrusted the stability and efficacy of our pledge to renew the non-intercourse against G. Britain, and has wished to execute his in a manner that would keep pace only with the execution of ours; and at the same time leave no interval for the operation of the British orders, without a counter operation in either his or our measures. In all this his folly is obvious. Distrust on one side produces and authorizes it on the other, and must defeat every arrangement between parties at a distance from each other, or which is to have a future or a continued execution. On the whole, our prospects are far from being very flattering; yet a better chance seems to exist than, with the exception of the adjustment with Erskine, has presented itself for closing the scene of rivalry in plundering and insulting us, and turning it into a competition for our commerce and friendship.

In the midst of other perplexities, foreign and internal, a source has been opened very near me, and where co-operation against them was to have been rightfully expected, from personal obligations, as well as public duty. I find, also, that the appointment of Warden is to draw forth the keenest resent-

ments of Armstrong. I have no doubt, however, that the ground on which we stand is sufficiently firm to support us with the nation, against individual efforts of any sort, or from any quarter.

TO THOMAS JEFFERSON.

WASHINGTON, April 1, 1811.

DEAR SIR,—I intimated to you the offence taken by Armstrong at the reinstatement of Warden. It is not improbable that it will be the ground of an open hostility. This will call into view his present denunciations of Warden, which are pointed against him as an adventurer and impostor, from the commencement to the end of his career, in comparison with the patronage so long continued to him, and the sentiments heretofore expressed of him. Will you be so good as to send me the extract from Armstrong's letter, written in the Summer or Fall of 1808, which notifies the appointment of Warden as Consul, and gives the favorable side of his character, as well as the objections to a confirmation of the appointment? That letter was the only communication made on the subject.

You will have inferred the change which is taking place in the Department of State. Col. Monroe agrees to succeed Mr. Smith, who declines, however, the mission to Russia, at first not unfavorably looked at. I was willing, notwithstanding many trying circumstances, to have smoothed the transaction as much as possible, but it will be pretty sure to end in secret hostility, if not open warfare. On account of my great esteem and regard for common friends, such a result is truly painful to me. For the rest, I feel myself on firm ground, as well in the public opinion as in my own consciousness.

Wilkinson, I find, has lately received a letter from you, which he has shewn to his friends with much apparent gratification. I understand, at the same time, that the letter is cautious, and limited to the charge of privity with Burr. Did he disown to you the anonymous letter printed in Clark's Book, or say any thing relative to that subject?

The latest information from Europe will be found in the inclosed papers. The indications from France are rather favorable. Should the old King displace the Regent in England, little is to be hoped from that quarter, unless forced on the Cabinet by national distress. In the last correspondence of Pinkney with Wellesley, the latter sufficiently shewed his teeth, and received the severest scourging that was ever diplomatically inflicted.

TO THOMAS JEFFERSON.

WASHINGTON, April 19th, 1811.

DEAR SIR,—I have received your favor of _____, containing the requested extract from Armstrong's letter relating to Warden. Armstrong has entangled himself in such gross inconsistencies, that he may, perhaps, not execute his threat to vindicate his removal of Warden against my reinstatement of him. This consideration alone will restrain his enmity against both of us. You will see the conflict in which he is engaged with Fulton. Pinkney is weekly expected by the return of the Essex. Previous to his taking leave of the Prince Regent, he ascertained, by a correspondence with Wellesley, that his stay was wished for the mere purpose of delay and delusion. The mission of Foster, like that of Rose, plays the same game. The convalescence of the King renders the Prince a cypher, and his Cabinet is inflexible in its folly and depravity. The inclosed paper of Poulson publishes from the "Courier," a Cabinet paper, the doctrine which is to be maintained and modified for the purposes of plunder. We have been long without official intelligence from France. The last was not unfavorable. Appearances and reports have of late engendered suspicions of foul play. The arrival of two vessels from Bayonne, in the Delaware, with the notice of others to follow, indicate a renewal of trade. On the other hand, extracts of letters seem to imply a continuance of the Iron policy in that quarter. The symptoms of approaching war between France and Russia seem to multi-

ply. I am sorry to trouble you with a recurrence to your dormant files, but as I know the facility afforded by the method of them, I will ask the favor of you to look under the "anonymous" head for a long letter or letters, written from London in the beginning of 1809, in a disguised hand, and signed "A Man." If received at all, it probably was forwarded by Lyman.

ROBERT SMITH, EX-SECRETARY OF STATE.*

HAVING seen in the Aurora of the 5th inst., [April, 1811,] and since copied into other Gazettes, an explanation which the Editor says he was authorized to make "of the rupture which has taken place between Mr. Madison and Mr. R. Smith," I have thought it proper, whilst the circumstances are fresh in remembrance, to preserve them in the following memorandum:

On the —— day of March Mr. S. called on me, as was common, on some point of official business. In the conversation, he alluded to the account in the newspapers of the dismissal of Mr. Pickering by Mr. Adams, as just published for the first time by the former. Altho' the manner of Mr. S. did not denote any purpose beyond the ordinary conversation incident to such a topic, it happened to be the very day on which I meant to have sent for him, in order to communicate the necessity of making a change in the head of the Department of State. Dropping, therefore, the case of Mr. Pickering, and breaking its apparent relation to his own by the interposition of other subjects, I intimated that, in coming over, he had anticipated my intention of sending for him, with a view to a conversation, which would be as candid and explicit on my part as it was, in some respects, delicate and disagreeable in itself. After remarking that I had delayed the execution of my purpose for some time after I had formed it, in order that my communication might have the character of being, not the result of any sudden impulse, but of a deliberate regard to public considerations and official duty, I proceeded to state to him, that it had long been

* This paper is a copy from the autographical original, consisting of sixteen pages of letter-press, in Mr. McGuire's collection, and endorsed with the following words, also in the handwriting of Mr. Madison: ("Quere: If necessary to become public?) Memorandum as to R. Smith, Ap^l, 1811."

felt, and had at length become notorious, that the administration of the Executive Department laboured under a want of the harmony and unity which were equally essential to its energy and its success; that I did not refer to the evil as infecting our Cabinet consultations, where there had always been an apparent cordiality, and even a sufficient concurrence of opinion, but as shewing itself in language and conduct out of doors, counteracting what had been understood within to be the course of the administration and the interest of the public; that truth obliged me to add, that this practice, as brought to my view, was exclusively chargeable on him; and that he had not only counteracted what had been the result of consultations apparently approved by himself, but had included myself in representations calculated to diminish confidence in the administration committed to me. He expressed surprise that I should have yielded to such impressions; declared that he had given no cause for them; observing, that it was not to be conceived that a motive could be felt by him to be otherwise than friendly, personally, as well as to the credit of my administration. I told him that I had long resisted such impressions, well knowing that my conduct to him had merited a very different return; but that they were the result of facts and circumstances brought to my knowledge from so many sources and with so many corroborations, that it was impossible to shut my mind against them. I assured him that I had struggled against the belief as long as I could; that it was painful, as well as difficult, for me to suppose that, conscious, as he must be, of the friendship he had experienced in my nomination of him to the Department of State, and in the constant aids I had given him in discharging its duties, he should privately set himself against me in any respect; but that what had harassed my feelings in a degree equalled by no occurrence in a long political life, was the reflection that there were among those most nearly connected with him a number of individuals whom I had always felt a gratification in classing among the best of my friends, political and personal, and for whom I felt the highest esteem and sincerest affection; and that the idea of distressing them was most severely so to myself. He

repeated his solemn denial of unfriendly conduct in any way towards me, or having done any thing tending to obstruct or embarrass the administration; that, on the contrary, he had been always personally my friend, and had contributed, as far as he could, to the credit and support of the administration. What motive could he have to be otherwise, being himself a member of it, and having neither pretensions nor expectations of any higher sort? What could have given rise to the unfavorable sentiments I had expressed he was at a loss even to conjecture. I told him I was aware of the awkwardness of my situation, in being obliged to refer to information and evidence which had come to me in ways not permitting me to name to him the sources; but I could assure him that the sources were such as made it my duty not to disregard them; and that, unquestionably, he would himself, in my situation, yield to the accumulated statements which had their effect on me. In what instances had he set himself against me, or against measures espoused by the administration? I reminded him of a conversation with Mr. ———, reported by the latter, in which he had indulged himself in disparaging remarks on my official character, and that of others in the Cabinet; on the general course of my policy, which he signified he disapproved; and in which he had communicated certain Cabinet proceedings, some of which were of so confidential a nature that the gentleman did not consider himself at liberty to repeat them. I had taken occasion before to drop him a hint that such a conversation had been given out, observing, at the time, that I did it, not because I lent an ear to it, but, that it might suggest circumspection. He slighted then the report, as proceeding from a source not likely to be listened to; and now repeated the denial of the conversation, with an allusion to a report from the same source as to a conversation with another member of the Cabinet, where it appeared that no interview could have taken place. I admitted that if this had been a solitary case, it would have been entirely dismissed from my recollection; but this was far from being the fact, altho' I could not equally enter into a specification of other cases. For examples in which he had counteracted what he

had not himself disapproved in the Cabinet, I referred to the Bills called Macon's bills, and the non-intercourse bill, on the consultations on which he appeared to concur in their expediency; that he well knew the former, in its outline, at least, had originated in the difficulty of finding measures that would prevent what Congress had solemnly protested against, to wit, a compleat submission to the belligerent edicts; that the measure was considered as better than nothing, which seemed to be the alternative, and as part only of whatever else might, in the progress of the business, be found attainable; and that he neither objected to what was done in the Cabinet, (the time and place for the purpose,) nor offered any thing in the place of it; yet it was well understood that his conversations and conduct out of doors had been entirely of a counteracting nature; that it was generally believed that he was in an unfriendly disposition, personally and officially; and that, altho' in conversations with different individuals he might not hold the same unfavorable language, yet with those of a certain temper it was no secret that he was very free in the use of it; and had gone so far as to avow a disapprobation of the whole policy of commercial restrictions, from the Embargo throughout. I intimated to him, also, that it was a complaint among our friends in Congress that the Federalists frequently quoted him for communications from our Ministers abroad which were unknown to others, the disclosures being sometimes such as to be deemed confidential, and to be turned against the administration. I glanced, also, at the report of his conversation with Mr. Morier, in which he (Mr. S.) had expressed his disapprobation of the whole course of policy observed by the U. States towards G. B. All these facts he repelled by a repetition of what he had before said. With respect to his motives for dissatisfaction, I acknowledged that I had been, for the reasons given by him, much puzzled to divine any natural ones, without looking deeper into human nature than I was willing to do; and it was on this account that I had so long resisted the impression which had at length been made on me; that instead of having any just motives to become an adversary, I knew, and he must be conscious, that in my confidential

intercourse with him, in my kindness in general, and, above all, in the labor I had taken upon myself in behalf of his official duties, and for his credit, as well as that of the administration, I ought to have found an opposite return. On this subject, as well as every other, I told him I meant, as I ought, to be entirely frank, and must, therefore, say, that it was an imperious consideration for a change in the Department of State, that whatever talents he might possess, he did not, as he must have found by experience, possess those adapted to his station; that this had thrown the business more into my hands than was proper, or consistent with my own duties; that as long as I considered him in the light I once did I had cheerfully given him my aid, but that it was too much to be expected under actual circumstances, and that, moreover, the increase of the public business had put it out of my power to do his share as well as my own; and that, indeed, throughout, it was not done as well as might have been by a mind appropriated thereto. I observed that I could appeal to himself for the fact that the business of the Department had not been conducted in the systematic and punctual manner which was necessary, particularly in the foreign correspondence, and that I had become daily more dissatisfied with it. He did not admit that complaint was well founded, intimating that I had a particular way of thinking on this subject, and that his conduct of the business would fully justify itself on examination. I told him he could not but be in a great error, reminding him of the condition in which his correspondence, more particularly, was brought to me; which was almost always so crude and inadequate, that I was in the more important cases generally obliged to write them anew myself, under the disadvantage, sometimes, of retaining, thro' delicacy, some mixture of his draft; that he must recollect that in the cases of Erskine and Jackson, the correspondence on his part had, in a manner, fallen entirely on my hands. I reminded him, also, of important failures to make seasonable communications to our foreign agents; particularizing the case of neglecting, tho' repeatedly desired, to make known to our Minister at Paris, as was done to our Minister at London, that in case the letter of the Duke de Cadore of Aug.

5, to Gen^l Armstrong, as reaching us through English newspapers, should it be officially confirmed, it would be the ground of a Proclamation as authorized by the act of May, 1810; and the case of not keeping Mr. Shaler, at the Havanna, duly informed of the state of our foreign relations, in consequence of which, as appeared by Mr. Shaler's letters, he was unable to pursue the object of his mission with advantage. I observed that if he had transmitted at once, in multiplied copies, and thro' different channels, the same information for the French Government as to the B. Government as to the light in which the letter of the D. de Cadore was viewed, it might, by removing uncertainty and distrust as to the course here, have prevented the delay and embarrassment resulting from the course there. The impression made by these remarks was shewn rather by his manner than his comment, which was limited to a general disclaimer of the justness of them; and to allusions to a report that he had expressed to Mr. — Ingersoll lately in Washington, a disapprobation of the Proclamation putting in force the non-importation act against G. B., which he denied to be fact, and said that he had sought out that gentleman, and had obtained from him a satisfactory explanation.

In this stage of the conversation, but in what particular connection is not recollected, it was noticed, as a mark of his disinclination to co-operate in promoting measures for the better fulfilling of the Executive trust, that altho' the Act of Congress at the session preceding that just closed relating to our diplomatic establishment, and of course particularly affecting his department, had been found so very inconvenient, and it had been so often suggested to him as desirable that some active member of Congress should be apprized of the expediency of amending or repealing the act, yet no such hint had been ever given, till at length I had availed myself of an opportunity of explaining the matter to a member of the Senate, who readily introduced it to the Senate, but too late in the session to receive an effectual attention. He signified that he had not been in the habit of proceeding in such a way with business belonging to the Legislature, and seemed to disapprove or doubt the propriety

of it. I remarked that where the intention was honest, and the object useful, the conveniency of facilitating business in that way was so obvious that it had been practised under every past administration, and would be so under every future one; that Executive experience would frequently furnish hints and lights for the Legislature; that nothing was more common than for members of Congress to apply for them; and that, in fact, such communications, in cases not calling for formal messages, were indispensable to the advantageous conduct of the public business. A resort to formal messages, on every occasion where executive information might be useful, was liable to obvious objections. He made no particular reply, but did not seem to acquiesce. Returning to the necessity of harmony and unity in the Executive Councils, in providing for which I expressed a disposition to wound feelings any where as little as possible, he said he had himself regretted my situation, in reference to the want of cordiality among members of the Cabinet, declaring, at the same time, that whilst he was aware of intrigues and hostilities carried on against himself, he had abstained from every thing of that sort against others, disdaining, at all times, to stoop to such practices. I told him it was unnecessary to repeat observations which I had already made; that such was the state of things, that a remedy had become essential in the view of the most considerate friends of the administration; and that I wished, for the reasons given, to make it as lenient as would answer the purpose. It had occurred to me that he might not be disinclined to serve his country in a foreign mission, and that St. Petersburg, where there was a vacancy, might be an eligible, as it certainly was an important situation. London more so, he remarked quickly. For London, I replied, another arrangement was thought of; adding, with a view to repress miscalculations, that it was a place of discussions and negotiations, calling for appropriate talents and habits of business. He said he had for a considerable time entertained thoughts of retiring from the Department of State, and had looked towards a vacancy on the Bench of the Supreme Court, likely to be produced ere long by a death in Baltimore, (alluding to Judge Chase.)

I observed that in that event it might be found most proper to seek a successor elsewhere; intimating, also, that he had been long out of the practice and study of the law, and that the Senate would probably be hard to please in such a case. He made light of that consideration, with an expression of confidence in his standing there, which led me to remark that he was not aware how much room there was for a different estimate; that he had assuredly lost ground extremely with the members of both Houses of Congress, in so much that the prevailing sentiment, as brought to my knowledge in the most direct manner, and from some quarters not unfriendly to himself, called for some arrangement that would at least vary the composition of the Cabinet. He ascribed unfavorable impressions against him, as far as they might exist, to intrigues and calumnies; signifying that there was, however, a body of firm friends, personal and political, who would not desert him, whatever course things might take. I did not admit that any considerable body of the Republicans would, in any event, take side against the administration; that, on the contrary, many on whom he might perhaps count had become dissatisfied with the course he had pursued; that it was not so much, therefore, the consideration alluded to by him which weighed with me, tho' not without weight, especially at the present crisis in Maryland, [the approaching elections of Senatorial Electors,] as the one I had before mentioned, namely, the personal friends common to both of us, that made me desirous of smoothing the change become necessary by proposing a mission to Russia, which I sincerely wished him to accept. I remarked that the services there, tho' neither difficult nor laborious, might be important; that the station was respectable, and that it was desirable to find a minister whose political grade here had been such as would satisfy the expectations of the Emperor, and whose private resources would also aid his salary in bearing the expensiveness of that Metropolis and Court. He admitted an inclination towards a trip to Europe as more eligible than his situation here; and, after a few uninteresting observations, concurred in the measure, with a mutual understanding that the appointment would be postponed for

some days, till he could wind up the business of his Department, and prepare for his departure from Washington. I observed that as the 1st of April closed a quarter, it might be a convenient epoch for the date of his Commission, in which he acquiesced. He said he supposed there would be no impropriety in letting it be known that the mission was on foot; none at all. After a short pause—May I say that the appointment is offered to me? I have no objection, it being of course understood that it is to take place on the 1st of April, and that you will let me be at liberty, as many days previous as may be convenient, to take overt measures for supplying the vacancy; which he promised. The conversation closed with his proposal that it should be considered as entirely confidential, and my acquiescence in it.

From his conversations and conduct for several days, in his office and elsewhere, it was not doubted that he persisted in his intention to accept the mission, and was making preparations accordingly. Circumstances soon, however, began to denote and strengthen doubts, particularly his declining, after accepting my invitation, to dine with a party, including the Russian Legation; and as I did not hear from him as was expected, and the 1st of April approached, I sent for him.

On his arrival, I told him my object, and that I had, according to the understanding between us, caused a commission to be made out for him. He said he was himself on the point of coming over to me, with the view of returning into my hands his Commission of Secretary of State, (handing it to me at the same time,) and to inform me that he had determined to decline the other which had been proffered to him. However disposed he might have been to accept it under other circumstances, it was impossible he could do so under such as would give it the appearance of a mere expedient to get rid of him as Secretary of State. He had learned from Baltimore that a removal of him was believed to have been determined on, under the influence of intrigues against him, and that this intention was known even to federal members of Congress, as was evinced by their language on their return home; that the same impression ex-

isted elsewhere; that he had, in fact, received letters from his friends, not only in Baltimore, but in Pennsylvania and N. York, advising him by no means to make himself a party to the transaction by accepting the Russian Mission, which would be regarded as a mere cover for his removal. I told him I could not be answerable for the reports or assertions that might be propagated; that the course I had pursued was the one deemed proper in the circumstances which had resulted from that pursued by him, and had been as delicate and favorable to him as could be reconciled with what I owed to the public and to myself; that in tendering him the commission for Russia, I wished him to accept it for the reasons explained to him; that what the Federalists said on the occasion must have grown out of the conversations which had, as was well known, been frequent and free among the friends of the administration, on the necessity of a change in the Department of State. I availed myself of this turn of the conversation to allude anew to the reports and complaints that the Federalists were the first to get from him information of our foreign affairs; and to its being understood that he had told Mr. Morier that the whole policy of the Government towards G. B. had been contrary to his opinion and advice. This he denied. I assured him there was full evidence that Morier had said so; that this was known to and believed by sundry members of Congress, and had contributed, with other causes, to strengthen the current running against him. I reminded him of the official letter from Mr. Morier to him, complaining of the non-intercourse being enforced against G. B. during the actual conduct of France, in which he (M.) referred to a conversation in which he (S.) admitted that G. B. had a right to complain; I told him I had been surprised, when he communicated the letter to me, to find no apparent intention of a formal disavowal of that circumstance till I had pressed it on him, as material to himself in case the correspondence should be brought before the public or Congress; and that I did not approve of the course finally taken by him, of getting Morier to withdraw the letter and substitute another omitting the passage; a course less eligible than the one I had suggested, of a written

disavowal, as Morier's communications to his Government might correspond with his first letter, and might find their way to the public thro' a call for papers by the British Parliament, in which case the statement would be without his contradiction. These, I observed, were disagreeable topics and I willingly turned from them to repeat to him, that, with a wish to consult the sensibility of common friends, I had been ready to give him, in exchange for an office which he professed no longer to relish, a foreign mission, which in itself did not appear to be unacceptable to him; and that it was still in his option, and would remain so for a short time longer, if he wished to deliberate further on the subject. He said he had made up his mind, and meant to be understood as having given his final answer to the proposal. He recurred to the aspect it wore of an indirect removal of him from the Department of State, and to the allegation of intrigues against him, which had been mistaken for a loss of confidence with the public and with Congress; regretted the tendency of what was taking place to injure the Republican cause; observing, again, that he should be supported by a body of friends, and that he knew he could stand on good ground in justifying himself to his Country. I assured him that neither my sentiments nor conduct in relation to him were in the least the effect of intrigues, to which I should never listen, but of the facts and considerations I had unfolded to him; that I did not doubt the friendship for him of a number of respectable and weighty characters; but it was not less true, however disagreeable it might be to dwell on the circumstance, that with the Public, as well as among the members of Congress in both Houses, the tide was setting strongly and extensively against him; that I regretted as much as himself a tendency in any occurrence to impair harmony among the Republicans, more especially at this time and in this State, but that I believed this was not likely to be much the case; conceiving that the administration rested on ground as solid as at any preceding period; and that for myself, I was entirely confident that what I had done in relation to him could be justified, not only to the public, if it should become there necessary, but even to the most partial of his per-

sonal friends; that I could have no personal objection, therefore, to any step he might take which would call the public attention to it. He said it was not his wish, however confident he might be of the ground on which he stood, to introduce any public discussion. The conversation being at an end, he took his leave with a cold formality, and I did not see him afterwards.

On reading over the above, I recollect nothing worth mentioning which is omitted; unless it be thought an exception, that in some stage of the conversation I alluded to the pretty general opposition made by his brother in the Senate to the measures proposed or supposed to be approved by the Executive, and its effect in strengthening the presumption with many of a like spirit in the Secretary of State; explicitly declaring, at the same time, that however I might be sometimes disappointed at the part taken by his brother, or regret it on account of his talents and his weight, I had always considered myself bound to suppose him actuated by a just respect for the independence of his station and his character; and that as he stood in no official connection with the Executive rendering him anywise responsible for his political conduct, I had never permitted myself to complain of it.

J. M.

APRIL, 1811.

LETTERS, ETC.

TO THOMAS JEFFERSON.

WASHINGTON, May 3, 1811.

DEAR SIR,—I have received yours of the 24th April, and return the letter inclosed in it, after having made the communication intended for Mr. Gallatin. Your expostulations with Duane could not be improved; but he gives proofs of a want of candor, as well as of temperance, that will probably repel advice, however rational or friendly. The great fulcrum of his attacks on Mr. Gallatin is Erskine's statement of his favorable dispositions toward England; and these attacks he obstinately reiterates and amplifies, notwithstanding the public and solemn denial of Mr. Gallatin; whilst Mr. Smith and myself, though included in a like statement, under which we have both remained silent, have not been reproached on that account, and Mr. Smith is become an object even of favor. A like want of candor is seen in the comments of the Aurora, on the putative explanation of the rupture between Mr. Smith and myself. Of the alleged points of difference, the main one, viz: the non-intercourse, it appears as his opinion on my side; yet he takes the other side generally, without alluding to the exception; and, of late, restricts his comments to Macon's bills, or smothers the "non-intercourse" under an &c., or confounds the measure with the manner of its execution. Again, whilst he admits occasionally that the non-intercourse, or rather non-importation, now in force, is the best and the only adequate resort against the aggressions of G. Britain, he continues his abuse on the Government for abandoning the interests and rights of the nation. I have always regarded Duane, and still regard him, as a sincere friend of liberty, and as ready to make every sacrifice to

its cause but that of his passions. Of these, he appears to be compleatly a slave.

Our expected frigate is not yet arrived from Europe, nor is there any account of the departure either of Pinkney or Foster from G. Britain. The last account from Pinkney was of March 13, when he was packing up for his passage in the Frigate. Whether the delays proceed from the approach of the Equinox, the posture of the Regency, or a wish to learn the result of things in Congress, or from some other cause, is unknown. From the jumble of accounts from France, it is probable that the repeal of the Decrees is professedly adhered to; and that an exchange of the productions of the U. States and France, with an exception of certain articles, is permitted by the municipal laws, under vexatious precautions against British forgeries and American collusions; and, perhaps, under some distrust of the views of this Government.

TO THE INHABITANTS OF THE TOWN OF NEW HAVEN.

I have received, fellow-citizens, the petition which you have addressed to me, representing the inconveniences experienced from the existing non-importation law, and soliciting that the National Legislature may be speedily convened.

It is known to all that the commerce of the United States has, for a considerable period, been greatly abridged and annoyed by Edicts of the belligerent powers; each professing retaliation only on the other, but both violating the clearest rights of the United States as a neutral nation. In this extraordinary state of things, the Legislature, willing to avoid a resort to war, more especially during the concurrent aggressions of two great powers, themselves at war, the one with the other, and determined, on the other hand, against an unqualified acquiescence, have endeavoured, by successive and varied regulations affecting the commerce of the parties, to make it their interest to be just.

In the act of Congress out of which the existing non-importa-

tion has grown, the state of commerce was no otherwise qualified than by a provision, that in case either of the belligerents should revoke its unlawful Edicts, and the other should fail to do the same, our ports should be shut to the vessels and Merchandize of the latter. This provision, which, like our previous offers, repelled the very pretext set up by each, that its Edicts against our trade with the other was required by our acquiescence in like Edicts of the other, was equally presented to the attention of both. In consequence of the communication, the French Government declared that its Decrees were revoked. As the British Government had expressed reluctance in issuing its orders, and repeatedly signified a wish to find in the example of its adversary an occasion for putting an end to them, the expectation was the more confident that the occasion would be promptly embraced. This was not done; and the period allowed for the purpose having elapsed, our ports became shut to British ships and merchandize. Whether the conduct of the French Government has been and will be such as to satisfy the authorized expectations of the United States; or whether the British Government may have opened, or will open, the way for the Executive removal of the restrictions on British Commerce with the United States, which it continues in its power to do by revoking its own unlawful restrictions on our commerce, is to be ascertained by further information, which will be received and employed by the Executive with the strict impartiality which has been invariably maintained towards the two belligerents.

Whatever may be the inconveniences resulting, in the mean time, from the non-importation act, it was not to have been supposed, that whilst it falls within the necessary power and practice of regulating our commercial intercourse with foreign Countries according to circumstances, the act would be regarded as not warranted by the Constitution; or that whilst it was a partial restriction only, and had for its object an entire freedom of our commerce, by a liberation of it from foreign restrictions unlawfully imposed, it could be viewed as destroying commerce; and least of all, that a likeness could be seen between a law enacted by the representatives of the Country, with a view to the

interest of the Country, and Acts of a Government in which the Country was not represented, framed with a view to the interest of another Country at the expense of this.

If appeals to the justice of the belligerents, through their interests, involve privations on our part also, it ought to be recollected that this is an effect inseparable from every resort by which one nation can right itself against the injustice of others.

If sacrifices made for the sake of the whole result more to some than to other districts or descriptions of citizens, this also is an effect which, though always to be regretted, can never be entirely avoided. Whether the appeal be to the sword or to interruptions or modifications of customary intercourse, an equal operation on every part of the community can never happen. Nor would an unqualified acquiescence in belligerent restrictions on our commerce, if that could be reconciled with what the nation owes to itself, be less unequal in its effect on different local situations and interests.

In estimating the particular measure which has been adopted by the National Councils, it may be reasonably expected, therefore, from the candor of enlightened citizens, that with the peculiarity of the public situation, they will be impressed, also, with the difficulty of selecting the course most satisfactory, and best suited to diminish its evils or shorten their duration; that they will keep in mind that a resort to war must involve necessary restrictions on commerce; and that were no measure whatever opposed to the belligerent acts against our commerce, it would not only remain under the severe restrictions now imposed by foreign hands, but new motives would be given for prolonging and invigorating them.

These observations are not meant to anticipate the policy which the Legislature may henceforward find best adapted to support the honor or promote the interest of the Nation; or to prejudge questions relative to particular changes which may be pointed out by experience, or be called for by the state of our foreign relations. Neither do they imply any predetermination as to the measure of convening the Legislature, which it will be a duty to adopt or decline as our national affairs may appear

to require. The view of our situation presented to your patriotic reflections has been suggested by that contained in your address; and it will have its desired effect, if it recalls your attention to the peculiar embarrassments with which the National Councils have had to contend, and enforces the importance of manifesting that union of all in supporting the measures of the constituted authorities whilst actually in force, which is as necessary to their effect at home and abroad as it is consistent with the right and with the legitimate modes of seeking a revisal of them. In the mode which the Town of New Haven has employed, I witness with satisfaction, that in exercising the right of freemen, the obligation of Citizens has not been forgotten; and that it affords a pledge and an example which I am far from undervaluing.

I tender you my respects and my friendly wishes.

WASHINGTON, May 24, 1811.

TO THE BAPTIST CHURCHES ON NEAL'S CREEK AND ON BLACK
CREEK, NORTH CAROLINA.

I have received, fellow-citizens, your address, approving my objection to the Bill containing a grant of public land to the Baptist Church at Salem Meeting House, Mississippi Territory. Having always regarded the practical distinction between Religion and Civil Government as essential to the purity of both, and as guarantied by the Constitution of the United States, I could not have otherwise discharged my duty on the occasion which presented itself. Among the various religious societies in our Country, none has been more vigilant or constant in maintaining that distinction than the Society of which you make a part, and it is an honorable proof of your sincerity and integrity, that you are as ready to do so in a case favoring the interest of your brethren as in other cases. It is but just, at the same time, to the Baptist Church at Salem Meeting House, to remark that their application to the National Legislature does not appear to have contemplated a grant of the land in

question but on terms that might be equitable to the public as well as to themselves.

Accept my friendly respects.

JUNE 3d, 1811.

TO THOMAS JEFFERSON.

WASHINGTON, June 7, 1811.

DEAR SIR,—I return the letter from you to Duane, on the subject of Mr. Gallatin: he seems to be incorrigible. If I am not misinformed, his eyes are opening to the conduct and character of Mr. Smith, with respect to both of which he has suffered himself to be misled, partly by his own passions, partly by those who took advantage of them. You see the new shapes our foreign relations are taking. The occurrence between Rodgers and the British ship of war, not unlikely to bring on repetitions, will probably end in an open rupture or a better understanding, as the calculations of the British Government may prompt or dissuade from war. Among the items in these will be the temper here, as reported by its partizans. The state of parties in Massachusetts is in this view important, especially as it will attract particular notice by its effect in degrading Pickering, who has made himself so conspicuous in the British service. On the other hand, much impatience is shewing itself in the Eastern States under the non-importation. The little embarrassment which occurs in procuring returns for the articles sent from Connecticut to the W. Indies is generating remonstrances, as in the case of the Embargo. I have been obliged to answer one from New Haven, headed by Hillhouse, which they have not yet published. The protracted delay of the Essex still leaves us a prey to the ignorance and interested falsehoods which fill our newspapers. It would seem that G. Britain is determined against repealing her orders, and that Bonaparte is equally so on the destruction of her commerce, to which he readily sacrifices his own commerce with the United States. As to the blockade of England, (the decree to which alone the

act of Congress and the Proclamation have reference,) there is no evidence of its being continued in force. All the official evidence is on the other side. And yet, by a confusion of ideas or artifice of language, the appearance is kept up that the ground of the non-importation has failed, and that it is consequently a wrong to G. Britain. After all, we must remain somewhat in the dark till we hear more on the subject; probably till the return of the vessel that carried to France the act of Congress putting in force the non-importation, for which Bonaparte seems to be waiting.

TO EDWARD TIFFIN, GRAND SACHEM.

WASHINGTON, June 23, 1811.

SIR,—I have received the letter of the 14th instant, which you have addressed to me, in the name of the Taminy Society of Wigwam N^o. 1, in the State of Ohio.

The circumstances in our National situation to which you refer could not but render it peculiarly embarrassing to those entrusted with the National rights and interests. Whilst Justice, however, continues to be the basis of our policy, and the great body of our fellow-citizens remain firm in sentiments and determinations such as are expressed by the society of which you are the organ, our Country will be found adequate to every trial to which it may be exposed. The approbation which the Society bestows on the share I have had in the public transactions, and its confidence in my further efforts for the public good, are entitled to my thankful acknowledgments, to which I add a tender of my respects and friendly wishes.

TO THOMAS JEFFERSON.

WASHINGTON, July 8, 1811.

DEAR SIR,—Your favor of the 3d came duly to hand. You will have noticed in the National Intelligencer that the wicked publication of Mr. Smith is not to escape with impunity. It is

impossible, however, that the whole turpitude of his conduct can be understood without disclosures to be made by myself alone, and, of course, as he knows, not to be made at all. Without these his infamy is daily fastening itself upon him; leaving no other consolation than the malignant hope of revenging his own ingratitude and guilt on others. The case of Erving will probably be better explained in the newspaper than I can here do it. The general facts of it, I believe, are, that the three offices at London were centered in him, with one of the salaries only, it being understood at the time that he would be made assessor to the Board under Jay's Treaty, in which case he would be well recompensed. The Board declined to appoint him, giving preference to Cabot. Still, however, a certain portion of business passed through his hands. On this he charged the usual commission of $2\frac{1}{2}$ per cent., accruing from the individuals, and not from a public fund. Having paid over the whole of the money of individuals in his hands to the public, instead of retaining his commission, a resort to Congress became necessary. Whilst the subject was before them, doubts were excited as to the merits of the case, and a call made on Mr. Gallatin for information. His report put an end to the difficulty; the appropriation was immediately made; and, but for the perverted view of the matter now before the public, would never more have been thought of. The Treasury officers, though politically adverse to Mr. Erving, do him much justice on the occasion, declaring that his official transactions throughout, as presented in his accounts, are models of clearness and exactness; that he appears to have saved or gained to the public by his vigilance and assiduity sixty or seventy thousand dollars; that there remains a surplus of unclaimed monies to a considerable amount, the greater part of which will probably never be claimed; and, finally, that the only error committed by Mr. Erving was his not avoiding the necessity of asking Congress to give back the amount of his commission, by deducting it himself from the sums paid into the public coffers.

It has been thought best, whilst Mr. Monroe is in communication with the British and French Ministers here, to be silent

on the subject. As the latest information from Russell is prior to the arrival of the non-importation act, the state of our affairs at Paris may be conjectured. Pinkney brings, of course, nothing, Foster being the channel of English news. I do not know that he has yet opened himself completely to Mr. Monroe; but from the conciliatory disposition of the Prince Regent, and the contrary one of his Cabinet, still deriving an ascendancy from the convalescence of the King, you will be very able to dive into the character of the mission. You will perceive in the printed paper inclosed a step by the British Minister, which, very unseasonably it would seem, denotes an increasing rigor towards this Country. According to a preceding interposition with the Court of Admiralty, cases under the orders in Council had been suspended.

TO JONATHAN RUSSELL.

WASHINGTON, July 24, 1811.

SIR,—I have received your letter of Jan^r 2d, with the sketch of a convention arranged between you and the Marquis Almarara. The purity of your views is attested by the guarded manner of your proceeding, as well as by the explanations in your letter. But it is proper you should be apprized that such a transaction would be deemed inadmissible on different grounds, were it without the feature given to it by the individual agencies and interests so justly denounced by you.

For information on other subjects which it may be interesting for you to receive, I refer to the communications of the Secretary of State.

TO J. Q. ADAMS.

WASHINGTON, Nov^r 15, 1811.

DEAR SIR,—I have received your several favors of Feb^r 8th, Ap^l 19th, June 3d, and Aug. 17th, all of them in triplicates or duplicates.

I need not say how agreeable it would have been to me, and I am persuaded satisfactory to the public, if your inclination and circumstances had favored the new allotment of your services. Being ignorant of the obstacle arising from the particular state of your family, and inferring, from considerations known to you, that such an exchange might not be unwelcome, I had proceeded so far in anticipating a decision different from that which took place in your mind as to hold out the station at S^t. Petersburg to another. It has happened that no disappointment of any sort ensued to your contemplated successor. But I ought not to omit that I did not so far lose sight of the possibility that you might be induced to decline the new appointment as not to have meditated a provision for that event, which would have probably deprived it of its embarrassments. In the present state of things, I have only to wish that your diplomatic situation may continue to be less incommodious than it was at first found, and that opportunities of rendering it useful to your Country may equal her confidence in the fidelity and ability which you will apply to them.

Count Pahlen has just delivered his letter of leave, in pursuance of the order of the Emperor, which translates him to Rio Janeiro. His excellent dispositions and amicable deportment have justly rendered him so highly and universally agreeable here, that we take for granted that no doubt on that point can have been among the reasons of his sovereign for this change of his destination.

You will receive by this conveyance from the Department of State the late communications to Congress, including the adjustment of the rusty and corrosive affair of the Chesapeake. The pretension of G. Britain, which requires us, as a neutral nation, to assert against one belligerent an obligation to open its markets to the products of the other, shews a predetermination to make her Orders in Council co-durable with the war, if even that will fulfil the condition annexed to their repeal. The question to be decided, therefore, by Congress, according to present appearances, simply is, whether all the trade to which the orders are and shall be applied is to be abandoned, or the

hostile operation of them be hostilely resisted. The apparent disposition is certainly not in favor of the first alternative, though it is more than probable that if the second should be adopted, the execution of it will be put off till the close of the session approaches; with the exception, perhaps, of a licence to our Merchantmen to arm in self-defence, which can scarcely fail to bring on war in its full extent, unless such an evidence of the declaration of the United States to prefer war to submission should arrest the cause for it. The reparation made for the attack on the American frigate Chesapeake takes one splinter out of our wounds; but besides the provoking tardiness of the remedy, the moment finally chosen deprives it of much of its effect, by giving it the appearance of a mere anodyne to the excitements in Congress and the Nation produced by the cotemporary disclosures.

It will afford you pleasure to know that the aggregate of our crops was never greater than for the present year. The grain part of them is particularly abundant.

TO JONATHAN RUSSELL.

WASHINGTON, Nov^r 15, 1811.

DEAR SIR,—Your letter of June 10th was duly delivered. I feel a pleasure in being able to say that the information conveyed to you, with respect to an unfriendly language having been held by Mr. Pinkney against you, is not confirmed by any thing heretofore known to me. He has certainly lodged no complaint with me, nor have I ever heard that he has censured you to others. If the reports to you, therefore, be not destitute of all foundation, I am persuaded they are great exaggerations, if not perversions, of expressions escaping from him, under his anxiety for further information from Paris, and his ignorance of the prudential considerations which governed your correspondence.

I have been always equally aware of the delicate situation in which you were placed, having in view the importance, on one

hand, of obtaining from the French Government confirmations of the repeal of its decrees, and, on the other, that of not weakening the ground on which the British repeal was urged; and this delicacy was increased by the mixed character of the French decrees, some parts of them relating to Great Britain only, others to the United States; and these, again, affecting our neutral character, so as to give G. Britain a plea for interposing; and partly our National rights or interests, with which G. Britain had nothing to do. Under this last head might, in truth, be placed the very case of the N. O. packet, which must have been seized under a part of the Decrees which did not violate our *neutral* rights. She entered voluntarily into a French port, and violated conditions only which France, as respects G. Britain, had an indisputable right to annex to our trade with herself. The conditions, with respect to us, no otherwise violated our rights than as they were enforced under circumstances giving them a retrospective effect. With a previous notice, they would only have contravened the dictates of friendship and reciprocity.

Referring you to communications from the Department of State, I tender you my esteem and friendly respects.

TO JOEL BARLOW.

(*Private.*)

WASHINGTON, Nov^r 17, 1811.

DEAR SIR,—You will receive by this conveyance the proper communications from the Department of State. You will see in them the ground now avowed for the British orders in Council. It must render them co-durable with the war; for nothing but a termination of it will re-open the continental market to British products. Nor is it probable that peace will do it in its former extent. The pretension which requires the United States, as a neutral power, to assert an obligation on one belligerent to favor, by its internal regulations, the manufactures of another, is a fitter subject for ridicule than refutation. It

accordingly has no countenance here, even among the most devoted champions of Great Britain. Whether some of them, by arming themselves with simulated facts and sophistical distinctions, may not be emboldened to turn out in her defence, will soon be seen. Nothing has yet passed in Congress disclosing the sense of that body with respect to the moment and manner of meeting the conduct of Great Britain in its present hostile shape. A disposition appears to enter at once on preparations, which will probably be put in force, or not, as the effect of them on the British Councils shall be ascertained in the course of the session. In the mean time, it is not improbable that the merchant vessels may be permitted to arm for self-defence. This can scarcely fail to bring on maritime reprisals, and to end in the full extent of war, unless a change in the British system should arrest the career of events. All proceedings, however, relating to Great Britain, will be much influenced by the conduct of France, not only as it relates to a violation of our neutral rights, but of our national ones also; and to justice for the past as well as for the future, and that, too, not only in cases strictly French, but in those in Naples and elsewhere indirectly so. Altho', in our discussions with Great Britain, we have been justified in viewing the repeal of the French Decrees as sufficiently substantiated to require a fulfilment of the pledge to repeal the orders in Council; yet the manner in which the French Government has managed the repeal of the decrees, and evaded a correction of other outrages, has mingled with the conciliatory tendency of the repeal as much of irritation and disgust as possible. And these sentiments are not a little strengthened by the sarcastic comments on that management with which we are constantly pelted in our discussions with the British Government, and for which the French Government ought to be ashamed to furnish the occasion. In fact, without a systematic change from an appearance of crafty contrivance and insatiate cupidity, for an open, manly, and upright dealing with a nation whose example demands it, it is impossible that good will can exist; and that the ill-will which her policy aims at directing against her enemy should not, by her folly and iniquity, be

drawn off against herself. The late licentiousness of the French privateers in the Baltic, the ruinous transmission of their cases to Paris, and the countenance said to be there given to such abuses, are kindling a fresh flame here; and if a remedy be not applied, and our merchantmen should arm, hostile collisions will as readily take place with one nation as the other. Were it not that our frigates would be in danger of rencounters with British ships of superior force in that quarter, there could be no scruple at sending thither some of them, with orders to suppress by force the French and Danish depredations. I am aware that a pretext for these has been sought in the practice of our vessels in accepting British convoy; but have they not, in many instances, at least, been driven to this irregular step by the greater irregularities practised against them? We await the return of the Constitution, not without a hope of finding the good effect of your remonstrances in a radical change of the French policy towards this Country.

The reparation for the outrage on the Chesapeake frigate, which you will find in the correspondence between Mr. Foster and Mr. Monroe, tho' in a stile and extent sufficiently admissible under actual circumstances, has been so timed as to lose its conciliatory effect, by wearing the appearance of a diplomatic ruse. Those who value it most do so on the calculation that Mr. Foster is authorized to go forward in the road from which he has removed the stumbling-block. In this they allow their wishes to mislead their judgments.

From a late communication of Mr. Russell to the Secretary of State, it appears that the French Emperor has very wisely made up his mind for the Independence of Spanish America; and for the possession of East as well as West Florida by the United States. It is to be hoped that no unworthy attempt will be made to extract money from the occasion: 1. Because it is incompatible with the assumed idea that Spanish America must be independent. 2. Because, without our occupancy, that of Great Britain would be interposed. 3. And essentially, because the pecuniary value of the territory is due from Spain to the United States. You ought to know that there is good reason

to believe that an agent (Keene) for certain grasping land-jobbers of New Orleans, and possibly elsewhere, has been treating with the Cortes, for the vacant lands in East Florida, and it may be counted on that equal art and avarice will mingle themselves with every opportunity for corrupt speculations.

Hitherto the Continental Colonies of Spanish America have masked their views of independence under a nominal adherence to Ferdinand, as the head of the whole empire, in contradistinction to the Cortes, governing the European part of it only. Venezuela, however, has thrown off this mask, has communicated to us its declaration of Independence, and solicits our acknowledging it by receiving a public Minister, &c. Mexico, according to our intelligence, which is difficult and obscure, is still in the struggle between the revolutionary and royal parties.

In what manner Great Britain will proceed in the case of Venezuela, and other districts following its example, does not yet appear. Whilst Ferdinand was acknowledged, it was less difficult to steer between the Cortes and the Colonies. It will require more dexterity to reconcile her political connections with the former, and her commercial views towards the latter. If our information from Cadiz be not very erroneous, she is doing us all the mischief there which her influence can effect. What her conduct may be in the event of our taking possession of East Florida cannot yet be said. The game she will play with Cuba may more readily be conjectured. But, like most of her others, it may in the end be a losing one.

You will receive from the Department of State a set of Newspapers, and will see the public countenance as reflected in that mirror. I add one or two which happen to be at hand, and to contain some things worth perusal.

Accept my great esteem and most friendly respects.

TO JOEL BARLOW, &c., &c.

WASHINGTON, Dec^r 10, 1811.

SIR,—I have received your letter of November 23d, covering an Address from the Legislature of the State of Tennessee.

The patriotic sentiments which it expresses are an honorable sample of those which animate the great body of our fellow-citizens. The wrongs which have been so long borne by our Country, in the hope that a sense of justice, and the true policy inseparable from it, would have put an end to them, are persisted in, with aggravations which leave to a nation determined not to abandon its rights no appeal but to its own means of vindicating them. The necessity will be deplored by a people who have cherished peace in sincerity, because they are alive to the calamities which begin where peace ends. But they will meet those as not the greatest calamities, when a surrender of their sacred rights and vital interests are the alternative. They will meet them with the intrepid firmness inspired by a consciousness that the issue has been unsought on their part, and, I trust, with the unanimity also which such a cause ought to produce.

In the measures by which the navigable streams proceeding from the neighborhood of Tennessee were secured to the United States, the Executive paid a just regard to the importance of them, in both a local and national view, without losing sight of the principles of justice and right on one hand, and of those of the Constitution on the other. The sequel rests with the National Councils, on which the Legislature of Tennessee properly rely for all the attention to the particular interests of that State which may be compatible with a comprehensive regard to the whole.

For the confidence which the Legislature and yourself have been pleased to express in my views and endeavours for the public good I tender my acknowledgments, with assurances of my high respects, and a return of my best wishes.

TO GOV^R HAWKINS, (N. CAROLINA.)

WASHINGTON, Jan^y 4, 1812.

SIR,—I have received your letter of the 26th ult., inclosing the Resolutions of the General Assembly of North Carolina, approving the sentiments contained in the Message to Congress of November 5, and declaring their readiness to co-operate in vindicating the violated rights of their Country.

Approbation from such a source could not fail, under any circumstances, to strengthen the satisfaction arising from a consciousness of faithful purposes. In the present conjuncture it is the more gratifying, as it is accompanied by a pledge of co-operation in the measures by which such sentiments may be effectuated.

I heartily join in the hopes you express that the state of our national affairs will have its proper influence in converting party feelings and prejudices into united exertions against the aggressions and insults which the just conduct of our Country has failed to avert, and I tender you assurances of my great respect.

TO THE HOUSE OF REPRESENTATIVES OF THE STATE OF SOUTH CAROLINA.

Jan^y 8, 1812.

I have received, fellow-citizens, your address, transmitted on the 22d of December, 1811.

Under the circumstances which impose on the National Councils the duty of resorting to other means for obtaining respect to the National rights than a continuation of the unavailing appeals to the justice of the aggressors, it is an animating consideration that the great body of the Nation appear to be united in the convictions and feelings which you have expressed.

Our Country, faithful to the principles which it professed, and studious of the blessings of peace, omitted no pacific effort to engage the belligerents to abandon their anti-neutral sys-

tems, persevering in the authorized expectation that if the example should be given by either, it would be followed by the other. When the repeal of the French Edicts, therefore, was officially declared, it was reasonably inferred that the occasion would be seized by G. Britain to demonstrate the sincerity of her professions, and to remove the obstructions to our commercial intercourse with her which had resulted from the obstructions of our commerce with her adversary. Far from making good the pledge to proceed, even step by step with France, in returning to a respect for our neutral rights, her Government contended for formalities in the French proceeding not observed even in her own practice, and disputed an evidence of facts which any other than a reluctant party would have promptly embraced; until, forced into a distrust of these pretexts for adhering to her orders, she has at length made it a condition of their repeal that the markets shut by her enemy shall be opened to her productions and manufactures; a condition which, being equally beyond our right to demand, and our means to effect, involves a continuance of the system levelled against our lawful trade during a war itself of indefinite duration.

The alternative thus presented to the American Nation is rallying it to a vindication of its violated rights; and it would be injustice to its character to doubt that its energy and perseverance, when rendered necessary, will be proportioned to the justice and moderation by which that necessity ought to have been prevented.

Acquiescence in the practice and pretensions of the British Government is forbidden by every view that can be taken of the subject. It would be a voluntary surrender of the persons and property of our citizens sailing under the neutral guaranty of an Independent flag. It would recolonize our commerce, by subjecting it to a foreign authority; with the sole difference that the regulations of it formerly were made by acts of Parliament, and now by orders in Council. And whatever benefits might be reaped by particular portions of the community, whose products are favored by contingent demands, but whose patriotism will not the less make a common cause with every other por-

tion, experience warns us of the fatal tendencies of a commerce unrestricted with Great Britain, and restricted by her pleasure and policy elsewhere. Whilst the limited market would continue overcharged with our exports, the disproportionate imports from it would drain from us the precious metals, endanger our monied institutions, arrest our internal improvements, and would strangle in the cradle the manufactures which promise so vigorous a growth. Nor would the evil be confined to our commerce, our agriculture, or our manufactures. The ship owners and ship builders and mariners must be equally sufferers. Should the regulating power submitted to afford no new preferences to British Navigation, those derived from existing laws and orders would exclude American vessels from the carriage of the products of their own country from its own ports. Finally, an acquiescence in the regulation of our Commerce by the belligerent having the command of the sea would be the surest method of perpetuating its destructive edicts. In a state of things so favorable to its interests, and so flattering to its power, the motives to a change would cease, if a change were otherwise likely to take place.

It is with a just discernment, therefore, that you have regarded a dereliction of our National rights as not less ruinous than dishonorable, and, with an exemplary patriotism, that you have unanimously resolved to co-operate in maintaining them.

TO THOMAS JEFFERSON.

WASHINGTON, Feb^y 7, 1812.

DEAR SIR,—I have received several letters from you, which, not requiring special answers, I now beg leave to acknowledge in the lump. I have delayed it in the hope that I might add something on our public affairs not uninteresting. If there be any thing at present of this character, it will be found in the inclosed paper from New York. We have no late official information from Europe; but all that we see from Great Britain indicates an adherence to her mad policy towards the United

States. The newspapers give you a sufficient insight into the measures of Congress. With a view to enable the Executive to step at once into Canada, they have provided, after two months' delay, for a regular force requiring twelve to raise it, and after three months' for a volunteer force, on terms not likely to raise it at all for that object. The mixture of good and bad, avowed and disguised motives, accounting for these things, is curious enough, but not to be explained in the compass of a letter. Among other jobs on my hands is the case of Wilkinson. His defence fills 6 or 700 pages of the most colossal paper. The minutes of the Court, oral, written, and printed testimony, are all in proportion. A month has not yet carried me through the whole.

We have had of late a hard winter and much ice, which still lies on the water in view. The reiteration of Earthquakes continues to be reported from various quarters. They have slightly reached the State of New York, and been severely felt West and South Westwardly. There was one here this morning at 5 or 6 minutes after 4 o'clock. It was rather stronger than any preceding one, and lasted several minutes; with sensible though very slight repetitions throughout the succeeding hour.

TO JOEL BARLOW.

WASHINGTON, February 24, 1812.

DEAR SIR,—Mr. Morris delivered yesterday morning the dispatches committed to him, including your letters to me.

The reasons for hastening the departure of the vessel now ordered to France will not permit the Secretary of State to do much more than acknowledge the receipt of your communications. The instructions you wish relative to the question of a commercial Treaty with France at this time, as well as the requisite terms, should such an one be admissible, will be subjects of due consideration and early communication.

I see with pleasure the auspicious attentions which have distinguished your intercourse with the French Government, and

the convincing views presented, on your part, of the commercial policy which it ought to adopt towards the United States. From these sources encouragement is drawn. In other respects, the prospect suggests distrust rather than expectation. The delay in answering your note; the vagueness of the answer when given; the refusal to sign the contents of the paper presented by you, even in the ordinary and unexceptionable form proposed; and the substitution of a verbal for a written notification of the orders to the Custom-houses, &c., &c., by which our merchants were to be invited to the French market, are circumstances which necessarily attract serious notice. The reserve manifested on the subject of the paper alluded to is the more remarkable, as a written sanction to it would have so little committed them. Beyond a freedom of the French ports to the products of the United States, under all the existing limitations and incumbrances, it pledged nothing more than a melioration of formalities as to ownership and origin; leaving Colonial produce on the old footing of special licences. The liberation of the remaining ships and cargoes could surely have created no difficulty, if any real purpose of friendship or good faith be entertained. It would seem, therefore, that the objection must have lain against the clause forbidding captures and seizures for other cause than forged papers. The recent condemnations in the Baltic cases, and the avowal of the French Consul in Denmark that all vessels, *whithersoever* bound, with Colonial produce, were taken within the orders to capture, favor this conjecture; and if it be the true one, adjustment is hopeless, and the consequences obvious. I do not forget that your understanding of all these particulars was better than mine can be, and that my constructions may be merely colorable. I wish this may be the case; but we find so little of explicit dealing or substantial redress mingled with the compliments and encouragements, which cost nothing because they may mean nothing, that suspicions are unavoidable; and if they be erroneous, the fault does not lie with those who entertain them.

From the scanty attention I can now give to the subject of a commercial treaty with France I am at a loss for the necessity

of it, or the motives of France to set it on foot, if it be not meant to gain time, and be guided by events. On our side we have nothing to stipulate which is not secured to her, as long as she merits it, by our general system, which leaves our exports and imports free, without any duties on the former, and with moderate ones on the latter. It is on her side that changes and securities are necessary to a friendly reciprocity; and these will for the present be satisfactory to us in the form of stable regulations, fairly executed. Among them, a reduced tariff favoring *all* our great staples, and a transit thro' French ports to inland markets, are indispensable to a continued admission of French staples. The system of licences must be abolished, if not by France, by us. The neglect of the subject by Congress is remarkable, but the event cannot be doubtful. Such a mode of commerce corrupts one class of citizens and disgusts all the rest; and when the trade licensed is in foreign, not native articles, the evil preponderates still more over the profit. The French Government seems to have taken up a radical error with regard to the commercial interests of the two Countries. It overrates our desire of her commodities. The present footing of the commerce is intolerable to the United States, and it will be prohibited if no essential change takes place. At all times it will be a barter of food and raw materials for superfluities in great part; and altogether so (with the temporary exception of Colonial re-exports) as long as a balance in money is prevented by the existing policy of France, and a return of useful fabrics by the war. Why might not certificates of origin from French Consuls, or, still better, of direct shipments from our ports, take the place of licenses? The advantages of the change are numerous and obvious. Mr. Gallatin promises to say something to Mr. Lee on this head.

I am concerned that the prospect of indemnity for the Rambouillet and other spoliations is so discouraging as to have led to the idea of seeking it thro' King Joseph. Were there no other objection than the effect on the public mind here, this would be an insuperable one. The gratification of the sufferers by the result would be lost in the general feeling against the

measure. But Joseph is not yet *settled* on the Spanish Throne; when so, *de facto*, he will be *sovereign* neither *de facto* nor *de jure* of any Spanish part of this Continent; the whole of which, if it had not on other accounts a right to separate from the peninsula, would derive it from the usurpation of Joseph. So evident is it that he can never be King of a Spanish Province, either by conquest or consent, that the independence of all of them is avowedly favored by the policy which rules him. Nor would a purchase under Joseph place us an inch nearer our object. He could give us neither right nor possession; and we should be obliged to acquire the latter by means which a grant from him would be more likely to embarrass than promote. I hope, therefore, that the French Government will be brought to feel the obligation and the necessity of repairing the wrongs, the flagrant wrongs in question, either by payments from the Treasury or negotiable substitutes. Without one or other, or some fair equivalent, there can be neither cordiality nor confidence here; nor any restraint from self-redress in any justifiable mode of effecting it; nor any formal Treaty on any subject. With justice on this subject, formal stipulations on others might be combinable.

As the *Hornet* had reached France before the sailing of the *Constitution*, and the latter had not a very short passage, we shall soon look for further communications from you. I hope they will correspond equally with your patriotic exertions and the public calculations. If they do not exhibit the conduct of the French Government in better colours than it has yet assumed, there will be but one sentiment in this Country, and I need not say what that will be.

Be assured of my affectionate esteem.

TO THOMAS JEFFERSON.

WASHINGTON, March 6, 1812.

DEAR SIR,—You will see that Congress, or rather the House of Representatives, have got down the dose of taxes. It is the strongest proof they could give that they do not mean to flinch from the contest to which the mad conduct of Great Britain drives them. Her perseverance in this seems to be sufficiently attested by the language of Lord Liverpool and Mr. Perceval in their parliamentary comments on the Regent's Message. The information from France is pretty justly described in the paragraph inserted in the National Intelligencer after the arrival of the Constitution. The prints herewith inclosed are forwarded to you at the request of Thomas Gimbrede, (of N. York,) the author.

TO THOMAS JEFFERSON.

March 9, 1812.

DEAR SIR,—As the Intelligencer will not publish the Message and documents just laid before Congress for the present mail, I send you a copy of the former. It is justified by the Documents, among which are the original credential and instructions from the Governor of Canada, and an original despatch from the Earl of Liverpool to him approving the conduct of the secret agent. This discovery, or rather formal proof, of the co-operation between the Eastern Junto and the British Cabinet, will, it is to be hoped, not only prevent future evils from that source, but extract good out of the past.

TO THOMAS JEFFERSON.

WASHINGTON, April 3, 1812.

DEAR SIR,—I have received your favor of the 26th, and have made to the members of the Cabinet the communication you

suggest with respect to your printed Memoir on the Batture. I learn from the Department of State that some books were received for you, and duly forwarded. What they were was not ascertained or remembered. If they do not, on their arrival, correspond with your expectation, let me know, and further enquiry will be made. Meantime, there is in my possession a very large packet addressed to you, which is probably a continuation of Humboldt's draughts, or other maps. It was accompanied by no letter to me, and, being unfit for the mail, waits for the patronage of some trusty traveller bound in the stage towards Monticello. A late arrival from G. Britain brings dates subsequent to the maturity of the Prince Regent's authority. It appears that Perceval, &c., are to retain their places, and that they prefer war with us to a repeal of their Orders in Council. We have nothing left, therefore, but to make ready for it. As a step to it, an embargo for sixty days was recommended to Congress on Wednesday, and agreed to in the House of Representatives by about 70 to 40. The bill was before the Senate yesterday, who adjourned about 4 or 5 o'clock without a decision. Whether this result was produced by the rule which arms a single member with a veto against a decision in one day on a bill, or foretells a rejection of the Bill, I have not yet heard. The temper of that body is known to be equivocal. Such a measure, even for a limited and short time, is always liable to adverse, as well as favorable considerations; and its operations at this moment will add fuel to party discontent and interested clamor. But it is a rational and provident measure, and will be relished by a greater portion of the Nation than an omission of it. If it could have been taken sooner, and for a period of 3 or 4 months, it might have enlisted [?] an alarm of the British Cabinet for their Peninsular system on the side of concessions to us, and would have shaken their obstinacy, if to be shaken at all; the successes on that theatre being evidently their hold on the Prince Regent, and the hold of both on the vanity and prejudices of the Nation. Whether, if adopted for 60 days, it may beget apprehensions of a protraction, and thence lead to admissible overtures before the sword is stained with

blood, cannot be foreknown with certainty. Such an effect is not to be counted upon. You will observe that Liverpool was secretary for the Foreign Department ad interim, and that Castlereagh is the definitive successor of Wellesley. The resignation of this last, who has received no other appointment, is a little mysterious. There is some reason for believing that he is at variance with Perceval, or that he distrusts the stability of the existing Cabinet, and courts an alliance with the Grenville party, as likely to upset it. If none of that party desert their colours, the calculation cannot be a very bad one; especially in case of war with the U. States, in addition to the distress of British trade and manufactures, and the inflammation in Ireland; to say nothing of possible reverses in Spain and Portugal, which alone would cut up the Perceval ascendancy by the roots. From France we hear nothing. The delay of the *Hornet* is inexplicable, but on the reproachful supposition that the French Government is waiting for the final turn of things at London before it takes its course, which justice alone ought to prescribe towards us. If this be found to be its game, it will impair the value of concessions, if made, and give to a refusal of them consequences it may little dream of.

I understand the Embargo will pass the Senate to-day, and possibly with an extension of the period to 75 or 90 days.

TO THOMAS JEFFERSON.

WASHINGTON, April 24, 1812.

DEAR SIR,—I have just received your favor of the 17th. The same mail brings me the "Proceedings of the Government of the United States relative to the *Batture*," for which you will accept my thanks.

I had not supposed that so great a proportion of produce, particularly of wheat and flour, was still in the hands of the farmers. In Pennsylvania, it was known to be the case. In New York, almost the whole of the last crop is in the country, though chiefly in the hands of the Merchants and Millers. The

measure of the Embargo was made a difficult one, both as to its duration and its date, by the conflict of opinions here, and of local interests elsewhere; and to these causes are to be added that invariable opposition, open with some and covert with others, which has perplexed and impeded the whole course of our public measures. You will have noticed that the Embargo, as recommended to Congress, was limited to 60 days. Its extension to 90 proceeded from the united votes of those who wished to make it a negotiating instead of a war measure; of those who wished to put off the day of war as long as possible, if ultimately to be met; and of those whose mercantile constituents had ships abroad, which would be favored in their chance of getting safely home. Some, also, who wished and hoped to anticipate the expiration of the terms, calculated on the ostensible postponement of the war question as a ruse against the Enemy. At present, great differences of opinion exist as to the time and form of entering into hostilities; whether at a very early or later day, or not before the end of the 90 days, and whether by a general declaration, or by a commencement with letters of Marque and Reprisal. The question is also to be brought forward for an adjournment for 15 or 18 days. Whatever may be the decision on all these points, it can scarcely be doubted that patience in the holders of wheat and flour at least will secure them good prices, such is the scarcity all over Europe, and the dependence of the W. Indies on our supplies. Mr. Maury writes me, on the 21st of March, that flour had suddenly risen to $16\frac{1}{2}$ dollars, and a further rise looked for. And it is foreseen that, in a state of war, the Spanish and Portuguese flags and papers, real or counterfeit, will afford a neutral cover to our produce, as far as wanted, in ports in the favour of G. Britain. Licences, therefore, on our part, will not be necessary; which, though in some respects mitigating the evils of war, are so pregnant with abuses of the worst sort as to be liable, in others, to strong objections. As managed by the belligerents of Europe, they are sources of the most iniquitous and detestable practices.

The Hornet still loiters. A letter from Barlow to Granger

fills us with serious apprehensions that he is burning his fingers with matters which will work great embarrassment and mischief here, and which his instructions could not have suggested. In East Florida, Mathews has been playing a strange comedy, in the face of common sense, as well as of his instructions. His extravagances place us in the most distressing dilemma.

TO THE INHABITANTS OF THE TOWN OF MILTON, IN MASSACHUSETTS.

I have received the memorial of the Inhabitants of the Town of Milton on the subject of vaccination, and the interesting papers sent with it. These have been distributed as desired, and I return my thanks for the setts allotted to myself.

In acknowledging the communication, I cannot withhold the tribute due to the exertions made by the Town of Milton for verifying and diffusing that propitious antidote to one of the severest scourges to the health and the lives of their fellow-men. I wish them all the success to which their benevolence is entitled; and have the satisfaction to inform them, that the precaution which occurred to them, in behalf of such of their fellow-citizens as may be more particularly exposed in the public service to the infectious malady against which vaccination protects them, has been already attended to.

The sympathy of the Inhabitants of Milton with the cause of their injured Country, as well as with that of individual humanity, is a proof that they add the merit of good citizens to that of good men. The patriotic sentiments which they express will, I trust, be found, on trial, to pervade the great body of the Nation; and I join fervently in their prayer, that our public Councils may in every vicissitude be under the direction of that Almighty Being who alone can ensure a happy success to them.

MAY 18, 1812.

TO THOMAS JEFFERSON.

WASHINGTON, May 25, 1812.

DEAR SIR,—The inclosed letters came under cover to me by the *Hornet*. France has done nothing towards adjusting our differences with her. It is understood that the Berlin and Milan Decrees are not in force against the United States, and no contravention of them can be established against her. On the contrary, positive cases rebut the allegation. Still, the manner of the French Government betrays the design of leaving G. Britain a pretext for enforcing her Orders in Council. And in all other respects, the grounds of our complaints remain the same. The utmost address has been played off on Mr. Barlow's wishes and hopes; in so much that at the departure of the *Hornet*, which had been so long detained for a final answer without its being obtained, he looked to the return of the *Wasp*, which had just arrived, without despair of making her the bearer of some satisfactory arrangement. Our calculations differ widely. In the mean time, the business is become more than ever puzzling. To go to war with England and not with France arms the Federalists with new matter, and divides the Republicans, some of whom, with the Quids, make a display of impartiality. To go to war against both presents a thousand difficulties; above all, that of shutting all the ports of the Continent of Europe against our cruisers, who can do little without the use of them. It is pretty certain, also, that it would not gain over the Federalists, who would turn all those difficulties against the administration. The only consideration of weight in favor of this triangular war, as it is called, is, that it might hasten through a peace with G. Britain or France; a termination, for a while, at least, of the obstinate questions now depending with both.

But even this advantage is not certain. For a prolongation of such a war might be viewed by both belligerents as desirable, with as little reason for the opinion as has prevailed in the past conduct of both.

TO THOMAS JEFFERSON.

June 22, 1812.

DEAR SIR,—The inclosed letter was sent to me, with a request that I would forward it. The reason assigned was, that the one of which it is a duplicate was presumed to have miscarried, no answer to it having been received. An answer will, of course, be expected.

I inclose a paper containing the Declaration of war, &c., merely to supply a possible miscarriage of others usually received by you. It is understood that the Federalists in Congress are to put all the strength of their talents into a protest against the war, and that the party at large are to be brought out in all their force.

It is impossible to say what effect will follow the assassination of Perceval. In England, it is doubted whether there will be a successor of the same kidney; whether Wellesley will be the man, with some modifications not affecting the character of the Cabinet; or whether he will be allowed to make one for himself, in which case it is supposed he will bring in the Tax party. All this will depend on the Prince, who, it seems, is ruled at present by Lady Holbert, [Hertford?] who, at the age of 60 years, has some secret fascination for his vitiated caprice.

TO _____.

WASHINGTON, July 25, 1812.

SIR,—I have received the address from “The Convention of Republican Delegates from the several Counties of the State of New Jersey,” explaining the sentiments entertained, at this crisis, by that portion of my Constituents. The sentiments are worthy the character of Citizens who know the value of the National rights at stake in the present contest, and who are willing to do justice to the sincere and persevering efforts which have been employed to obtain respect to them without a resort to arms.

The conduct of the nation against whom this resort has been proclaimed left no choice but between that and the greater evil of a surrender of our Sovereignty on the Element on which all nations have equal rights, and in the free use of which the United States, as a nation whose agriculture and commerce are so closely allied, have an essential interest.

The appeal to force in opposition to the force so long continued against us had become the more urgent, as every endeavor short of it had not only been fruitless, but had been followed by fresh usurpations and oppressions. The intolerable outrages committed against the crews of our vessels, which, at one time, were the result of alleged searches for deserters from British ships of war, had grown into a like pretension, first, as to all British seamen, and next, as to all British subjects; with the invariable practice of seizing on all neutral seamen of every Nation, and on all such of our own seamen as British officers interested in the abuse might please to demand.

The Blockading orders in Council, commencing on the plea of retaliating injuries indirectly done to G. Britain, through the direct operation of French Decrees against the trade of the United States with her, and on a professed disposition to proceed step by step with France in revoking them, have been since bottomed on pretensions more and more extended and arbitrary, till at length it is openly avowed as indispensable to a repeal of the Orders as they affect the U. States, that the French Decrees be repealed as they affect G. Britain directly, and all other neutrals, as well as the United States. To this extraordinary avowal is superadded abundant evidence that the real object of the Orders is, not to restore freedom to the American Commerce with G. Britain, which could, indeed, be little interrupted by the Decrees of France, but to destroy our lawful commerce, as interfering with her own unlawful commerce with her enemies. The only foundation of this attempt to banish the American flag from the highway of Nations, or to render it wholly subservient to the commercial views of the British Government, is the absurd and exploded doctrine that the ocean, not less than the land, is susceptible of occupancy and dominion;

that this dominion is in the hands of G. Britain; and that her laws, not the law of Nations, which is ours as well as hers, are to regulate our maritime intercourse with the rest of the world.

When the United States assumed and established their rank among the nations of the Earth, they assumed and established a common Sovereignty on the high seas, as well as an exclusive sovereignty within their territorial limits. The one is as essential as the other to their character as an Independent Nation. However conceding they may have been on controvertible points, or forbearing under casual and limited injuries, they can never submit to wrongs irreparable in their kind, enormous in their amount, and indefinite in their duration; and which are avowed and justified on principles degrading the United States from the rank of a sovereign and independent power. In attaining this high rank, and the inestimable blessings attached to it, no part of the American people had a more meritorious share than the people of New Jersey. From none, therefore, may more reasonably be expected a patriotic zeal in maintaining by the sword the unquestionable and unalienable rights acquired by it, and which it is found can no otherwise be maintained.

TO GENERAL DEARBORN.

WASHINGTON, August 9, 1812.

DEAR SIR,—The last of your favors which I have to acknowledge is that of the 3d ultimo, from Boston. I am glad to find that you are again at Albany, where your presence will aid much in doing all that can be done for the reputation of the campaign. The lapse of time, and the unproductiveness of the laws contemplating a regular force, and volunteers for an entire year, and under Federal commissions, compel us to moderate some of our expectations. It was much to have been desired that simultaneous invasions of Canada, at several points, particularly in relation to Malden and Montreal, might have secured the great object of bringing all Upper Canada, and the channels communicating with the Indians, under our command;

with ulterior prospects towards Quebec flattering to our arms. This systematic operation having been frustrated, it only remains to pursue the course that will diminish the disappointment as much as possible. Hull, as you will have learnt, is preparing a force for the attack of Malden; and that he may descend towards Niagara with greater effect and be the more secure against Indian dangers, a reinforcement of 1,500 men is ordered, which will be promptly supplied by the overflowing zeal of the detached militia of Ohio and Kentucky. We hope that your arrangements with Governor Tompkins will have provided an effective co-operation for subduing the hostile force opposite ours at Niagara, and preparing the way for taking possession of the country at the other extremity of Lake Ontario. In these events, we shall have in our hands not only all the most valuable parts of the Upper province, but the important command of the Lakes. It appears that Hull was making an effort to overpower the British force on Lake Erie, his success in which will be critically useful in several respects.

In addition to these measures, it is essential, notwithstanding the advance of the season, and the difficulties thrown in our way, that the expedition against Montreal should be forwarded by all the means in your power. The number of regulars that can be procured for it cannot even yet be ascertained; but it is sufficiently ascertained that an extensive auxiliary force will be wanted; and it is nearly as certain that this will not be furnished by the Volunteer Act of February, unless a sudden ardor overcoming the objections to it should be inspired by the vicinity of the object and the previous conquests. The last resource, therefore, on which we are to depend, is that portion of the detached and other militia which may be within reach, will comply with the call, and voluntarily unite with their officers in rejecting geographical limits to their patriotism. To this resource I hope you will turn your full attention, with a view to the immediate steps proper to be taken to enable it to supply the deficit of regulars and volunteers; with respect to the latter of which, as far as they are within a practicable distance, the number known here to be in readiness is very inconsiderable.

From the Vermont and New Hampshire militia favorable expectations are indulged, the State authorities being well disposed to promote the service. As to Massachusetts and Connecticut, even, notwithstanding the obstructions created by the Governors, it is not yet decided that the spirit of some of the detached and other corps may not give effect to your requisitions. Should an adequate force be attainable from the whole or part of the sources referred to, you will be the best judge how far a demonstration towards Quebec will be proper in aid of the measures against Montreal; which, if we can take by any means of any sort, we shall find the means of holding. Should it be found impracticable to take it this campaign, will it be possible to occupy any other post that will cut off the intercourse with the Indians thro' the Ottawas river?

You will have noticed the arrival of a dispatch vessel from the British Government. Nothing is disclosed from that quarter that ought in the slightest degree to slacken our military exertions.

The Secretary of State is on a visit to his farm, where he will leave his family. On his return, which will take place in a few days, I propose a like respite. I find myself much worn down, and in need of an antidote to the accumulating bile, of which I am sensible, and which I have never escaped in August on tide-water.

TO JOEL BARLOW.

WASHINGTON, August 11, 1812.

DEAR SIR,—As I write on short notice and in cypher, I must be very brief.

The conduct of the French Government, explained in yours of the ———, on the subject of the decree of April, 1811, will be an everlasting reproach to it. It is the more shameful as, departing from the declaration to General Armstrong, of which the enforcement of the non-importation was the effect, the re-

voking decree assumes this as the cause, and itself as the effect; and thus transfers to this Government the inconsistency of its author.

The decree of April may, nevertheless, be used by Great Britain as a pretext for revoking her orders, notwithstanding the contrary language of Lord Castlereagh in Parliament. An authentic, tho' informal, communication has just arrived in a despatch vessel from Great Britain, importing that the orders were to be revoked on the 1st of August, subject to renewal if required by the conduct of France and the United States, particularly if the non-importation act should not be forthwith rescinded on the arrival of the act of revocation. As this pledge was given before the declaration of war was known, it may not be adhered to. It is not improbable, however, that it was hurried off, as a chance for preventing an apprehended war; and the same dislike to the war may possibly produce advances for terminating it, which, if the terms be admissible, will be readily embraced.

In the event of a pacification with Great Britain, the full tide of indignation with which the public mind here is boiling will be directed against France, if not obviated by a due reparation of her wrongs. War will be called for by the nation almost *una voce*. Even without a peace with England, the further refusal or prevarications of France on the subject of redress may be expected to produce measures of hostility against her at the ensuing session of Congress. This result is the more probable, as the general exasperation will coincide with the calculations of not a few, that a double war is the shortest road to peace.

I have been the more disposed to furnish you with these prospects that you may turn them to account, if possible, in prosecuting your discussions with the French Government, and be not unprepared to retire from them altogether on a sudden notice so to do. Your return home may possibly be directed even before the meeting of Congress, if the intermediate information should continue to present the French conduct in the provoking light in which it has hitherto appeared.

The Secretary of State is absent. But you will receive from

Mr. Graham the usual supply of current intelligence, to which I refer you. I have not time to write to General La Fayette. With my best regards to him, tell him that Congress rose without deciding as to the validity of the remaining locations near Point Coupee.

Affectionate respects.

TO THOMAS JEFFERSON.

WASHINGTON, August 17, 1812.

DEAR SIR,—I have received yours of the 10th, and return, as you request, the letter of Mr. Higginbotham. He will probably have understood from Col. Monroe that the Consulate of Lisbon is the object of numerous and respectable candidates.

The seditious opposition in Massachusetts and Connecticut, with the intrigues elsewhere insidiously co-operating with it, have so clogged the wheels of the war that I fear the campaign will not accomplish the object of it. With the most united efforts in stimulating volunteers, they would have probably fallen much short of the number required by the deficiency of regular enlistments. But under the discouragements substituted, and the little attraction contained in the volunteer act, the two classes together leave us dependent for every primary operation on militia, either as volunteers or draughts for six months. We are, nevertheless, doing as well as we can in securing the maritime frontier, and in providing for an effective penetration into Upper Canada. It would probably have been best, if it had been practicable in time, to have concentrated a force which could have seized on Montreal, and thus, at one stroke, have secured the upper Province, and cut off the sap that nourished Indian hostilities. But this could not be attempted without sacrificing the Western and North Western Frontier, threatened with an inundation of savages, under the influence of the British establishment near Detroit. Another reason for the expedition of Hull was, that the unanimity and ardor of Kentucky and

Ohio promised the requisite force at once for that service, whilst it was too distant from the other points to be assailed. We just learn, but from what cause remains to be known, that the important post of Michilimackinac has fallen into the hands of the enemy. If the reinforcement, of about 2,000, ordered from the Ohio, and on the way to Hull, should not enable him to take Malden and awe the savages, emboldened by the British success, his situation will be very ineligible. It is hoped that he will either be strong enough, as he has cannon and mortars, to reduce that Fort, or to leave a force that will justify him in passing on towards the other end of Lake Erie, and place the British troops there between him and those embodied, under arrangements of Dearborn and Tompkins, at Niagara, for the purpose of occupying the central part of Upper Canada. In the mean time, the preparations against Montreal are going on, and perhaps may furnish a feint towards it that may conspire with the other plan. I find that Kingston, at the East end of Lake Ontario, is an object with Gen^l Dearborn. The multiplication of these offensive measures has grown out of the defensive precautions for the Frontiers of New York.

We have no information from England since the war was known there, or even seriously suspected, by the public. I think it not improbable that the sudden change in relation to the Orders in Council, first in yielding to a qualified suspension, and then a repeal, was the effect of apprehensions in the Cabinet that the deliberations of Congress would have that issue; and that the Ministry could not stand against the popular torrent against the Orders in Council, swelled, as it would be, by the addition of a war with the United States to the pressure of the non-importation act. What course will be taken when the declaration here shall be known is uncertain, both in reference to the American shipments instituted under the repeal of the Orders, and to the question between vindictive efforts for pushing the war against us, and early advances for terminating it. A very informal and, as it has turned out, erroneous communication of the intended change in the Orders was hurried over, evidently with a view to prevent a declaration of war, if it

should arrive in time. And the communication was accompanied by a proposal from the *local* authorities at Halifax, sanctioned by Foster, to suspend hostilities, both at sea and on land. The late message of Prevost to Dearborn, noticed in the newspapers, has this for its object. The insuperable objections to a concurrence of the Executive in the project are obvious. Without alluding to others, drawn from a limited authority, and from the effect of patriotic ardor, the advantage over us in captures would be past before it could take effect. As we do not apprehend invasion by land, and preparations on each side were to be unrestrained, nothing could be gained by us, whilst arrangements and reinforcements adverse to Hull might be decisive; and on every supposition the Indians would continue to be active against our frontiers, the more so in consequence of the fall of Michilimaekinac. Nothing but triumphant operations on the theatre which forms their connection with the enemy will controul their bloody inroads.

I have been indulging my hopes of getting away from this place in the course of the present week. It is quite possible, however, that my stay here may be indispensable. As yet, I have less of bilious sensations than I could have expected.

TO REV^D S. SPRING.

MONTPELIER, Sept^r 6, 1812.

REV^D SIR,—I have received your favor of August 26. I recollect our collegiate friendship with the same impressions which it gives me pleasure to find you still retain. Nor have I forgotten the pleasant hours that passed between us, at a much later day, under my own roof.

We all feel the weight of the times, and it is to be regretted that all cannot unite in the measures opposed [?] to them. If it were proper for me, it might not be agreeable to you, to discuss the subject; but I will not conceal the surprize and the pain I feel at declarations from any portion of the American people that measures resulting from the national will, constitutionally

pronounced, and carrying with them the most solemn sanctions, are not to be pursued into effect without the hazard of civil war. This is surely not the legitimate course. Neither is it the language on other occasions heard from the same quarter, nor a course consistent with the duration or efficacy of any Government.

Permit me to express equal surprise that this extraordinary opposition to the war declared against Great Britain is most emphatically rested on an alliance or a connection with France, presumed to exist, or be intended, in the face of demonstrations to the contrary with which the slightest degree of candor ought to be satisfied.

Without entering into comparisons between different districts of the Union with respect to the suffering which led to the war, or the objects at stake in it, it is clear that every district felt more or less the evils which produced it, and is more or less deeply interested in the success of it. It is equally certain that the way to make it both short and successful, would be to convince the enemy that he has to contend with the whole, and not a part of the Nation. Can it be doubted that if, under the pressure added by the war to that previously felt by G. Britain, her Government declines an accommodation on terms dictated by justice, and compatible with, or rather conducive to, her interest, it will be owing to calculations drawn from our internal divisions? If she be disposed to such an accommodation, it will be evinced in due time, to the most prejudiced and misinformed, that the earliest and fairest opportunities are not withheld.

I need scarcely remark that this is a letter altogether *private*, and written in confidence that it will be so received.

TO MAJ^R GEN^L DEARBORN.

WASHINGTON, October 7, 1812.

DEAR SIR,—I have received your favor of Sep^r 30. I am glad to find that you have succeeded in producing such apprehensions at Montreal as to prevent reinforcements from that quarter to

the posts above. It would have been fortunate if you could have derived such Militia and Volunteer aids from Vermont and Eastward of it as might have substantially a like controul on Prevost, and thereby have augmented the regular force ordered to Niagara. Appearances denote a better spirit, or rather, perhaps, a better use of it, in the Eastern quarter; but it may be too late and too distant to answer immediate purposes; unless, indeed, the Volunteers of Maine, and the Militia or Volunteers of New Hampshire, should be in sufficient numbers and forwardness to prevent descents on our maritime frontier by a show towards Nova Scotia, which would excite defensive attention at Halifax. The advance of the season would, I presume, render a measure of that sort unavailing at Quebec. Yet *there* is undoubtedly the sensorium to which projects of alarm may be most successfully addressed, when not too palpably chimerical. You will receive from the War Office the last information from Gen^l Harrison. He has a prospect of doing something towards retrieving the campaign. The promptitude and numbers of the force under his command will at least save the Military character of that part of the nation, will satisfy G. Britain that the tendency of defeat is to rouse, not depress, the American spirit, and will stamp deep on the Indian mind the little security they have in British protection. As Harrison seems to be making sure of food for his army, and the measures taken promise seasonable supplies of other necessaries, I see nothing to prevent his reaching Detroit early in this month. And if the great exertions on foot to give him cannon should not fail, it may be hoped he will not only be in possession of that place, but of Malden also, and proceed towards a still more effectual co-operation with the forces at Niagara. Nor do we despair of his success should the cannon not reach him in time, if the British garrisons be such as are represented, and he can carry with him the force he has in view; since he will be able to proceed with a very impressive portion, and leave sufficient investments and precautions behind. The artillery sent from this place had travelled nearly to Pittsburg, at a rate which promised a good chance for its reaching Detroit before November, if not by the

20th of this month. As Hull's army was lost, it is to be regretted that the misfortune did not take place a little earlier, and allow more time, of course, for repairing it within the present season. This regret is particularly applicable to the Great Lakes. What is now doing for the command of them proves what may be done: And the same means would have been used in the first instance, if the easy conquest of them by land held out to us had not misled our calculation. The command of the Lakes by a superior force on the water ought to have been a fundamental point in the national policy from the moment the peace took place. Whatever may be the future situation of Canada, it ought to be maintained, without regard to expense. We have more means for the purpose, and can better afford the expense than G. Britain. Without the ascendancy over those waters we can never have it over the savages, nor be able to secure such posts [as] Makinaw. With this ascendancy we command the Indians, can controul the companies trading with them, and hold Canada, whilst in foreign hands, as a hostage for peace and justice.

I do not wonder you are oppressed with labour, as well from the extent of your command, rendered necessary by the mutual relations between its objects, as from the deficiency of General Officers, and particularly the difficulty and delay in bringing the staff department even into its present state. The effect of these circumstances in burdening you with details has been severely felt here, in throwing them where they as little belonged. To carry on the war with due advantage, more effectual inducements, at least, must be put into the hands of recruiting officers. The volunteer system must be essentially improved, the use of the militia secured to the constitutional authority, and an addition made to the General Officers, both of Divisions and Brigades. It will be equally essential to discriminate better the functions of the several staff Departments, and to have heads of them in immediate contact with the War Department. Experience enforces these truths; and nothing but that will ever sufficiently inculcate them. We have nothing important from abroad but what is in the Newspapers.

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE
OF SOUTH CAROLINA.

October 10th, 1812.

I have received, fellow-citizens, your joint address, transmitted by the President and Speaker.

In the unanimous determination to support the war in which our country is engaged, you have given a conspicuous proof of your fidelity to the National rights and sensibility to the National character. It is a war worthy of such a determination; having its origin neither in ambition nor in vain-glory; and for its object, neither an interest of the Government distinct from that of the people, nor the interest of a part of the people in opposition to the welfare of the whole. It is a war which was forced by persevering injustice on exhausted forbearance. And having been called for by the public voice, every motive ought to be felt to bear its necessary pressure with cheerfulness, and to prosecute it with zeal to a successful issue.

The approbation you have been pleased to express of the agency which fell to my lot in resorting to the only mode left of maintaining for our Country the rights and the rank of an independent Nation, claims my acknowledgments. I tender them, with my fervent wishes that a general emulation and exertion of the patriotism exhibited by the Legislature of South Carolina may speedily secure to the United States the blessings of a just and honorable peace.

TO THOMAS JEFFERSON.

WASHINGTON, October 14, 1812.

DEAR SIR,—I received your favor of the 2d, inclosing the letter from Mr. Meigs. The place he wishes has been long allotted to Mr. Mansfield, who preferred it to that of the surveyorship held by him, and who has just obtained the exchange; and a commission for the place vacated has just been sent to Mr. Meigs, who was long ago recommended for it, and who, it

was understood, wished it. It is the more probable that it will be acceptable to him as he has connections in the Western Country, particularly the Governor of Ohio.

I see so little chance of being able to peruse the lucubrations of Faronde you were so good as to send me, that I replace them, for the present at least, in your hands.

The last intelligence from the Westward left a military crisis near Fort Defiance. Winchester, with about half the army, was encamped within 3 miles of the encampment of about 300 British troops, with some field pieces, and a body of Indians, stated at 2,000 or 2,500. It is probable they were destined against Fort Wayne, with the general view of finding employment for our forces on their way to Detroit, until the season should be spent, or Brock could send troops from below. Of our affairs at Niagara and the neighbourhood of Montreal it is difficult [to] judge, the force of the enemy being imperfectly known, and that under General Dearborn depending so much on circumstances. Our best hopes for the campaign rest on Harrison; and if no disaster, always to be feared from Indian combats, befall him, there is a probability that he will regain Detroit, and perhaps do more. He has a force of 8 or 10,000 men at least, enthusiastically confiding in him, and a prospect of adequate supplies of every sort, unless it be cannon, which, though on the way, may possibly encounter fatal delays. This article, however, he appears not to make a *sine qua non*; nor will it be wanted for Detroit, if it be true, as is reported, that every piece has been withdrawn by the British.

The latest accounts from Europe are in the newspapers. The ideas of which Foster and Russell are put in possession will soon draw from the British Government some evidence of their views as to peace. From France we hear nothing, and shall probably meet Congress under the perplexity of that situation.

The current elections bring the popularity of the war, or of the Administration, or both, to the *Experimentum crucis*. In this State the issue is not favorable, though less otherwise than would appear. In the Congressional Districts the Republicans, I believe, have not lost ground at all, notwithstanding the aux-

iliaries to Federalism. In the State Legislature they will be in a minority on a joint vote. Pennsylvania, although admitted to be shaken, is represented to be safe. New Jersey is doubtful, at least. The same is the case with New Hampshire. North Carolina, also, is reported to be in considerable vibration. The other States remain pretty decided on one hand or on the other.

TO GOVERNOR GALUSHA.

WASHINGTON, November 30, 1812.

SIR,—I have received your letter of the 7th instant, communicating a Resolution of the General Assembly of Vermont, pledging their co-operation with the General Government and with the nation in the present contest with a Foreign power. Had this contest originated in causes appealing with a less indiscriminate force to the common interests and honorable feelings of every portion of our fellow-citizens, that respect for the will of the majority regularly proclaimed, which is the vital principle of our free Constitution, would have imposed on all the sacred duty which is thus laudably recognised by the State of Vermont; and the discharge of which is enforced by the powerful consideration, that nothing can more contribute to prolong the contest and embarrass the attainment of its just objects, than the encouragement afforded to the hopes of the enemy by appearances of discord and discontent among ourselves.

In doing justice to the patriotism which dictated the Resolution transmitted, I take a pleasure in remarking that it is heightened by the particular exposure of Vermont to the pressure which the war necessarily brings with it, and in assuring myself that proportionate exertions of her citizens will add new lustre to their character. In the war which made us an Independent nation their valor had a conspicuous share. In a war which maintains the rights and attributes of Independence on the Ocean, where they are not less the gift of nature and of nature's God than on the land, the same zeal and perseverance

may be confidently expected from the same pride of liberty and love of Country.

Accept the assurances of my high respect and best wishes.

TO WILLIAM EUSTIS, SECRETARY OF WAR.

WASHINGTON, December 4, 1812.

DEAR SIR,—I have received your letter of yesterday, with the impressions which could not but result from your purpose of retiring from an office so nearly related to that which has been entrusted to me, in which your services have been coeval with mine, and in which I have witnessed the zeal and constancy of your exertions for the public good under difficulties peculiarly arduous and trying. In bearing this testimony, I indulge my own feelings as well as pay a tribute which is so justly due.

I take the liberty of adding a hope that it will not be inconsistent with your arrangements to continue your official attentions until they can be replaced by a successor.

I thank you for the kind wishes you have expressed, and I offer you the best of mine for your welfare and happiness.

TO PAUL HAMILTON.

December 31, 1812.

DEAR SIR,—I have received your letter of yesterday, signifying your purpose to retire from the Department which has been under your care.

On an occasion which is to terminate the relation in which it placed us, I cannot satisfy my own feelings, or the tribute due to your patriotic merits and private virtues, without bearing testimony to the faithful zeal, the uniform exertions, and unimpeachable integrity, with which you have discharged that important trust; and without expressing the value I have always placed on that personal intercourse, the pleasure of which I am now to lose.

With these recollections and impressions, I tender you assurances of my affectionate esteem, and of my sincerest wishes for your welfare and happiness.

LETTERS.

WASHINGTON, 1812.

MY RED CHILDREN,—You have come through a long path to see your father, but it is a straight and a clean path, kept open for my red children who hate crooked walks. I thank the Great Spirit that he has brought you in health through the long journey, and that he gives us a clear sky and a bright sun for our meeting. I had heard from General Clarke of the good dispositions of several of the Nations on and West of the Mississippi, and that they shut their ears to the bad birds hovering about them for some time past. This made me wish to see the principal chiefs of those bands. I love to shake hands with hearts in them.

The red people who live on this same great Island with the White people of the 18 fires are made by the Great Spirit out of the same earth, from parts of it differing in colour only. My regard for all my red children has made me desirous that the bloody tomahawk should be buried between the Osages, the Cherokees, and the Choctaws. I wished, also, that the hands of the Shawenoe and the Osage should be joined in my presence, as a pledge to cherish and observe the peace made at S^t Louis. This was a good peace for both. It is a chain that ought to hold them fast in friendship. Neither blood nor rust should ever be upon it.

I am concerned at the war which has long been kept up by the Sacs and Foxes against the Osages, and that latterly a bloody war is carried on between the Osages and Ioways. I now tell my red children now present that this is bad for both parties. They must put under my feet their evil intentions against one another, and henceforward live in peace and good

will, each hunting on their own lands, and working their own soils.

Your father loves justice. He extends it to all the red tribes. When they keep the chain of friendship with the 18 fires bright, he will protect them and do them good. If any make the chain bloody, it must be broken on their heads. The Winebagoes, and some other tribes between the Mississippi and Lake Michigan and the Wabash, have shut their ears to my Councils. They have killed men, women, and children, and have plundered the white people. They refuse to give up the murderers, and to return the stolen property. Time enough has been allowed them. When they feel the punishment, they must blame their own folly and the bad counsels to which they have listened. I will not suffer my white children to be killed without punishing the murderers.

A father ought to give good advice to his children, and it is the duty of his children to hearken to it. The people composing the 18 fires are a great people. You have travelled through their Country. You see they cover the land as the stars fill the sky, and are thick as the trees in your forests. Notwithstanding their great power, the British King has attacked them on the great water beyond which he lives. He robbed their ships, and carried away the people belonging to them. Some of them he murdered. He has an old grudge against the 18 fires, because, when he tried to make them dig and plant for his people beyond the great water, not for themselves, they sent out warriors who beat his warriors; they drove off the bad chiefs he had sent among them, and set up good chiefs of their own. The 18 fires did this when they had not the strength they now have. Their blows will now be much heavier, and will soon make him do them justice. It happened when the 13 fires, now increased to 18, forced the British King to treat them as an independent nation, one little fire did not join them. This he has held ever since. It is there that his agents and traders plot quarrels and wars between the 18 fires and their red brethren, and between one red tribe and another. Malden is the place where all the bad birds have their nests. There

they are fed with false tales against the 18 fires, and sent out with bloody belts in their bills to drop among the red people, who would otherwise remain at peace. It is for the good of all the red people, as well as the people of the 18 fires, that a stop should be put to this mischief. Their warriors can do it. They are gone and going to Canada for this purpose. They want no help from their red brethren. They are strong enough without it. The British, who are weak, are doing all they can by their bad birds to decoy the red people into the war on their side. I warn all the red people to avoid the ruin this must bring upon them. And I say to you, my children, your father does not ask you to join his warriors. Sit still on your seats, and be witnesses that they are able to beat their enemies and protect their red friends. This is the fatherly advice I give you.

I have a further advice for my red children. You see how the Country of the 18 fires is filled with people. They increase like the corn they put in the ground. They all have good houses to shelter them from all weathers, good clothes, suitable to all seasons, and as for food of all sorts, you see they have enough and to spare. No man, woman, or child of the 18 fires ever perished of hunger. Compare all this with the condition of the red people. They are scattered here and there in handfuls. Their lodges are cold, leaky, and smoky. They have hard fare, and often not enough of it. Why this mighty difference? The reason, my red children, is plain. The white people breed cattle and sheep. They plow the earth, and make it give them every thing they want. They spin and weave. Their heads and their hands make all the elements and productions of nature useful to them. Above all, the people of the 18 fires live in constant peace and friendship. No tomahawk has ever been raised by one against another. Not a drop of blood has ever touched the chain that holds them together as one family. All their belts are white belts. It is in your power to be like them. The ground that feeds one Lodge by hunting would feed a great band by the plow and the hoe. The Great Spirit has given you, like your white brethren, good heads to contrive, strong arms, and active bodies. Use them like your white

brethren; not all at once, which is difficult, but by little and little, which is easy. Especially live in peace with one another, like your white brethren of the 18 fires, and, like them, your little sparks will grow into great fires. You will be well fed, well clothed, dwell in good houses, and enjoy the happiness for which you, like them, were created. The Great Spirit is the friend of man of all colours. He made them to be friends of one another. The more they are so, the more he will be their friend. These are the words of your father to his red children. The Great Spirit, who is the father of us all, approves them. Let them pass through the ear, into the heart. Carry them home to your people. And as long as you remember this visit to your father of the 18 fires, remember these as his last and best words to you.

In the present state of your wants, Factories are established where you may trade and supply them. Of late, the times have made it difficult to send you all the things convenient to you. We are now enlarging our workshops and our weaving houses, and soon there will be no difficulty.

As we cannot always see one another, the distance being great, my words, from time to time, will be delivered to you by General Clarke, and others who may be near you. Your words will always come to me through the same hands. I hope they will always be good words.

LETTERS, ETC.

TO THOMAS JEFFERSON.

WASHINGTON, *Jan*y 27, 1813.

DEAR SIR,—Congress proceed with their usual slowness, even on the most essential subjects; and the undercurrent against us is as strong as ever. I have not time to explain the late changes in the Executive Department, if I were disposed to trouble you with them. Bonaparte, according to his own shewing, is in serious danger; and if half the official accounts of the Russians be true, his own escape is barely possible, and that of his army impossible. The effect of such a catastrophe on his compulsory allies may once more turn the tables quite round in the case between France and England. You will have seen the speech of the Regent. The debates on it have not reached us. Wellesley's party attack the Ministry for not prosecuting the war more vigorously against us. Nothing but the difficulty of their affairs will open their ears, and that without opening their hearts to peace. In the Peninsula, the French are driving Wellington back to Lisbon, and there now is no doubt that the late harvest is a very short one, and the quality for the most part bad. Their expenditures, also, are enormous, beyond former years; and their Bank paper 35 per cent below specie. I have for you a copy of Cooper's Justinian, which I will forward by next mail.

TO JOHN BINNS AND OTHERS.

WASHINGTON, *Feb*y 11, 1813.

GENTLEMEN,—I have received your communication in behalf of the naturalized Citizens in and near Philadelphia who were

born within the British dominions, occasioned by the Proclamation of the Prince Regent of G. Britain, dated the 26 of October last, and by other indications of a purpose of subjecting to the penalties of British law such of that description of Citizens as shall have been taken in arms against G. Britain.

As the British laws and practice confer all the rights and immunities of natural-born subjects on aliens serving even a short period on board British vessels, it might have been concluded that an intention would have been neither formed nor proclaimed by the Head of that nation, which is as inconsistent with its own example as it is repugnant to reason and humanity.

The rights of naturalized Citizens being under the same guaranty of the National faith and honor with the rights of other Citizens, the former may be assured that it is the determination, as it will be the duty of the Executive department of the Government, to employ whatever just means may be within its competency, for enforcing the respect which is due from the enemy to the rights and persons of those who combat under the banners, and in defence and maintenance of the rights and safety, of their adopted country.

TO THOMAS JEFFERSON.

WASHINGTON, March 10, 1813.

DEAR SIR,—I have received your two favors of the 8 and 21 ult. The conduct and character of the late Commander at Niagara, as portrayed in the narrative enclosed in the first, had been before sufficiently brought to our knowledge. Some of his disqualifications for *such* a trust were indeed understood when he was appointed *Inspector General*. Genl Dearborn seems not to have been apprised of some of the sides of his character, though he has an apology for what he did in the paucity of General officers provided for the army at that time, and the difficulty of making a satisfactory selection. The narrative is returned, as you desire. It gives me pleasure to receive a con-

firmation of the unchanged dispositions of those whose sympathies with R—— S—— could not fail to be most excited. The opportunity of proving to one of them that I have not permitted my belief or my dispositions to be affected by reports or presumptions inconsistent with his penetration, candour, and justice, has been promptly embraced, as you will see by the late military appointments. His son has just received the rank of Major. You will see, also, that I have taken the liberty of naming Mr. Randolph to the Senate for the command of a Regiment, and that it is now within his acceptance. I was aware of all the considerations, and [?] embracing those around him, which were mingled with the subject. But knowing his superiority in the talents and military acquirements so much needed in our Army, and that they had occurred to others of his friends as well as myself, I could not do less than give the public a chance of having the benefit of them. I should, indeed, have taken the same liberty in the original nominations, but for the less decided state of things than that now existing.

If you do not receive the New York Mercantile Advertiser, the enclosed will give you the Russian account of the catastrophe of the French Army. It is doubtless much exaggerated; but there is no doubt that the losses are beyond example. Whether they can be so replaced as to prevent the defection of Allies, and to present another formidable countenance to the North is uncertain. It does not appear that any thing like despondence is felt at Paris; and so many interests on the Continent have become associated with the ascendancy of Napoleon, that it will [not?] be surprising, if, with the terrors of his name, he should surmount his difficulties. In England, unusual exultation is indulged on the recent events, and, united with the rage and jealousy produced by our little naval triumphs, account for the gigantic force she is bringing against us on the water. In the meantime, Russia, as you will observe, is tendering her mediating friendship, with the collateral view, there is reason to believe, of deriving advantage from the *neutral* interference with British monopoly in the trade with her. We shall endeavor to turn the good will of Russia to the proper account.

Whether England will accede to the mediation, or do so with evasive purposes, remains to be seen. That she has brought it about I cannot readily suppose, because I think she would not promote our political intercourse with the Baltic, where she apprehends a sympathy with our maritime doctrines, and not with hers. The present occasion proves the good policy of having cultivated the favorable dispositions of the Emperor Alexander. We have good reason to believe that Sweden is as well inclined towards us as Russia.

TO COL. DAVID HUMPHREYS.

WASHINGTON, Mar. 23, 1813.

DEAR SIR,—I have received your letter of the 19th ultimo. Mr. Perkins, who was to have been the bearer, has not yet arrived, unless, as is possible, he may have done so, and had his communications with the Patent Office without my knowing it.

Altho' it is neither usual nor often eligible to enter into political explanations on such an occasion as the present, I am induced by the frank and friendly tenor of your remarks to express (under the reserves which you will infer) my regret that you should be able to cite a prevailing opinion, that "an alliance with France and a systematic exclusion of commerce" were within the views of the Administration.

To say nothing of the extreme improbability of such a policy on the first point, it is not easy to conceive a more formal disavowal of it than has been repeatedly made and published both by my predecessor and myself, particularly in the Messages relating to the war, which emphatically impugn political alliances or conventions with any foreign power. In full conformity with these disavowals is the letter from Mr. Barlow to Mr. Monroe, lately published, from which it must be necessarily inferred that he was forbidden to enter into any arrangement with France beyond the subjects of indemnity and commerce. With such strong presumptions and decisive proofs before the public, it is impossible that a purpose in this Government of allying

itself with that of France can be seriously believed by any intelligent individual not in a temper to reject a witness even from the dead.

As to a systematic exclusion of commerce, a belief of it is still more incomprehensible. Temporary abridgements or suspensions of it must have for their object its permanent freedom, as interruptions of peace have for their object a re-establishment of peace on improved foundations. In such a light only can the restrictive measures applied to our commerce be rationally viewed. The avowed object of them, in fact, was to liberate our commerce from foreign restrictions equally obnoxious to all parties. Whether the means were well applied or not may be made a question. The object itself never can. How is it possible that any man in his senses should attempt or wish to annihilate the foreign commerce of such a country as this; or that such a policy should be supported by that portion of the country which thinks itself as much more interested in commerce than the other portion as the cargoes of ships are more valuable than their freight?

Viewing the topics which have so much agitated the public mind in the light here presented, I have never allowed myself to believe that the Union was in danger, or that a dissolution of it could be desired, unless by a few individuals, if such there be, in desperate situations or of unbridled passions. In addition to the thousand affinities belonging to every part of the nation, every part has an interest, as deep as it is obvious, in maintaining the bond which keeps the whole together; and the Eastern part certainly not less than any other. Looking to the immediate and *commercial* effect of a dissolution, it is clear that the Eastern part would be the greatest loser by such an event, and not likely, therefore, deliberately to rush into it; especially when it takes into view the groundlessness of the suspicions which alone could suggest so dreadful an alternative, and the turn which would probably grow out of it to the relations with Europe. The great road of profitable intercourse for New England, even with old England, lies through the wheat, the cotton, and the tobacco fields, of her Southern and Western confeder-

ates. On what basis could New England and old England form commercial stipulations? On all the great articles they would be in direct rivalship. The real source of our revolution was the commercial jealousy of Great Britain towards that part of her then Colonies. If there be links of common interest between the two countries, they would connect the Southern, and not the Northern States, with that part of Europe.

TO JOHN NICHOLAS.

WASHINGTON. April 2d, 1813.

DEAR SIR,—Your favor of the 11th March came duly to hand, and I feel myself obliged by the friendly spirit of the observations it contains. The circumstances under which the war commenced on our part require that it should be reviewed with a liberality above the ordinary rules and dispositions indulged in such cases. It had become impossible to avoid, or even delay, war at a moment when we were not prepared for it, and when it was certain that effective preparations would not take place whilst the question of war was undecided. Another feature was, the discord and variety of opinions and views in the public councils, of which sufficient evidence has been seen in the public debates and proceedings, and of which much more is known than ever has been published. The calculations of the Executive were, that it would be best to open the war with a force of a kind and amount that would be soon procured, and that might strike an important blow before the enemy, who was known to disbelieve the approach of such an event, could be reinforced. These calculations were defeated, as you observe, by mixing and substituting preparations necessarily producing fatal delays, and in some respects thwarting each other. At this moment, notwithstanding the additional stimuli, it is not certain that the regular force exceeds that which was in the first instance recommended, which would have been more an overmatch for the then strength of the enemy than the force voted, if realized, would be for his present strength; and which could

have been easily augmented as fast as might be necessary to maintain conquered ground, or meet reinforcements from Europe or elsewhere. The failure of our calculations with respect to the expedition under Hull needs no comment. The worst of it was, that we were misled by a reliance, authorized by himself, on its securing to us the command of the Lakes. The decisive importance of this advantage has always been well understood; but until the first prospect ceased, other means of attaining it were repressed by certain difficulties in carrying them into effect. These means have since been pushed with alacrity, and, we hope, will enable us to open the campaign, in relation to Canada, with a retort of the success which the last turned against us. With the command of Lake Ontario, the treasonable commerce at which you point will probably be found too hazardous to be prosecuted. I have furnished you hints, however, for the consideration of the proper Departments.

We are at present occupied with the mediation of Russia. That is the only power in Europe which can command respect from both France and England, and at this moment it is in its zenith. We shall endeavour to turn this mediation to the best account, in promoting a just peace. We are encouraged in this policy by the known friendship of the Emperor Alexander to this Country; and by the probability that the greater affinity between the Baltic and American ideas of maritime law than between those of the former and of G. Britain, will render his interposition as favorable as will be consistent with the character assumed by him.

TO THOMAS JEFFERSON.

WASHINGTON, June 6, 1813.

DEAR SIR,—I received your favor of the ———, and now return the letter of Doctor Waterhouse, with the newspapers sent with it. He appears to be a man of ability and learning, and to have been rendered interesting to several distinguished

To JEFFERSON

June 6 1813

friends to the Administration by the persecutions he has suffered from its enemies. Like many others, however, I see at present no reward for him but in his own virtues. The Treasury of the Mint was allotted by the general sentiment to Doctor J. Rush. And Doctor Tilton has long since been had in view for the superintendence of the Medical Department of the Army.

Your suggestions for protecting the trade of the Chesapeake by gun-boats at the South end of it, with a safe retreat provided for them, have been taken into consideration, with all the respect due to the importance as well as the motives of them. The present Secretary of the Navy is not unfriendly to gun-boats, and, in general, the call for them by the inhabitants of the coast proves a diffusive sense of their utility. It seems agreed, at the same time, that, being too slow in sailing and too heavy for rowing, they are limited in their use to particular situations, and rarely for other than defensive co-operations. That an adequate number of them in Lynhaven Bay, with a safety of retreat, would be useful, cannot be doubtful; but if the enemy chuse to bring such a force as they have applied, and with appearances of an intended increase, the number of gun-boats necessary to controul them would be very great, and their effect pretty much restricted to guarding the interior navigation of the Bay. Cruisers on the outside of the Capes, beyond the range of the gun-boats, would still blockade the external commerce.

Commodore Barry has suggested a species of row galley, which he considers as better fitted for protecting the interior trade of the Bay than the gun-boat, or, rather, as an essential auxiliary to the gun-boats. His plan is to allow them twenty oars and muskets on each side, to be planked up for protection of the oarsmen against small arms in the enemy's launches, and to have one long and heavy gun; their construction to fit them for speed and for shallow water, and their length and form to be such that at the end of the war they might be easily raised on, and become ordinary coasters. Twenty of these, costing 50 or 60 thousand dollars, he thinks would put an end to the dep-

redations of the smaller vessels, which have been the greatest, and might even attack large ones in the night, or under special circumstances.

I have not ascertained the opinion of the Secretary of the Navy, who adds to a sound judgment a great deal of practical knowledge on such subjects.

You have in the newspapers all the latest news, both foreign and domestic.

TO THE SENATE OF THE UNITED STATES.

I have received from the committee appointed by the resolution of the Senate of the — day of ———, a copy of that resolution, which authorizes the committee to confer with the President, on the subject of the nomination made by him of a minister plenipotentiary to Sweden.

Conceiving it to be my duty to decline the proposed conference with the committee, and it being uncertain when it may be convenient to explain to the committee, and, through them, to the Senate, the grounds of my so doing, I think it proper to address the explanation directly to the Senate.

Without entering into a general review of the relations in which the Constitution has placed the several departments of the government to each other, it will suffice to remark:

That the executive and Senate, in the cases of appointments to office and of treaties, are to be considered as independent of and co-ordinate with each other. If they agree, the appointments or treaties are made. If the Senate disagree, they fail. If the Senate wish information previous to their final decision, the practice, keeping in view the constitutional relations of the Senate and the Executive, has been either to request the Executive to furnish it, or to refer the subject to a committee of their body, to communicate either formally or informally with the head of the proper department. The appointment of a committee of the Senate to confer immediately with the Executive himself appears to lose sight of the co-ordinate relation between

the Executive and the Senate which the Constitution has established, and which ought, therefore, to be maintained.

The relation between the Senate and House of Representatives, in whom legislative power is concurrently vested, is sufficiently analogous to illustrate that between the Executive and Senate in making appointments and treaties. The two houses are in like manner independent of and co-ordinate with each other; and the invariable practice of each, in appointing committees of conference and consultation, is to commission them to confer, not with the co-ordinate body itself, but with a committee of that body. And although both branches of the Legislature may be too numerous to hold conveniently a conference with committees were they to be appointed by either to confer with the entire body of the other, it may be fairly presumed that, if the whole number of either branch were not too large for the purpose, the objection to such a conference, being against the principle, as derogating from the co-ordinate relations of the two houses, would retain all its force.

I add only that I am entirely persuaded of the purity of the intentions of the Senate in the course they have pursued on this occasion, and with which my view of the subject makes it my duty not to accord; and that they will be cheerfully furnished with all the suitable information in possession of the Executive in any mode deemed consistent with the principles of the Constitution, and the settled practice under it.

WASHINGTON, July 6, 1813.

TO ALBERT GALLATIN.

WASHINGTON, Aug^t 2, 1813.

DEAR SIR,—You will learn from the Secretary of State the painful manner in which the Senate have mutilated the mission to S^t Petersburg. But the course and circumstances of the proceeding require more of explanation than may fall within his scope, and more, indeed, than can well be conveyed on paper.

Previously to sending in the nomination of the Envoys, there

was no indication that, if the popularity of the object did not prevent opposition, it would extend beyond a portion of the Senate essentially short of a majority. And there is reason to believe that if a preliminary attempt to embarrass the subject had been decided on at the proper time, and before out-door means could be interposed, the desired and expected result would have been secured. Liberality, however, yielded to an adjournment of the question, and the opportunity afforded by it was industriously improved. The first step, after formally ascertaining the arrangement under which you were included in the mission, was to obtain a vote declaring an incompatibility (without specifying whether constitutional or otherwise) between the domestic and diplomatic appointments. The tendency of this proposition, to comprehend as many and to commit as much [?] as possible, is obvious. It would seem, notwithstanding, that the vote of incompatibility was concurred in by some who regarded it not as an obstacle to an ultimate concurrence in the nomination, but rather as a protest throwing the whole responsibility upon the Executive. The next step was to communicate this opinion of the Senate to me, with a view either to extort a compliance, or to unite against the nomination all, or as many as possible, who had concurred in the vote of incompatibility. In this stage of the business, it was the confident opinion of the supporters of the nomination that inflexibility on the part of the Executive would ensure a majority for it, and their unanimous and urgent advice, as well on general grounds as on that particular calculation, not to yield to the irregular views of the adverse party. The event proved that the final purposes of certain individuals, on whom the turning of the scale depended, had been miscounted. It is not easy to express the mixed feelings produced by the disappointment, or the painfulness of my own, in particular. It was at first suggested, from some friendly sources, as most advisable in such a posture of things, to send in a renomination, founded on a vacancy in the Secretaryship of the Treasury; and under certain points of view this expedient had its recommendations. They were met, however, by difficulties and considerations not to be got over. 1. The ground

taken by the Executive did not admit a compliance with the condition imposed by the Senate, without a palpable inconsistency. 2. Those who had approved and urged this ground could not brook the idea of putting their opponents ostensibly in the right, and themselves in the wrong. 3. It was calculated that the mediation, if accepted by Great Britain, would be over, and the Envoys on their way home, before the decision of the Senate could reach S^t Petersburg; and that this last would certainly be the case should the mediation be rejected, as was becoming more and more probable, especially considering the prospects on the Continent, and, as seems now to be put beyond doubt, by a late communication from Beaseley, at London. Nor were these the only views of the subject. It was apprehended by some of the best disposed and best informed of the Senate that a renomination would not secure the object. As it had become certain that the open and secret adversaries together amounted to a formidable number, who would be doubly gratified by a double triumph, it was suspected that, after succeeding in getting the Treasury vacated, it would be a prerequisite to a confirmation of the other appointment that the vacancy should be actually filled, in order to prevent its being kept open for your return, which might be looked for within the term of six months; and that with this view a resolution might be obtained declaring the inconsistency of a protracted vacancy with the public service, and the incompatibility of the two offices held by the Secretary of the Navy, to be used in like manner with the first resolution, as a motive or pretext for embarrassing and, if possible, getting rid of the renomination. It is certain that some who had intimated an intended change of their votes, in case the Treasury Department should be vacated, had in view that the vacancy should be forthwith filled, and even that a nomination to it should go in with the renomination. Whether a majority would have gone such lengths is uncertain; but strong symptoms existed of a temper in the Body capable of going very great lengths. And, apart from all other considerations, it would have been impossible, even if it had been intended to make and fill a vacancy in the Treasury Department, that the

consent of the Senate in the other case could be purchased by a pledge to that effect. Besides the degradation of the Executive, it would have introduced a species of barter of the most fatal tendency.

I have given you this summary, that you may understand the true character of a proceeding which has given us so much concern. I will add to it two observations only: 1. That the Senate, by resting their negative on the opinion of official incompatibility, tacitly acknowledge a personal fitness, and so far defeat their own hostility. 2. That the whole proceeding, according to every friendly opinion, will have the effect of giving you a stronger hold on the confidence and support of the nation. Judging from the effect as already known, this cannot fail to be the case.

I have just recovered strength enough, after a severe and tedious attack of bilious fever, to bear a journey to the mountains, whither I am about setting out. The physicians prescribe it as essential to my thorough recovery and security against a relapse at the present season. For recent occurrences and the general state of affairs, I refer to the official communications going by this conveyance. If it were less inconvenient to me to lengthen my letter, I should recollect that I send it without expecting that it will find you at Petersburg, should it happen not to be intercepted on its passage.

Accept my affectionate esteem and best wishes.

TO MAJ^R GEN^L HENRY DEARBORN.

WASHINGTON, Aug^t 8th, 1813.

DEAR SIR,—I have received yours of the 24th July. As my esteem and regard have undergone no change, I wish you to be apprized that such was the state of things, and such the turn they were taking, that the retirement which is the subject of your letter was pressed by your best personal friends.

It was my purpose to have written to you on the occasion,

but it was made impossible by a severe illness, from which I am now barely enough recovered for a journey to the mountains, prescribed by my physicians as indispensable. It would have been entirely agreeable to me if, as I took for granted was to be the case, you had executed your original intention of providing for your health by exchanging the sickliness of Niagara for some eligible spot, and I sincerely lament every pain to which you have been subsequently exposed, from whatever circumstance it has proceeded. How far the investigation you refer to would be regular, I am not prepared to say. You have seen the motion in the House of Representatives comprehending such an object, and the prospect held out of resuming the subject at another session. I am persuaded that you will not lose in any respect by the effect of time and truth.

TO GOVERNOR SHELBY.

MONTPELIER, Aug. 12, 1813.

DEAR SIR,—I received your favor of the 18th July a few days only before I left Washington, which was on the 9th instant. If any doubt had ever existed of the patriotism or bravery of the citizens of Kentucky, it would have been turned into an admiration of both by the tests to which the war has put them. Nor could any who are acquainted with your history and character wish the military services of your fellow-citizens to be under better direction than yours. How far a call on you and them, according to the provision made by your Legislature, will take place, must depend on the wants of Gen^l Harrison, who will be regulated in his applications for succour by his own prospects on Lake Erie, and by the operations on and below Lake Ontario, which must have a considerable bearing on his. We do not despond, though we ought not to be too sanguine, that the effect of our naval preparations on the several Lakes, and the proper use of the forces assembled on and convenient to them, will soon relieve the distant militia and volunteers from much of the demands which the course of the war on

our inland frontier has made on them. Should it happen otherwise, it is consoling to know that such resorts exist as those to which your letter contains so favorable an example.

TO JOHN GRAHAM, [CHIEF CLERK IN STATE DEPARTMENT.]

MONTPELLIER, Aug^t 28th, 1813.

DEAR SIR,—I have received your favor of the 26th. I cannot recollect, off-hand, very much about the letter from Turreau to R. Smith, of which a translation is printed at Georgetown. My general impression is, that it was considered, at the time, as highly exceptionable in several passages; that it was noticed that Turreau, by a *ruse diplomatique*, which distinguished between the existing and preceding administrations, and assumed the air of a private instead of an official paper, had attempted to cover and pass off here a rudeness which might be received as a proof of his energetic zeal by his own Government; and that, unless Turreau preferred taking back the paper, a proper notice of its offensiveness ought to be taken; it being of course left to R. Smith to manage the business with Turreau. A further appeal to my memory may give more precision to these circumstances, and may recover others from the oblivion into which they have fallen. The case will probably be the same with you. If you can pronounce with certainty from your own knowledge, or the information of Mr. Smith, that the letter was taken back by Turreau, (a thing not very unusual in such cases, and of which there have been examples with other foreign Ministers, British,* if I mistake not, as well as French,†) it may be well, perhaps; that the fact should be noticed in the newspaper. An antidote in some form to the mischievous intent of the publication seems due to the crisis chosen for it. If no answer were given to the letter, which the records will test, that alone would be animadversion, in one of its modes, of no inconsider-

* Mr. Erskine.

† Mr. Pichon.

able force. It is unfortunate that the individual possessing the fullest knowledge of all circumstances cannot be resorted to. If he has himself conveyed the paper to the printer, as you conjecture, it is another evidence of the folly which has marked his career; since the position which he occupied, and the address of the paper to him as "une lettre simple," would assign to him, more particularly, any reproach of want of sensibility to its offensive character: for he will hardly pretend that he was controuled in the expression of it. The time for doing that was the time when he mustered the whole of that and every other species of denunciation against the object of his tormenting passions. If the original of the French letter was returned to Turreau without a copy having been taken, as may be inferred from the sending of a translation to the printer, and your translation is not found in the office, the translation sent must have been yours, and the public will decide between the clerks in the Department and the then head of it. It is sufficiently known that he carried with him out of it copies of other papers which he wished to possess, with a view to eventual publicity.

If the date of the translated letter be correctly published, the letter must have been received before the rejection of Erskine's arrangement was known, and at a period when a reconciliation with England was considered as certain. This consideration might properly have had weight in disposing the Cabinet to bear with less impatience an exceptionable tone from a French Minister, whose feelings on such an event would naturally mingle themselves with his complaints on other subjects, some of which, particularly the apathy of the American Government with respect to the French ship burnt near the shore of North Carolina, it was not very easy to meet in a satisfactory manner.

I am very sorry to hear of the indisposition of Col. Monroe. I hope it will be found to justify the term *slight* which you apply to it. My own health has greatly improved since my arrival here, but I have not been without several slight returns of fever, which are chargeable rather on the remnant of the influenza than the cause from which I suffered in Washington. I am now

pretty well recovered from the last return, which took place a few days ago. Accept, with my respects, my best wishes for your health and welfare.

TO WILLIAM WIRT.

MONTPELIER, Sept^r 30th, 1813.

DEAR SIR,—I have been several weeks in possession of your favor of the 29th of August. As it appeared that you were on an excursion from Richmond, perhaps behind the mountains, I have not been in a hurry to acknowledge it. From the present advance of the season, I infer your probable return to that place.

From whatever motives information such as that in your letter might proceed, it ought not to be unwelcome. The friendly ones by which I well know you were governed entitle it to my sincere thanks, which I pray you to accept.

I have not been unaware of the disappointment and discontent gaining ground with respect to the war on Canada, or of the use to which they were turned against the Administration. I have not been less aware that success alone would put an end to them. This is the test by which public opinion decides more or less in all cases, and most of all, perhaps, in that of military events, where there is the least opportunity of judging by any other. No stimulus, therefore, has been wanting to the exertions necessary to render our arms successful in the quarter where they have failed.

How far these exertions will prevail remains to be seen; and how far past failure is to be ascribed to the difficulties incident to the first stages of a war commenced as the present necessarily was; to the personal faults of those entrusted with command; to the course pursued by the National Legislature; or to mismanagements by the Executive Department, must be left to those who will decide impartially, and on fuller information than may now exist.

Without meaning to throw undue blame elsewhere, or to shun

whatever blame may be justly chargeable on the Executive, I will, in the confidence with which we both write, intimate the plan for giving effect to the war, originally entertained by that branch of the Government. As it was obvious that advantage ought to be taken of our chusing the time for commencing, or rather retorting, hostilities, and of the pains taken to make the British Government believe that they were not to be resorted to by the United States; and as it was foreseen that there would be great delay, if not impossibility, in raising a large army for a long term of service, it was thought best to limit our first attempts to such a force as might be obtained in a short time, and be sufficient to reduce Canada, from Montreal upwards, before the enemy would be prepared to resist its progress; trusting to the impression to be made by success, and to the time that would be afforded, for such an augmentation of the durable force as would be able to extend as well as secure our conquests. With these views, it was recommended to Congress to provide immediately and effectually for completing the existing establishment of 10,000 men; to provide for a like number to be enlisted for a shorter term of 2 or 3 years; and for volunteers, of whom an adequate number, as was represented, would be readily furnished by the enthusiasm of the frontiers of New York and Vermont. With this arrangement was combined the expedition conducted by Hull against the upper and weaker part of the Province.

Of the issue of this part of the plan, and its distressing consequences, it is needless to speak. The other part, not coinciding with the ideas adopted by Congress, was not brought to an experiment. It was there thought best to commence with the addition of 25,000 regulars to the existing establishment of 10,000. And to the delays in passing the laws for this purpose; to the deficiency in the bounty and pay allowed recruits; to the necessity of selecting 1,000 officers, to be drawn from every part of the Union; and to the difficulty, not to say impossibility, of procuring, at a crisis of such scarcity, supplies for such an army, and of distributing them over such a surface in the worst season of the year; may reasonably be ascribed the

loss of the first year of the land war. It unfortunately happened, also, that the first provision for the two vital Departments, the Commissary's and Quarter Master's, was so inadequate, that the War office, otherwise overcharged, was obliged for some time to perform the functions of both. It was only after repeated failures and a lapse of months that a Commissary General could be obtained on the terms offered by the law. Nor ought it to be omitted that the recommendation of a greater number of General Officers, though complied with at the last session of Congress, was rejected in the first instance. The same may be remarked as to two auxiliary appointments in the War office, now substantially provided for under other names in the organization of the military establishment. The utter inexperience of nearly all the new officers was an inconvenience of the most serious kind, but inseparable, as it always must be, from a Country among whose blessings it is to have long intervals of peace, and to be without those large standing armies which even in peace are fitted for war.

These observations will be allowed less weight in the present than in the first year of the war. But they will justly mitigate the lateness, to say nothing of the thinness of the ranks, notwithstanding the augmented inducements to enlist, attending the operations by which the character of the campaign is to be decided. My anxiety for the result is great, but not unmingled with hopes that it will furnish topics better than the past on which the censorious adversaries and criticising friends of the Administration are to be met.

Accept, dear Sir, the assurances of my regard.

TO MORRIS BIRKBECK.

SIR,—I have received your letter of September 18, though at a much later day than that at which it was due. The letter inclosed in it from Mr. Coles would have been received with additional pleasure from your own hand, if you had found it convenient to take Montpelier in your Westwardly route. He

was a few days ago with me, and confirmed verbally the esteem and the friendly interest he takes in your behalf.

I cannot but commend the benevolent solicitude you express for your emigrating countrymen; and I sincerely wish that all who are attached to our Country by its natural and political advantages might be as little disappointed or embarrassed on their arrival as possible. I am obliged, at the same time, to say, as you will doubtless learn from others, that it is not either the provision of our laws or the practice of the Government to give any encouragement to emigrants, unless it be in cases where they may bring with them some special addition to our stock of arts or articles of culture. You will perceive, therefore, that it is not in the power of the Executive to dispose of the public land in a mode different from the ordinary one; and I should not be justified in encouraging any reliance on the success of a resort to the National Legislature.

Should your future movements bring you at any time within reach of my residence, I shall be happy in an opportunity of proving, by a cordial welcome, the sincerity of my respect and good wishes.

TO WILLIAM EUSTIS.

WASHINGTON, November 12, 1813.

DEAR SIR,—I have just been favored with yours of the 7 instant.

Whatever may be the weight of your observations, it would be difficult to act on the view they take of the subject, complicated as it necessarily is with some other views of it, passing by the incompetency of the Executive alone to consummate the arrangement suggested.

I may not be able to do full justice to impressions, some of which, at least, may possibly grow out of circumstances not to be exactly appreciated in other situations. Usage, however, seems to have excluded the necessity of disagreeable comparisons in cases of appointments not having for their object honor

or distinctions, but reference merely to calculations of interest or conveniency; more especially where the appointments are not coeval.

I shall take no further step until I shall be favored with your final communication, taking the liberty only of intimating, that the early functions [?] of the Collectors in the towns having Banks is urged from the Treasury Department, and of renewing assurances of my high esteem and best regards.

TO THE SENATE AND HOUSE OF COMMONS OF THE GENERAL ASSEMBLY OF THE STATE OF NORTH CAROLINA.

December 11, 1813.

I have received, fellow-citizens, your memorial of the 29th ult., representing the exposure of your State to danger on its sea-coast, and requesting to be informed whether measures will be immediately taken by the National Government for its protection.

The anxiety which you manifest for the security of the State under your particular care cannot but be commended; and it would be highly agreeable to make a communication that would remove all occasion for it.

The Legislature of North Carolina is too enlightened and too just not to be sensible that the protection to be extended by the General Government over the Union must be proportioned to the aggregate means applicable thereto; and that in distributing these regard must be had to the comparative practicability and probability of attempts on particular States and places. Against occasional attempts, where there are so many points accessible by water, from an enemy having on that element a force so extensive and so readily concentrated, an absolute protection of every one is not possible. Considering the States as parts of one whole, the best defence of the whole must be kept in view by the authority to which that is entrusted; and it fortunately happens, that the security and interests of particular parts will

be often comprehended in the effect produced by measures more immediately applied to the protection of other parts.

These observations are not intended to preclude a due consideration of the particular case stated in your memorial. They appeal only to the candour with which you will be sure to review the measures of the Executive in relation to the general and particular defence of our country, and to the confidence claimed by the impartiality which have directed them.

With a view to the more convenient superintendence and protection of every part of the United States, they have been partitioned into military districts. The officer allotted to that which includes the State of North Carolina will be instructed, as soon as practicable, to visit and examine the situation of the exposed parts of the State, with a view to improvements which may be properly made in works of defence. He was about to make such a visit when he was lately called away to a more urgent but temporary service. In the mean time, a Col. of Engineers had been sent to examine the forts and to make report on the subject of them.

The Secretary of the Navy has not been inattentive to the means of defence depending on his Department which were thought best adapted to the waters of North Carolina. And to the gun-boats already allotted, and the equipments of which has not been intermitted, a like number of armed boats of another modification will be added as soon as they can be made ready for service.

In making this communication, it will, of course, not be understood as superseding any auxiliary provisions which the State of North Carolina may think proper to make on its own account, as has been done by some other States, in order to a more compleat and particular security than it may be in the power of the General Government to extend to every exposed situation throughout the frontiers of the United States.

Be pleased, fellow-citizens, to accept assurances of my high respect and my best wishes.

TO THE LEGISLATURE OF THE STATE OF SOUTH CAROLINA.

December, 1813.

I have received, fellow-citizens, your communication of the 18th of December. It is in a spirit which was to be expected from a public Body whose sensibility to the rights and honor of the nation produced a unanimous approbation of a war waged in defence of both.

You do no more than justice to the love of peace, patient forbearance, and the conciliatory efforts which preceded this last appeal of injured nations against the inflexibility of their aggressors. When finally and formally assured by the British Government that its hostile measures would not be revoked, no alternative was left to the United States but irretrievable degradation, or the lesser calamity of a resort to arms.

The reluctance of this resort has been sufficiently attested by the readiness shewn, and the steps taken on the part of the United States, first to suspend its effects, and then, by liberal arrangements, to terminate its causes. Until a correspondent disposition on the part of the enemy shall give success to the pacific views on our part, the course pointed at by your honorable patriotism is that alone which becomes a free people, devoted to their Independence, and awake to their high destinies.

Amidst the painful scenes of the war, it is consoling to us all that it has been conducted, on our part, in a spirit and manner which prove that the American character is as conspicuous for humanity as for bravery; and that, if a seeming departure from the former has taken place in any instance, it has been extorted by the cruel policy of the adversary, and has for its real object a controul or correction of that policy, dictated by humanity itself.

The approbation which you have been pleased to express of my public conduct during a trying period derives a particular value from my high respect for the source from which I receive it; and I pray you, fellow-citizens, to accept, with my acknowledgments, assurances of my best wishes for your prosperity and

that of a State whose example in the common cause so well merits it.

TO GOVERNOR TOMPKINS.

WASHINGTON, Jan^y 25th, 1814.

SIR,—Your favor of the 3d instant came duly to hand. You will have learnt from the Secretary of War the measures which were thought, on the whole, best suited to the general posture of our military affairs.

The events on the Niagara frontier were as unexpected as they have been distressing. As there can be little comparative inducement to the enemy to prolong their barbarities in that neighbourhood, it is most to be apprehended that the attention of that part of their force will be turned to some other quarter; either to Presque Isle or Detroit. Precautions have been taken with respect to both; but such is the reduction of our regular force from sickness and other causes every where, and such the difficulties of supplying occasional force in distant and detached situations, that some anxiety necessarily remains for the security of those important points. As a controul on enterprises of the enemy upwards, as well as a barrier to the Country adjoining Niagara, a regular force of the amount you suggest would be the best provision for that station, could it be spared from the armies below and the objects to be elsewhere kept in view. Sackett's harbour and the stake on Lake Champlain have an essential and constant claim to attention. If, besides making the former safe, Kingston can be attacked, or even seriously threatened, the effect will be salutary every where.

In the Navy Department every possible exertion will be made to keep down the enemy on Lake Ontario. The task is arduous, but its importance is in full proportion.

Be assured, sir, that I do justice to your laudable solicitude for the safety of the State over which you preside, and estimate as I ought your readiness to co-operate with the measures of the General Government.

Be pleased to accept assurances of my great consideration and respect.

TO WILLIAM PINKNEY.

WASHINGTON, Jan^y 29, 1814.

DEAR SIR,—I have received your letter conveying a resignation of the important office held by you. As the Bill to which you refer has not yet passed into a law, I hope you will be able to prolong your functions till a successor can be provided; and at any rate to afford aid in the business of the United States, particularly understood by you, at the approaching term of the Supreme Court.

On the first knowledge of the Bill, I was not unaware that the dilemma it imposes might deprive us of your associated services, and the United States of the advantage accruing from your professional care of their interests. I readily acknowledge that, in a general view, the object of the bill is not ineligible to the Executive. At the same time, there may be instances where talents and services of peculiar value outweigh the consideration of constant residence; and I have felt all the force of this truth since I have had the pleasure of numbering you among the partners of my public trust. In losing that pleasure, I pray you to be assured of my high and continued esteem, and of my sincere friendship and best wishes.

TO WILLIAM JONES.

April , 1814

DEAR SIR,—I have before me your letter of yesterday. At the communication it makes, I cannot but feel the sincerest regret, which is much heightened by the considerations which produced it. The nature of these forbids any effort to divert you from your purpose, especially as it is qualified by the interval of carrying it into effect. All that I ought to hope is, that if a continuance of the war should call for services so difficult to be

found, some removal of the pressure of unfavorable circumstances may justify you in prolonging yours. Whatever may happen, I cannot let the present occasion pass without expressing the gratification I have experienced in the entire fulfillment of my expectations, large as they were, from your talents and exertions, and from all those personal qualities which harmonize official and sweeten social intercourse. To these assurances permit me to add my best wishes for your success in every thing that may conduce to your prosperity and happiness.

TO THOMAS JEFFERSON.

MONTPELIER, May 10, 1814.

DEAR SIR,—Having particular occasion, and the state of business at Washington not forbidding, I am on a short visit at my farm. Mrs. M., as well as myself, would gladly extend it to Monticello, but with a certainty that our return to Washington must be very soon. I am obliged, moreover, to hold myself in readiness to hasten it at any moment of notice. We must postpone, therefore, the pleasure of paying our respects there till the autumn, when I hope we shall be less restricted in time.

We have received no information from our Envoys to the Baltic for a very long time. From those last appointed, there has not been time to hear after their arrival at Gottenburg. Neither have we any accounts from England, other than the newspaper paragraphs which you have seen. The British Government cannot do less than send negotiators to meet ours; but whether in the spirit of ours, is the important question. The turn of recent events in Europe, if truly represented, must strengthen the motives to get rid of the war with us; and their hopes, by a continuance of it, to break down our Government, must be more and more damped by occurrences here as they become known there. The election in New York alone crushes the project of the Junto faction, so long fostered by and flattering the expectations of the British Cabinet. Still, it is possible that new fallacies may suffice for a willingness to be deceived.

Our difficulties in procuring money without heavy taxes, and the supposed odium of these, will probably be made the most of by our internal enemies to the experiment of prolonged hostilities.

The idea of an armistice, so much bandied in the newspapers, rests on no very precise foundation. It is not doubted that it is wished for in Canada, and might coincide with the opinions of the naval commander; but it is presumable that the latter has no commensurate power, and it is taken for granted that the power in Canada is limited to operations of land forces.

TO GOVERNOR JAMES BARBOUR.

(Private.)

WASHINGTON, June 16, 1814.

DEAR SIR,—I have duly received your letter of the 13th.

That the late events in Europe will put it in the power of Great Britain to direct a much greater force against the United States, cannot be doubted. How far she may be restrained from so doing by an estimate of her interest in making peace, or by a respect for the sentiments of her allies, if these should urge it, cannot be yet known. It is incumbent on us to suppose that she may be restrained by neither, and to be prepared as well as we can to meet the augmented force which may invade us.

Our means for this purpose consist essentially of regular troops, and of Militia. As far as the former go, they will be applied in the way deemed most conducive to the public safety. The deficiency must be supplied by a resort to the latter; and the questions arising are, first, whether they shall be immediately called into service in anticipation of attack; and, secondly, what measures, in case of no such immediate call, can be usefully adopted by the States liable to attack.

Under existing circumstances, which, whilst they suggest general apprehensions, afford no information either as to the amount or the particular destination of forces that may be sent against

us; and taking into view the great number of objects accessible to attack by a large and concentrated force of the enemy, the objections to an immediate call of militia into service are obvious. If the call be made in favor of one assailable object, it must be extended proportionally to all. It would waste a resource on which eventually every thing may depend. And, what cannot escape the most serious reflection, the employment of bodies of militia sufficient to give security and tranquillity every where would rapidly exhaust our pecuniary means, and soon put every thing at hazard. Prudence advises, therefore, that we should exert all our vigilance in discovering the particular views of the enemy, and, by not prematurely or erroneously applying our means of defence, be the more able to use them with effect where and when they become necessary.

In the mean time, it will rest with the State Governments to do whatever may depend on them for keeping every thing in as preparatory an arrangement as possible for the prompt and effective service of their militia, as detachments from it may be required by emergencies. Where particular States have military means of any sort exclusively their own, they will of course decide for themselves as to the best use that can be made of them.

Knowing the just solicitude you feel for the safety of every part of the State under your charge, a solicitude I most sincerely participate, I regret that it is not in my power to give you either more certain information with respect to the plans and purposes of the enemy, or more satisfactory views of our means of frustrating them, or any answer more precise to the particular enquiry made by you. I assure myself you will readily comprehend that nothing more has been in my power.

Accept my high esteem and friendly respects.

TO C. J. INGERSOLL.

WASHINGTON, July 28th, 1814.

DEAR SIR,—I have received your favor of the 18th instant, and delivered into the hands of Mr. Rush the interesting extract inclosed in it. The armed neutrality in 1780 forms an Epoch in the history of maritime law, which makes it more than a point of mere curiosity to trace it to its real source. You know, perhaps, that there is an American pretension to a share, at least, in bringing about that measure. The fact may not improperly enter into a general research.

On the question of "free ships, free goods," it has always appeared to me very clear that the principle was right in itself, and friendly to the general interest of Nations. It is, perhaps, less clear that the United States have a special interest in it; unless combined with another principle, of which an example is found in our Treaty with Prussia, and probably in no other, namely, that unarmed merchant vessels, like wagons or ploughs, the property of one belligerent, should be unmolested by the other. This principle has, I believe, an undisputed American Father in Doctor Franklin.

On the question whether, under the law of Nations, as it stands *de facto*, "free ships make free cargoes," the United States, at an early day, took the negative side;* and although the acknowledgment of it has been shunned as much as possible since, it seems to have been generally understood that the British doctrine was practically admitted.

Were the question to be regarded as unsettled and open to fair discussion, I am persuaded that the weight of authority furnished by reason, public good, treaties, and the luminaries of public law, preponderates in favor of the principle, "free ships, free goods."

The ablest defence of the opposite principle which I have seen is in a treatise by Croke, the present Vice Admiralty Judge at Halifax, in answer to Schlegel. I am sorry I neither

* See Jefferson's correspondence with Genet.

possess a copy, nor can refer you to any convenient depository of one.

On the side of "free ships, free goods," may be urged not only the intrinsic merit of the rule, and the number and character of distinguished Jurists, but the predominant authority of Treaties, even of Treaties to which G. Britain is a party. Prior to the Treaty of Utrecht, her treaties, particularly with the Dutch, carefully inserted the stipulation. Sir William Temple, her ambassador, claimed great merit, on one occasion, for his success in obtaining from them an article to that effect. In the Treaty of Utrecht, in 1713, to which the several great maritime powers were parties, the principle is stipulated in the most explicit form. In the successive Treaties, to which the great maritime powers were also parties. in 1748, 1763, and 1783, the Treaty of Utrecht is renewed and made a part thereof. Perhaps no article in maritime law can be found which, at one time, rested on such broad and solid evidence of that general consent of nations which constitutes the positive law among them. To those Treaties, embracing so many parties, may be added the Treaty of 1786, between the two most important of them, G. Britain and France. In the negotiations at Amiens, at a still later date, the British Government was desirous of again re-enacting the Treaty, though probably with a view rather to the political balance than to the maritime principles contained in it.

It has been unfortunate that all the efforts of the Baltic Powers to secure the interests of neutrals have been frustrated by the want of a united and determined perseverance. Their leagues have been broken to pieces; and to finish the catastrophe, each of the parties has separately deserted itself. The latter Treaties of Russia, of Sweden, and of Denmark, with G. Britain, have all, in some form or other, let in the British doctrines, and become authorities against the claims of neutrals.

If a purification of the maritime code ever take place, the task seems to be reserved for the United States. They cannot fail to acquire rapidly more and more of respect from other nations, and of influence on those having a common interest

with themselves. They will soon become, in the canvas they spread, and in all the means of power, on the ocean, rivals of the nation which has, in fact, legislated on that element. Under such auspices, truth, justice, humanity, and universal good, will be inculcated, with an advantage which must gradually and peaceably enlist the civilized world against a code which violates all those obligations; a code as noxious by the wars and calamities it produces to its overbearing patron as to the nations protesting against it.

As a preparation for such a result, it is of great moment that the subject of maritime law should appear in our public debates, in the Judicial proceedings, and in individual disquisitions, to have been profoundly studied and understood, so as to attract favorable attention elsewhere; and by inspiring respect for the lights and the character of the nation, increase that for its power and importance. The law of nations has been made by the powerful nations; and these having been warlike in their dispositions and institutions, the law has been modelled to suit belligerent rather than peaceable nations. With the faculties for war, it is to be hoped our country will continue friendly to peace, and exert the influence belonging to it in promoting a system favorable to nations cherishing peace and justice, rather than to those devoted to ambition and conquest.

The questions claiming more particular research and elucidation seem to be those relating to contraband of war, blockades, the colonial and coasting trades, and the great question of "free ships, free goods."

TO GOVERNOR TOMPKINS.

Sept 28, 1814.

D^R SIR,—Mr. Monroe having just been appointed Secretary of War, it is necessary to provide for the vacancy resulting in the Department of State. Wishing to avail the U. States of your talents and services, I take the liberty of requesting permission to name you to the Senate as his successor. I am aware

of the very important station from which their concurrence will withdraw you; but I justify my personal wish to see you a member of the Executive family by my persuasion that the one contemplated will afford still greater scope for the benefits which you have given so many proofs of your disposition to render to our Country. I need not suggest that as early an answer as you can make convenient will be acceptable.

TO THOMAS JEFFERSON.

WASHINGTON, October 10, 1814.

DEAR SIR,—Your favor of the 24th ult. came duly to hand. I learn that the Library Committee will report favorably on your proposition to supply the loss of books by Congress. It will prove a gain to them if they have the wisdom to replace it by such a collection as yours. Mr. Smith will doubtless write you on the subject.

I have not yet read your last communication to Mr. Monroe on the subject of Finance. It seems clear, according to your reasoning in the preceding one, that a circulating medium, to take the place of a Bank or metallic medium, may be created by law, and made to answer the purpose of a loan, or rather anticipation of a tax; but as the resource cannot be extended beyond the amount of a *sufficient* medium, and of course cannot be *continued* but by successive re-emissions and redemptions by taxes, resort must eventually be had to loans of the usual sort, or an augmentation of taxes, according to the public exigencies. I say augmentations of taxes, because these, absorbing a larger sum into circulation, will admit an enlargement of the medium employed for the purpose. In England, where the paper medium is a legal tender in paying a hundred millions of taxes, thirty millions of interest to the public creditors, &c., &c., and in private debts, so as to stay a final recovery, we have seen what a mass of paper has been kept afloat, with little if any depreciation. That the difference in value between the circulating notes and the metals, [is] produced rather from the rise in the

latter than from the depreciation of the former, is now proved by the fact that the notes are, notwithstanding a late increase of their quantity, rising towards a par with the metals, in consequence of a favorable balance of trade, which diminishes the demand of them for foreign markets.

We have just received despatches from Ghent, which I shall lay before Congress to-day. The British sine qua non excluded us from fishing within the sovereignty attached to her shores, and from using these in curing fish; required a cession of as much of Maine as would remove the obstruction to a *direct* communication between Quebec and Halifax; confirmed to her the Passamaquoddy Islands as always hers of right; included in the pacification the Indian allies, with a boundary for them (such as that of the Treaty of Greenville) against the United States mutually guarantied, and the Indians restrained from selling their lands to either party, but free to sell them to a *third* party; prohibited the United States from having an armed force on the lakes or forts on their shores; the British prohibited as to neither; and substituted for the present North Western limit of the U. States a line running direct from the West end of Lake Superior to the Mississippi, with a right of G. Britain to the navigation of this river. Our ministers were all present, and in perfect harmony of opinion on the arrogance of such demands. They would probably leave Ghent shortly after the sailing of the vessel just arrived. Nothing can prevent it but a sudden change in the British Cabinet, not likely to happen, though it might be somewhat favored by an indignant rupture of the negotiation, as well as by the intelligence from this Country and the fermentations taking place in Europe.

I intended to have said something on the changes in the Cabinet, involving, in one instance, circumstances of which the public can as yet very little judge, but cannot do it now.

The situation of Sackett's Harbour is very critical. I hope for the best, but have serious apprehensions.

TO GOVERNOR TOMPKINS.

WASHINGTON, Oct^r 18, 1814.

DEAR SIR,—I have received your two letters of the 6 and 8th instant. I cannot deny the cogency of the considerations which have determined you to decline the station which was the subject of mine of the 28th ult., and that some of them can by no one be so well appreciated as by yourself. I was not unaware of the great value of your services within the limits of your particular State, under the circumstances attending it; but in looking to the Nation at large, and the importance of drawing into the Cabinet at so critical a period as much weight of character as possible, I thought I consulted my judgment, as well as my inclination, in the attempt to translate you from the one to the other sphere of service. As your estimate of the public interest and of your duty does not allow me the gratification I should have felt in a different result, I can only add my regrets to the assurances I pray you to accept of my great esteem and friendly respects.

TO THOMAS JEFFERSON.

WASHINGTON, October 23, 1814.

DEAR SIR,—I have received yours of the 15th, and attended to your remarks on "ways and means." I find that the variance in our ideas relates—1. To the probable quantity of circulating medium. 2. To the effect of an annual augmentation of it. I cannot persuade myself that in the present stagnation of private dealings, and the proposed limitation of taxes, the two great absorbents of money, the circulating sum would amount even to 20 millions. But be this amount what it may, every emission beyond it must either enter into circulation, and depreciate the whole mass, or it must be locked up. If it bear an interest, it may be locked up for the sake of the interest; in which case it is a loan, both in substance and in form, and implies a capacity to lend; in other words, a disposable capital in

the Country. If it does not bear an interest it could not be locked up, but on the supposition that the terms on which it is received are such as to promise indemnity, at least for the intermediate loss of interest, by its value at a future day; but this both involves the substance of a loan to the amount of the value locked up, and implies a depreciation differing only from the career of the old continental currency by a gradual return from a certain point of depression to its original level. If this view of the subject be in any measure correct, I am aware of the gloomy inferences from it. I trust, however, that our case is not altogether without remedy. To a certain extent, paper, in some form or other, will, as a circulating medium, answer the purpose your plan contemplates. The increase of taxes will have the double operation of widening the channel of circulation and of pumping the medium out of it. And I cannot but think that a domestic capital, existing under various shapes, and disposable to the public, may still be obtained on terms, though hard, not intolerable; and that it will not be very long before the money market abroad will not be entirely shut against us; a market, however ineligible in some respects, not to be declined under our circumstances.

We hear nothing from our Envoys since the despatches now in print, nor any thing else of importance from abroad. We continue anxious for the situation of Sackett's Harbour. Izard has joined Brown on the Canada side of the straight, and offered battle to Drummond, which he does not accept, and which it seems cannot be forced on him without risk of reinforcements now transportable to him. The most that can fairly be hoped for by us now is, that the campaign may end where it is.

TO GEO. W. CAMPBELL.

November 2d, 1814.

DEAR SIR,—The committee appointed by the House of Representatives to enquire into the causes of the late military events in this District have called for information on the several mem-

bers of the Cabinet, and the call will embrace you. That you may be under no restraint whatever from official or personal confidence, I think it proper to intimate to you that, in relation to myself, I hope that no information you may be able to give will be withheld from either of those considerations.

I am so far from wishing to circumscribe the range of enquiry on this subject, that I am anxious that every circumstance may be reached that can throw light on it. I am, indeed, the more anxious, because I understand that a statement furnished by the late Secretary of War implicates me in two particulars: 1. That I committed to him the direction of the operations on the field of battle, which I could not even legally do. 2. That at a critical moment I interposed and prevented it.

On the latter point, I am aware that, as you were not on the ground, you can have no direct knowledge, and may be without a knowledge of any circumstances indirectly bearing on it. It is a point, however, which I believe can be disproved by evidence as decisive as can be required to establish the negative.

On the first point, your memory may furnish circumstances not unimportant, as the statement in question has, doubtless, reference to the conversation with Gen^l Armstrong on the morning of August 24, to which I was led by the regret you expressed at his apparent reserve on so momentous a crisis, and your suggestion that he might be kept back by some feeling of delicacy in relation to Gen^l Winder.

The conversation was held very near to you, but no part of it might be within your hearing. Your recollection of my reply to your remarks, and of my communication of what passed between me and Gen^l Armstrong, may, in connection with recollections of others, aid in elucidating truth.

I have heard with pleasure that you were far advanced on your journey to Nashville, and that your health was improving. With my sincerest wishes for its perfect restoration, accept assurances of my great esteem and friendly respects.

TO GOVERNOR TOMPKINS.

WASHINGTON, Nov^r 12, 1814.

SIR,—I have received your letter of the 5th instant, covering a unanimous Resolution of the two Houses of the Legislature of N. York, expressing the emotions with which they view the terms of peace proposed by the British Commissioners at Ghent, and recommending the most vigorous measures for bringing the war to an honorable termination.

This language does great honor to the patriotism and just sentiments of the State by whose Councils it has been adopted. And the Resolution derives additional value from the unanimity stamped upon it.

Such a devotion every where to the rights and dignity of our Country is alone necessary to a speedy triumph over the obstacles to an honorable peace. And such an example could proceed from no source more entitled or more conducive to patriotic emulations.

Accept, Sir, assurances of my high esteem and my friendly respects.

TO WILSON C. NICHOLAS.

WASHINGTON, Nov^r 25, 1814.

DEAR SIR,—I did not receive your favor of the 11th instant till a few days ago, and I have, till now, been too much indisposed to acknowledge it.

You are not mistaken in viewing the conduct of the Eastern States as the source of our greatest difficulties in carrying on the war; as it certainly is the greatest, if not the sole inducement with the enemy to persevere in it. The greater part of the people in that quarter have been brought by their leaders, aided by their priests, under a delusion scarcely exceeded by that recorded in the period of witchcraft; and the leaders themselves are becoming daily more desperate in the use they make of it. Their object is power. If they could obtain it by men-

aces, their efforts would stop there. These failing, they are ready to go every length for which they can train their followers. Without foreign co-operation, revolt and separation will hardly be risked; and what the effect of so profligate an experiment would be, first, on misguided partizans, and next on those remaining faithful to the nation, who are respectable for their consistency, and even for their numbers, is for conjecture only. The best may be hoped, but the worst ought to be kept in view. In the mean time, the course to be taken by the Government is full of delicacy and perplexity, and the more so under the pinch which exists in our fiscal affairs, and the lamentable tardiness of the Legislature in applying some relief.

At such a moment the vigorous support of the well-disposed States is peculiarly important to the General Government, and it would be impossible for me to doubt that Virginia, under your administration of its Executive Government, will continue to be among the foremost in zealous exertions for the national rights and success.

TO WILLIAM EUSTIS.

(*Private.*)

WASHINGTON, December 15, 1814.

DEAR SIR,—It has been in view for some time to counterplace Mr. Changion by an Envoy Extraordinary and Minister Plenipotentiary to his Sovereign Prince, and I have had you in my thoughts for the service. I postponed, however, consulting you on the subject, on the calculation that it could be done at any time without inconvenient delay to the object. Circumstances now exist which render an immediate appointment expedient, and I have just sent in your name to the Senate. I must pray you to excuse my taking this liberty with it, and my hoping that it will be not inconsistent with your views to undertake the mission contemplated. You will oblige me by a few lines of as early a date as you can make convenient.

Accept assurances of my great esteem and friendly regards.

TO BENJAMIN W. CROWNSHIELD.

WASHINGTON, December 15, 1814.

SIR,—Mr. Jones having retired from the Secretaryship of the Navy, my thoughts have been turned to you as a desirable successor, and I have this day sent in your name to the Senate for the appointment. I hope you will excuse my doing it without your consent, which would have been asked if the business of that Department had less urged an avoidance of delay. The same consideration will apologize for my hoping that it will not be inconsistent with your views to aid your country in that station, nor with your conveniency to be prepared to repair to it as soon as you may receive notice that the Senate have given effect to the nomination.

Accept, Sir, assurances of my esteem and of my friendly respects.

TO JOHN ADAMS.WASHINGTON, Dec^r 17th, 1814.

DEAR SIR,—Your favor of the 28th ultimo was duly received, though with more delay than usually attends the mail. I return the interesting letter from your son, with my thanks for the opportunity of perusing it.

I have caused the archives of the Department of State to be searched, with an eye to what passed during the negotiation for peace on the subject of the fisheries. The search has not furnished a precise answer to the enquiry of Mr. Adams. It appears, from one of your letters referring to the instructions accompanying the commission to make a Treaty of commerce with G. Britain, that the original views of Congress did not carry their ultimatum beyond the common right to fish in waters distant three leagues from the British shores. The negotiations, therefore, and not the instructions, if no subsequent change of them took place, have the merit of the terms actually obtained. That other instructions, founded on the Resolutions of Congress,

issued at subsequent periods cannot be doubted, though as yet they do not appear. But how far they distinguished between the common use of the sea and the use, then common also, of the shores, in carrying on the fisheries, I have no recollection.

The view of the discussions at Ghent presented by the private letters of all our Ministers there, as well as by their official despatches, leaves no doubt of the policy of the British Cabinet, so forcibly illustrated by the letter of Mr. Adams to you. Our enemy, knowing that he has peace in his own hands, speculates on the fortune of events. Should these be unfavorable, he can at any moment, as he supposes, come to our terms. Should they correspond with his hopes, his demands may be insisted on, or even extended. The point to be decided by our Ministers is, whether, during the uncertainty of events, a categorical alternative of immediate peace, or a rupture of the negotiation, would not be preferable to a longer acquiescence in the gambling procrastinations of the other party. It may be presumed that they will, before this, have pushed the negotiations to this point.

It is very agreeable to find that the superior ability which distinguishes the notes of our Envoys extorts commendation from the most obdurate of their political enemies. And we have the further satisfaction to learn that the cause they are pleading is beginning to overcome the prejudice which misrepresentations had spread over the continent of Europe against it. The British Government is neither inattentive to this approaching revolution in the public opinion there, nor blind to its tendency. If it does not find in it a motive to immediate peace, it will infer the necessity of shortening the war by bringing upon us, the ensuing campaign, what it will consider as a force not to be resisted by us.

It were to be wished that this consideration had more effect in quickening the preparatory measures of Congress. I am unwilling to say how much distress in every branch of our affairs is the fruit of their tardiness; nor would it be necessary to you, who will discern the extent of the evil in the symptoms from which it is to be inferred.

Extract of a letter from J. Q. Adams to his Father, dated Ghent, October 27, 1814.

“The whole compass of the diplomatic skill employed by the British Government in this negotiation has consisted in consuming time, without coming to any conclusion. Mr. Clay and Mr. Russell arrived at Gottenburg the 11th of April. The negotiation had been proposed by Lord Castlereagh in November; had been acceded to by the President in the beginning of January. The British Government were informed in February of the appointment of American Plenipotentiaries. Their first dilatory proceeding was to defer the appointment of their Commissioners until official notification should be given them, by the American Ministers themselves, that they were at the place of meeting which had been agreed upon. One full month was gained by this. The next device was, to propose the transfer of the negotiation to Ghent, which absorbed six weeks more; and then they left us from the 24th of June to the 6th of August waiting here for the appearance of their Plenipotentiaries.”

TO GOVERNOR EARLY, OF GEORGIA.

Decr 18, 1814.

SIR,—I have duly received your letter of the 2d instant, with the Resolutions of the Legislature of Georgia, expressing unanimously the sentiments inspired by the extravagant terms of peace demanded by the enemy, and the readiness of that State to make any sacrifice necessary to a vigorous prosecution of the war, till it can be brought to an honorable termination.

Resolutions of such a character are worthy of the real and public spirit of which so many other proofs have been given by the State of Georgia; and they have the greater merit as proceeding from a part of the Nation which presents so disproportionate an extent of frontier to the pressures of the war, with the other disadvantages incident to their situation in sustaining them.

It is under such circumstances that the patriotism and magnanimity of a people are put to the severest trial; and it will be a lasting honor to those of Georgia that the trial bears testimony to the manly spirit which presides in their public Councils.

Accept, sir, assurances of my great esteem and friendly respects.

TO MAJ^R GEN^L DEARBORN.

WASHINGTON, March 4th, 1815.

DEAR SIR,—Being desirous of obtaining for the Department of War services which I thought you could render with peculiar advantage, and hoping that, for a time, at least, you might consent to step into that Department, I took the liberty, without a previous communication, for which there was not time, to nominate you as successor to Mr. Monroe, who was called back to the Department of State. I had not a doubt, from all the calculations I could make, that the Senate would readily concur in my views; and if a doubt had arisen, it would have been banished by the confidence of the best informed and best disposed with whom I conferred, that the nomination would be welcomed where it was to be decided on. Contrary to these confident expectations, an opposition was disclosed in an extent which determined me to withdraw the nomination. But before the Message arrived, the Senate very unexpectedly had taken up the subject and proceeded to a decision. They promptly, however, relaxed, so far as to erase the proceeding from their Journal, and in that mode to give effect to the withdrawal.

I have thought this explanation due both to me and to yourself. I sincerely regret the occasion for it. But to whatever blame I may have subjected myself, I trust you will see in the course taken by me a proof of the high value I place on your public, and of the esteem I feel for your personal, character. Permit me to add, that I have been not a little consoled for the occurrence to which I have been accessory by the diffusive ex-

pression to which it has led of sentiments such as your best friends have heard with most pleasure.

TO THE REPUBLICAN MEMBERS OF THE LEGISLATURE OF MASSACHUSETTS.

March 7, 1815.

I have received, fellow-citizens, the address transmitted by you on the 23d of February, with the attention due to the occasion which gave rise to it, and to the view which it takes of past scenes and events.

Whatever differences of opinion may have existed among good citizens, all will rejoice in the happy result of the contest in which we have been engaged. If this has been attended with difficulties and with sacrifices, with anxieties and with apprehensions, we have a reward in the reflection that the rights of our Country have been successfully maintained, under peculiar disadvantages, against a nation powerful at all times in armaments and resources, and wielding them against us under circumstances the most favorable to her; that the arduous trial has unfolded the energies of the American people, the extent of their public spirit, the stability of their political Institutions, and their capacities for war, as well as for the improvements and enjoyments of honorable peace.

The firm and persevering resistance which has been made to violations of our national rights and of our essential interests, and the signal valour and patriotism displayed by every variety of our arms, both on the water and on the land, whilst they cannot fail to do justice to the American name, will be among the best guardians of our future peace and safety.

It remains for us to strengthen these titles to the respect and esteem of other nations by an adherence to the policy which has cultivated peace, friendship, and useful intercourse with all; and to provide still further for our external security, as well as for our internal prosperity and happiness, by fidelity to the Union; by reverence for the laws; by discountenancing all

local and other prejudices; and by promoting every where the concord and brotherly affection becoming members of one great political family.

I thank you, fellow-citizens, for the kind partiality with which you have regarded the discharge of my duty throughout the period which called for the best efforts of us all in our respective situations; and I pray you to accept for yourselves, and for those in whose behalf you have spoken, assurances of my friendly respects and my best wishes.

TO THOMAS JEFFERSON.

WASHINGTON, March 12, 1815.

DEAR SIR,—It was long desirable that an Expose of the causes and character of the war between the United States and Great Britain should remedy the mischief produced by the Declaration of the Prince Regent, and other misstatements which had poisoned the opinion of the world on the subject. Since the pacification in Europe, and the effect of that and other occurrences in turning the attention of that quarter of the world towards the United States, the antidote became at once more necessary and more hopeful. It was accordingly determined, soon after the meeting of Congress, that a correct and full view of the war should be prepared, and made public in the usual demi-official form. The commencement of it was, however, somewhat delayed by the probability of an early termination of the negotiations at Ghent, either in a peace, or in a new epoch particularly inviting a new appeal to the neutral public. The long suspension of intelligence from our Envoys, and the critical state of our affairs at home, as well as abroad, finally overruled this delay, and the execution of the task was committed to Mr. Dallas. Although he hastened it as much as the nature of it and his other laborious attentions admitted, it was not finished in time for publication before the news of peace arrived. The latter pages had not even been struck off at the press. Under these circumstances, it became a question whether

it should be published with a prefatory notice that it was written before the cessation of hostilities, and thence derived its spirit and language; or should be suppressed, or written over with a view to preserve the substantial vindication of our Country against prevailing calumnies, and avoid asperities of every sort unbecoming the change in the relations of the two Countries. This last course, though not a little difficult, might have been best in itself, but it required a time and labour not to be spared for it; and the suppression was preferred to the first course, which would have been liable to misconstructions of an injurious tendency. The printed copies, however, amounting to several hundred, are not destroyed, and will hereafter contribute materials for a historical review of the period which the document embraces. I have thought a perusal of it might amuse an hour of your leisure, requesting only, that as it is to be guarded against publication, you will be so good as either to return the copy, or to place it where it will be in no danger of escaping. You will observe, from the plan and cast of the work, that it was meant for the eye of the British people, and of our own, as well as for that of the neutral world. This three-fold object increased the labour not a little, and gives the composition some features not otherwise to be explained.

The despatch vessel with the peace, via France, has just arrived. It brings little more than duplicates of what was received via England. The affairs at Vienna remain in a fog, which rather thickens than disperses. The situation of France, also, has yet, it would seem, to pass some clearing-up shower. The peace between this Country and Great Britain gives sincere pleasure there, as relieving the Government and the nation from the dilemma of humiliating submissions to the anti-neutral measures of G. Britain, or of a premature contest with her. In Spain, every thing suffers under the phrenzy of the Throne and the fanaticism of the people. But for our peace with England, it is not impossible that a new war from that quarter would have been opened upon us. The affair at New Orleans will, perhaps, be a better guaranty against such an event.

Mr. Smith will have communicated to you the result of our consultation on the transportation of the Library.

We are indulging hopes of paying a trip soon to our farm, and shall not fail, if it be practicable, to add to it the pleasure of a visit to Monticello.

TO THE COMMITTEE OF A MEETING OF CITIZENS IN BALTIMORE,
APRIL 10, 1815.

I have received, fellow-citizens, the congratulations upon the conclusion of an honorable peace with G. Britain, which you have communicated on the part of a numerous and respectable meeting of Republican Citizens of the city and precincts of Baltimore.

A candid review of the trials to which our Country has been exposed, and of its conduct previous and subsequent to the appeal to arms, will always do equal justice to its love of peace and its energies in war; to the stability of its political Institutions amid threatening shocks, and the public spirit which animated and was in turn cherished by them; to its respect for the rights of other nations, and its firmness in asserting its own.

The present generation, in disregarding temporary interests when brought into competition with essential rights and National character, the only foundations of lasting prosperity, has emulated the wisdom and the virtue of that which bequeathed to it the blessings of freedom and Independence; and it will have the happiness of handing down the precious trust with additional security and lustre to the generations which are to follow.

A comparison of the present situation of our Country in its own eyes, and in the eyes of the world, with the degradation inviting future insults in which it would have been left by an unresisted accumulation of oppressions, will convey to discriminating minds and to American hearts the value of what has been done, and the compensation for what has been suffered.

For the success which has placed us on the high ground which calls for our common congratulations, too much praise cannot be given to the warriors who, on both elements, have fought so gloriously the battles of their country; nor to the great body of citizens whose patriotism has borne every sacrifice and braved every danger.

In the varied scenes which have put to the test the constancy of the nation, Baltimore ranks among the portions most distinguished for devotion to the public cause. It has the satisfaction to reflect that it boldly and promptly espoused the resort to arms when no other honorable choice remained; that it found in the courage of its citizens a rampart against the assaults of an enterprising force; that it never wavered nor temporized with the vicissitudes of the contest; and that it has had an ample share in the exertions which have brought it to an honorable conclusion.

For the favorable light in which your kind partiality has regarded my participation in the public Councils and measures, throughout the arduous period now so auspiciously terminated, I tender my thanks, with my respects and my best wishes.

TO BENJAMIN W. CROWNINSHIELD.

WASHINGTON, June 12, 1815.

SIR,—I have given to the questions growing out of your letter and communications of the 23d of May, and others from the Commissioners of the Navy Board, the consideration due to them. The following remarks convey the result of it.

The law which establishes the Board containing provisions entirely new, and rendering the Constitution of the Navy Department more complicated, at the same time that they render it more ample for its objects, it might well happen that different constructions would in the first instance be put on some parts of the law. It is to be hoped, however, that by recurring to the constitutional principles on which the Executive Department of the Government rests, in aid of the established rules of

interpretation, the meaning of the act may be satisfactorily determined.

The better to ascertain the relation in which the Board is placed to the Secretary of the Navy, it is proper to take into view the relation of the latter to the President.

By the structure of the several executive Departments, and by the practice under them, the Secretary of the Navy, like the other Secretaries, is the regular organ of the President for the business belonging to his Department; and with the exception of cases in which independent powers are specially vested in him by law, his official acts derive their authority from, or, in other words, carry with them, the authority of the Executive of the U. S. Should a Head of Department at any time violate the intentions of the Executive, it is a question between him and the Executive. In all cases where the contrary does not appear, he is to be understood to speak and to act with the Executive sanction, or, in other words, the Executive is presumed to speak and to act through him.

This being the relation of the Secretary of the Navy to the Executive, and no direct relation existing between the Board of Commissioners and the Executive, the relation between them must be through the Secretary of the Navy, and must depend on the relation of the Board to the latter, as established by law.

According to the terms of the law, the Board is attached to the office of the Secretary of the Navy, and shall discharge all its ministerial duties under his superintendence.

Altho' the term "attached," taken by itself, may not fully explain the relation of the Board to the office of the Secretary, it excludes the idea of a substantive power independent of him. The ministerial duties to be performed by the Board are the ministerial part of the duties of the office of the Secretary.

The nature of these duties is as well expressed by the term "ministerial" as by any other that could be applied. Uncertainties will doubtless occur in the detail, which a course of practice only can remove.

In saying that the Board "shall discharge" the duties in ques-

tion, the law is not to be understood as giving an independent power and imposing an absolute obligation. The terms taken by themselves would not require such a construction. In the Legislative use of them, in analogous cases, they import only that when certain acts become requisite, it will be the duty of the functionary named to perform them. The terms, if taken in a literal and absolute sense, would make the Board as independent of the President as of the Secretary of the Navy, and would destroy the unity, the efficiency, and the responsibility of the Executive in an important branch of the Administration. This could not be contemplated by the Legislature.

On the contrary, it is expressly provided that the ministerial duties in question are to be discharged "under the superintendence" of the Secretary of the Navy, acting, of course, under the authority of the Executive. The term "superintendence," whether its meaning be sought in the Books employed in the explanation of words, or in the use of it in legislative acts, imports a superiority and authority in the superintending over the superintended party. To superintend or supervise without an authority to guide or controul, would be a task either altogether nugatory, or of a nature which the Legislature cannot be presumed to have committed to a Head of Department and a Constitutional organ of the Executive authority.

But whilst the Board is restricted to the discharge of duties which are ministerial, and are subject therein to the superintendence of the Secretary of the Navy, the Secretary, in the discharge of his duties, so far as they ministerially relate to matters connected with the naval establishment, is restricted to the intermediary functions of the Board.

No separate or subordinate officers or agents can be immediately employed by him for purposes embraced by the duties of the Board.

The powers of the Board to adopt rules and regulations for the government of their meetings, and to appoint their own Secretary and two clerks, to be attached to their office, being specially vested in them, are exceptions, and not under the superintendence of the Secretary of the Navy.

The Board is specially authorized, also, to prepare rules and regulations necessary for securing uniformity in the several classes of vessels and their equipments, and for repairing and refitting them, and for securing responsibility in the subordinate officers and agents; under the restriction, however, of preparing them by and with the consent of the Secretary of the Navy, and that they be approved by the President.

Whether the alteration which has been made in the Navy Department might have been better modified, or defined with a more discriminating precision, are questions which do not belong to those whose duty it is to execute the law according to the necessary rules of expounding it as it stands.

The exposition which has been given will at least have the advantage of avoiding essential inconsistencies in its several parts, as well as of preserving that unity of action which is essential to the Executive trust. And with the aid of that candor, cordiality, and confidence, which distinguish those whom the law associates, and which will be exercised in proportion to the call for co-operation in overcoming difficulties, of whatever sort, incident to new arrangements for complicated objects, I flatter myself that the law will go into its due effect with the advantages to the public service for which it was enacted.

Accept assurances of my esteem and respect.

WASHINGTON, June 12, 1815.

The Secretary of the Navy will communicate to the Board of Commissioners a copy of the above letter.

TO ——— CHARLTON, MAYOR OF SAVANNA.

WASHINGTON, June 19th, 1815.

SIR,—I have duly received your communication of the 5th instant, and am very sensible of the value I ought to place on the friendly and favorable sentiments which it conveys from the Mayor and Aldermen of the City of Savanna.

It will always be honorable for the patriotic citizens of that

City that they uniformly and zealously supported their Country in every stage of the struggle which has terminated so happily for its interests, and so gloriously for its arms and its Republican Institutions.

It was a struggle due to the Independence of the present and to the security of future generations. It could not have been avoided without a derogation from both. And it is a proud and gratifying consideration that its issue has consolidated the one and is so auspicious to the other.

If the peace does not embrace every provision which might have been justly claimed, no blame can touch those whose blood and treasure were devoted to the public cause. If a more unanimous discharge of patriotic duties could have rendered the contest shorter, or the conduct of it less costly, or could have improved, in any manner, the terms on which it was closed, time and reflection are giving lessons to those who did not emulate the general example, which will be a barrier against recurrences of the melancholy error; whilst the past difficulties, which were added to those inseparable from an unaided encounter of so powerful an adversary, enhance the final triumph over the whole.

Accept, Sir, and tender to those associated with you, assurances of my high respect and my friendly wishes.

TO WILLIAM PLUMER, JUN^R.

WASHINGTON, July 14, 1815.

SIR,—I received, some time ago, your letter of June 8, which it has not been convenient for me sooner to acknowledge.

The war lately concluded, with its causes, its events, and the lessons to be drawn from it, will form a volume so interesting in the history of our Country, that it is much to be desired that the facts and features of it may be presented to the world as they really existed. The view you have taken of the task appears to be a very just one; and from the preparations and aids to which you refer, and the style of your observations on the

subject, I cannot but augur a valuable and acceptable execution of it. The undertaking is the more meritorious, if, as you intimate, there be danger of early and deceptive publications, which may preoccupy the public belief, and do lasting injustice to our Country or those who have served it.

With respect to the enquiries which you may find it requisite to address to the Departments or Officers of the Government, I cannot doubt that they will be always ready to contribute proper information for an undertaking laudable in its object, and in hands worthy of the respect and confidence to which patrons, such as your letter points at, must of themselves secure to you.

RETURN OF NAPOLEON FROM ELBA.

[1815.]

TO COL. MONROE, (ON THE RETURN OF NAPOLEON.)

DEAR SIR,—From the aspect of the latest intelligence from Europe, we are to infer that war is to be renewed. If the coalition against F. be also renewed, and a civil war there should aid it, the Bourbons and peace may soon be restored. Should Napoleon have the united support of the French, and be able to disunite the allies, the war may soon be terminated in his favor. On other suppositions, the war may be protracted and the issue be doubtful. As war, however, is so presumable, and with England and France adverse parties in it, it is our duty to contemplate a recurrence of embarrassments to the U. S. Should Napoleon yield less than he may be expected to do to the lessons of experience, a difference in his own situation, in that of France, in that of the Continent of Europe, and in that of the U. S., will probably divert him from the anti-commercial and anti-neutral policy which marked his former career. He may even take the opposite course of inviting the commerce of neutral America, for the double purpose of nourishing his own resources, and laying snares for his maritime adversary. On the other hand, it is possible, that his old prejudices may not have forsaken him, and that he may relapse into collisions with our rights, national or neutral.

But whatever may be the system embraced in that quarter, we cannot turn to another without serious apprehensions that, in some form or other, our commerce and navigation will encounter vexations dangerous to our peace. The full enjoyment of the American market, and an involuntary respect for the military and naval faculties of the U. S., of which such monitory

demonstrations have been given, must, indeed, not be without effect in the Councils of G. B. It must occur, also, that with the use of the ports of F., the pressure of our marine would be more than doubled on her commerce. Nor can she be unaware of the dilemma which a war with the U. S. must impose, of either leaving Canada open to our attacks, or defending it by forces not to be well spared from Europe. But strong as these motives are to a just and conciliatory conduct on the part of that nation, it does not follow that they will prevail. It is more probable, especially if the administration continue in the present or similar hands, that a spirit of revenge, a hope of retrieving lost reputation, a wish to retard our maritime growth, a pride in shewing to the world that neither the war nor the peace with this Country has impaired her maritime claims, or her determination to exert them, will all unite with the object of distressing France and destroying her Ruler, in stimulating her into her former violence on the ocean. Should she even cover a discountenance of her impressments under arrangements with us saving her pride, she will be unwilling to forego a general blockade of the ports of France, as at once crippling her enemy and checking the prosperity of her rival. She will be the less apt to decline a resort to this measure, as her continental allies will be reconciled to it when directed against a common enemy, as well as by the plea already prepared, that such an enemy has no claim to the benefit of public law; whilst the measure itself might have the aspect of asserting the British doctrine on the subject of blockades against the pretensions of the U. S.

We may expect vexations, also, from a fresh application of the rule of '56, in case the French colonies should abandon the Bourbons in favor of Napoleon.

With these sources of collision before us, the questions to be decided are: 1. What is the armor [?] in which U. S. ought to present themselves, and, particularly, whether the law reducing the military establishment ought to be carried into immediate effect? 2. Whether any and what diplomatic experiments ought to be made for the purpose of obviating threatened col-

lisions, by a conciliatory adjustment of differences which may produce them?

With respect to the reduction of the Army, I am induced to think that it will be the better course, on the whole, to carry the law into execution; and if the members of the Cabinet at Washington concur in this opinion, the Secretary of War will take his measures accordingly, on the return of the documents sent to me, which will be by the mail of to-morrow. If a preference be given to a delay of the reduction, I wish to have an opportunity of reconsidering the subject with the aid of the views of it leading to that preference.

On the 2d question, I wish to have the result of a consultation as it relates to Great Britain, to France, and even to Spain; but more particularly as it relates to G. B., and as it relates to the number composing the mission, and the subjects committed to them. It is not impossible that something may have passed from the British Government after the arrival of our ratification of the peace, and the prospect of a new war with France, in reply to the last communication from our Ministers at Ghent, that may affect the question of an Extraordinary Mission.

When you are all together, take up, also, the expediency of prolonging or rescinding the suspension of the orders for the sailing of Commodore Decatur. If the danger be not serious, the delay may be complained of by the Mediterranean commerce [?]; the more so, as vessels may have gone thither with an understanding that a protecting force would be hastened. It merits consideration whether the squadron might not proceed in such force only as would overmatch that of Algiers and suffice for a blockade; diminishing thus the stake exposed, without an entire disappointment as to the original objects. The reinforcing squadron or squadrons might follow as soon as better estimates of the prospect should justify it.

I return you the communications by the Fingal [?], with a couple of letters to me from Mr. Crawford for your perusal. I have read the whole but slightly; but you may want them in your consultations.

The mail of this morning arrived without your correspondence with Baker. It brought, in fact, not even a newspaper. Of course, the whole mail to Fredericksburg must have failed.

Best wishes and respects

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