

APPENDIX.

NOTE I.

Speech of the Honorable JOHN MARSHALL, delivered in the House of Representatives of the United States, on the resolutions of the Honorable Edward Livingston, relative to Thomas Nash, *alias* Jonathan Robins.

MR. MARSHALL said, believing as he did most seriously, that in a government, constituted like that of the United States, much of the public happiness depended, not only on its being rightly administered, but on the measures of administration being rightly understood ; on rescuing public opinion from those numerous prejudices with which so many causes might combine to surround it ; he could not but have been highly gratified with the very eloquent, and what was still more valuable, the very able, and very correct argument, which had been delivered by the gentleman from Delaware (Mr. BAYARD) against the resolutions now under consideration. He had not expected that the effect of this argument would have been universal, but he had cherished the hope, and in this he had not been disappointed, that it would be very extensive. He did not flatter himself with being able to shed much new light on the subject ; but as the argument in opposition to the resolutions had been assailed, with considerable ability, by gentlemen of great talents, he trusted the house would not think the time misapplied, which would be devoted to the re-establishment of the principles contained in that argument, and to the refutation of those advanced in opposition to it. In endeavoring to do this, he should notice the observations *in support of the resolutions, not in the precise order in which they were made, but as they applied [*4 to the different points he deemed it necessary to maintain, in order to demonstrate, that the conduct of the executive of the United States could not justly be charged with the errors imputed to it by the resolutions.

His first proposition, he said, was, that the case of Thomas Nash, as stated to the president, was completely within the twenty-seventh article of the treaty of amity, commerce and navigation, entered into between the United States of America and Great Britain. He read the article, and then observed : The *casus fœderis* of this article occurs, when a person, having committed murder or forgery, within the jurisdiction of one of the contracting parties, and having sought an asylum in the country of the other, is charged with the crime, and his delivery demanded, on such proof of his guilt as, according to the laws of the place where he shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed.

The case stated is, that Thomas Nash, having committed a murder, on board a British frigate, navigating the high seas, under a commission from his Britannic majesty, had sought an asylum within the United States, and on this case, his delivery was demanded by the minister of the king of Great Britain. It is manifest, that the case stated, if supported by proof, is within the letter of the article, provided a murder committed in a British frigate, on the high seas, be committed within the jurisdiction of that nation. That such a murder is within their jurisdiction, has been fully shown by

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the gentleman from Delaware. The principle is, that the jurisdiction of a nation extends to the whole of its territory, and to its own citizens, in every part of the world. The laws of a nation are rightfully obligatory on its own citizens, in every situation, where those laws are really extended to them. This principle is founded on the nature of civil union. It is supported everywhere by public opinion, and is recognised by writers on the law of nations. Rutherford, in his second volume (p. 180), says, “The jurisdiction which a civil society has ^{*5} over the persons of its members, affects them immediately, whether they are within its territories or not.”

This general principle is especially true, and is particularly recognised, with respect to the fleets of a nation, on the high seas. To punish offences committed in its fleet, is the practice of every nation in the universe; and consequently, the opinion of the world is, that a fleet at sea is within the jurisdiction of the nation to which it belongs. Rutherford (vol. 2, p. 491) says, “There can be no doubt about the jurisdiction of a nation over the persons which compose its fleets, when they are out at sea, whether they are sailing upon it, or are stationed in any particular part of it.” The gentleman from Pennsylvania (Mr. GALLATIN), though he has not directly controverted this doctrine, has sought to weaken it, by observing, that the jurisdiction of a nation at sea could not be complete, even in its own vessels; and in support of this position, he urged the admitted practice of submitting to search for contraband; a practice not tolerated on land, within the territory of a neutral power. The rule is as stated; but is founded on a principle which does not affect the jurisdiction of a nation over its citizens or subjects, in its ships. The principle is, that in the sea itself, no nation has any jurisdiction. All may equally exercise their rights, and consequently, the right of a belligerent power to prevent aid being given to his enemy, is not restrained by any superior right of a neutral, in the place. But if this argument possessed any force, it would not apply to national ships of war, since the usage of nations does not permit them to be searched. According to the practice of the world, then, and the opinions of writers on the law of nations, the murder committed on board a British frigate, navigating the high seas, was a murder committed within the jurisdiction of the British nation.

Although such a murder is plainly within the letter of the article, it has been contended, not to be within its just construction; because, at sea, all nations have a common jurisdiction, and the article, correctly construed, will not embrace a case of concurrent jurisdiction. It is deemed unnecessary to controvert this construction, because

^{*6}] *the proposition, that the United States had no jurisdiction over the murder committed by Thomas Nash, is believed to be completely demonstrable. It is not true, that all nations have jurisdiction over all offences committed at sea. On the contrary, no nation has any jurisdiction at sea, but over its own citizens or vessels, or offences against itself. This principle is laid down in 2 Ruth. 488, 491. The American government has, on a very solemn occasion, avowed the same principle. The first minister of the French republic asserted and exercised powers of so extraordinary a nature, as unavoidably to produce a controversy with the United States. The situation in which the government then found itself was such, as necessarily to occasion a very serious and mature consideration of the opinions it should adopt. Of consequence, the opinions then declared, deserve great respect. In the case alluded to, Mr. Genet had asserted the right of fitting out privateers, in the American ports, and of manning them with American citizens, in order to cruise against nations with whom America was at peace. In reasoning against this extravagant claim, the then secretary of state, in his letters of the 17th of June 1793, says: “For our citizens, then, to commit murders and depredations on the members of nations at peace with us, or to combine to do it, appeared to the executive and to those whom they consulted, as much against the laws of the land, as to murder or rob, or combine to murder or rob, its own citizens; and as much to require punishment, if done within their limits, where they have a territorial jurisdiction, or on the high seas, where they have a personal jurisdiction, that is to say, one which reaches their own citizens only; this being an appropriate part of each nation, on an element where all have a common jurisdiction.” The well-considered

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opinion, then, of the American government on this subject is, that the jurisdiction of a nation at sea is "personal," reaching its "own citizens only," and that this is "the appropriate part of each nation" on that element.

This is precisely the opinion maintained by the opposers of the resolutions. If the jurisdiction of America at sea be personal, reaching its own citizens only; if this be its appropriate ^{*7} part, then the jurisdiction of the nation cannot extend to a murder committed by a British sailor, on board of a British frigate, navigating the high seas, under a commission from his Britannic majesty.

As a further illustration of the principle contended for, suppose, a contract made at sea, and a suit instituted for the recovery of money which might be due thereon. By the laws of what nation would the contract be governed? The principle is general, that a personal contract follows the person, but is governed by the law of the place where it is formed. By what law, then, would such a contract be governed? If all nations had jurisdiction over the place, then, the laws of all nations would equally influence the contract; but certainly, no man will hesitate to admit, that such a contract ought to be decided according to the laws of that nation, to which the vessel or contracting parties might belong.

Suppose, a duel, attended with death, in the fleet of a foreign nation, or in any vessel which returned safe to port, could it be pretended, that any government on earth, other than that to which the fleet or vessel belonged, had jurisdiction in the case; or that the offender could be tried by the laws or tribunals of any other nation whatever. Suppose, a private theft by one mariner from another, and the vessel to perform its voyage and return in safety, would it be contended, that all nations have equal cognizance of the crime, and are equally authorized to punish it?

If there be this common jurisdiction at sea, why not punish desertion from one belligerent power to another, or correspondence with the enemy, or any other crime which may be perpetrated? A common jurisdiction over all offences at sea, in whatever vessel committed, would involve the power of punishing the offences which have been stated. Yet, all gentlemen will disclaim this power. It follows, then, that no such common jurisdiction exists. In truth, the right of every nation to punish, is limited, in its nature, to offences against the nation inflicting the punishment. This principle is believed to be universally true. It comprehends every possible violation of its laws on its ^{*8} own territory, and it extends to violations committed elsewhere by persons it has a right to bind. It extends also to general piracy.

A pirate, under the law of nations, is an enemy of the human race; being the enemy of all, he is liable to be punished by all. Any act which denotes this universal hostility, is an act of piracy; not only an actual robbery, therefore, but cruising on the high seas without commission, and with intent to rob, is piracy. This is an offence against all and every nation, and is, therefore, alike punishable by all. But an offence which in its nature affects only a particular nation, is only punishable by that nation. It is by confounding general piracy with piracy by statute, that indistinct ideas have been produced, respecting the power to punish offences committed on the high seas. A statute may make any offence piracy, committed within the jurisdiction of the nation passing the statute, and such offence will be punishable by that nation. But piracy under the law of nations, which alone is punishable by all nations, can only consist in an act which is an offence against all. No particular nation can increase or diminish the list of offences thus punishable.

It had been observed by his colleague (Mr. NICHOLAS) for the purpose of showing that the distinction taken on this subject by the gentleman from Delaware (Mr. BAYARD) was inaccurate, that any vessel, robbed on the high seas, could be the property only of a single nation, and being only an offence against that nation, could be, on the principle taken by the opposers of the resolutions, no offence against the law of nations: but in this, his colleague had not accurately considered the principle. As a man, who turns out to rob on the highway, and forces from a stranger his purse, with a pistol at his bosom, is not the particular enemy of that stranger, but alike the enemy of every man who carries a purse, so those who, without a commission, rob, on the high seas,

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manifest a temper hostile to all nations, and therefore, become the enemies of all. The same inducements which occasion the robbery of one vessel, exist to occasion the robbery of others, and therefore, the single offence is an offence *against the *9] whole community of nations, manifests a temper hostile to all, is the commencement of an attack on all, and is, consequently, of right, punishable by all.

His colleague had also contended, that all the offences at sea, punishable by the British statutes, from which the act of congress was in a great degree copied, were piracies at common law, or by the law of nations, and as murder is among these, consequently, murder was an act of piracy, by the law of nations, and therefore, punishable by every nation. In support of this position, he had cited 1 Hawk. P. C. 267, 271; 3 Inst. 112; and 1 Wooddeson 140. The amount of these cases is, that no new offence is made piracy by the statutes; but that a different tribunal is created for their trial, which is guided by a different rule from that which governed previous to those statutes. Therefore, on an indictment for piracy, it is still necessary to prove an offence which was piracy before the statutes. He drew from these authorities a very different conclusion from that which had been drawn by his colleague. To show the correctness of his conclusion, it was necessary to observe, that the statute did not, indeed, change the nature of piracy, since it only transferred the trial of the crime to a different tribunal, where different rules of decision prevailed; but having done this, other crimes, committed on the high seas, which were not piracy, were made punishable by the same tribunal; but certainly, this municipal regulation could not be considered as proving that those offences were, before, piracy by the law of nations.

Mr. Nicholas insisted that the law was not correctly stated; whereupon, Mr. Marshall called for 3 Inst., and read the statute: "All treasons, felonies, robberies, murders and confederacies, committed in or upon the seas, &c., shall be inquired, tried, heard, determined and judged in such shires, &c., in like form and condition as if any such offence had been committed on the land, &c." "And such as shall be convicted, &c., shall have and suffer such pains of death, &c., as if they had been attainted of any treason, felony, robbery, or other the said offences, done upon the land."

*This statute, it is certain, does not change the nature of piracy; but all *10] treasons, felonies, robberies, murders and confederacies, committed in or upon the sea, are not declared to have been, nor are they piracies. If a man be indicted as a pirate, the offence must be shown to have been piracy before the statute; but if he be indicted for treason, felony, robbery, murder, or confederacy, committed at sea, whether such offence was or was not a piracy, he shall be punished in like manner as if he had committed the same offence on land. The passage cited from 1 Wooddeson 140, is a full authority to this point. Having stated that offences committed at sea were formerly triable before the lord high admiral, according to the course of the Roman civil law, Wooddeson says: "but by the statute 27 Hen. VIII., c. 4, and 28 Hen. VIII., c. 15, all treasons, felonies, piracies, and other crimes, committed on the sea, or where the admiral has jurisdiction, shall be tried in the realm, as if done on land. But the statutes referred to affect only the manner of the trial so far as respects piracy. The nature of the offence is not changed. Whether a charge amounts to piracy or not, must still depend on the law of nations, except where, in the case of British subjects, express acts of parliament have declared, that the crimes therein specified shall be adjudged piracy, or shall be liable to the same mode of trial and degree of punishment." This passage proves not only that all offences at sea are not piracies by the law of nations, but also that all indictments for piracy must depend on the law of nations, "except where, in the case of British subjects, express acts of parliament" have changed the law. Why do not these "express acts of parliament" change the law as to others than "British subjects?" The words are general; "all treasons, felonies," &c. Why are they confined in construction to British subjects? The answer is a plain one. The jurisdiction of the nation is confined to its territory and to its subjects.

The gentleman from Pennsylvania (Mr. GALLATIN) abandons, and very properly abandons, this untenable ground. He admits, that no nation has a right to punish offences against another nation, and that the United States can only punish offences

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against *their own laws, and the law of nations. He admits, too, that if there had only been a mutiny (and consequently, if there had only been (murder) on board the Hermoine, that the American courts could have taken no cognisance of the crime. Yet mutiny is punishable as piracy, by the law of both nations. That gentleman contends that the act committed by Nash was piracy, according to the law of nations. He supports his position by insisting, that the offence may be constituted by the commission of a single act; that unauthorized robbery on the high seas is this act, and that the crew having seized the vessel, and being out of the protection of any nation, were pirates.

It is true, that the offence may be completed by a single act; but it depends on the nature of that act. If it be such as manifests general hostility against the world—an intention to rob generally, then it is piracy; but if it be merely a mutiny and murder, in a vessel, for the purpose of delivering it up to the enemy, it seems to be an offence against a single nation, and not to be piracy. The sole object of the crew might be to go over to the enemy, or to free themselves from the tyranny experienced on board a ship of war, and not to rob generally. But should it even be true, that running away with the vessel, to deliver her up to an enemy, was an act of general piracy, punishable by all nations, yet the mutiny and murder was a distinct offence. Had the attempt to seize the vessel failed, after the commission of the murder, then, according to the argument of the gentleman from Pennsylvania, the American courts could have taken no cognisance of the crime. Whatever, then, might have been the law respecting the piracy, of the murder, there was no jurisdiction. For the murder, not the piracy, Nash was delivered up. Murder, and not piracy, is comprehended in the 27th article of the treaty between the two nations. Had he been tried, then, and acquitted, on an indictment for the piracy, he must still have been delivered up for the murder, of which the court could have no jurisdiction. It is certain, that an acquittal of the piracy would not have discharged the murder; and, therefore, in the so-much-relied-on trials at Trenton, a separate indictment for murder was filed, after the indictment for piracy. Since, then, if acquitted for piracy, he must have been *delivered to the British government on the charge of murder, the president of the United States might, very properly, [12] without prosecuting for the piracy, direct him to be delivered up on the murder.

All the gentlemen who have spoken in support of the resolutions, have contended that the case of Thomas Nash is within the purview of the act of congress, which relates to this subject, and is, by that act, made punishable in the American courts. That is, that the act of congress designed to punish crimes committed on board a British frigate. Nothing can be more completely demonstrable than the untruth of this proposition.

It has already been shown, that the legislative jurisdiction of a nation extends only to its own territory, and to its own citizens, wherever they may be. Any general expression in a legislative act must, necessarily, be restrained to objects within the jurisdiction of the legislature passing the act. Of consequence, an act of congress can only be construed to apply to the territory of the United States, comprehending every person within it, and to the citizens of the United States. But independent of this undeniable truth, the act itself affords complete testimony of its intention and extent. (See 1 U. S. Stat. 112.) The title is, "an act for the punishment of certain crimes against the United States." Not against Britain, France or the world, but singly "against the United States." The first section relates to treason, and its objects are, "any person or persons owing allegiance to the United States." This description comprehends only the citizens of the United States, and such others as may be on its territory or in its service. The second relates to misprision of treason, and declares, without limitation, that any person or persons, having knowledge of any treason, and not communicating the same, shall be guilty of that crime. Here, then, is an instance of that limited description of persons in one section, and of that general description in another, which has been relied on to support the construction contended for by the friends of the resolutions. But will it be pretended, that a person can commit misprision of *treason, who cannot commit treason itself? That he would be [13] punished for concealing a treason, who could not be punished for plotting

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it? Or can it be supposed, that the act designed to punish an Englishman or a Frenchman, who, residing in his own country, should have knowledge of treasons against the United States, and should not cross the Atlantic to reveal them? The same observations apply to the sixth section, which makes "any person or persons" guilty of misprision of felony, who having knowledge of murder or other offences enumerated in that section, should conceal them. It is impossible to apply this to a foreigner, in a foreign land, or to any person not owing allegiance to the United States.

The eighth section, which is supposed to comprehend the case, after declaring, that if any person or persons shall commit murder on the high seas, he shall be punishable with death; proceeds to say, that if any captain or mariner shall piratically run away with a ship or vessel, or yield her up, voluntarily, to a pirate, or if any seaman shall lay violent hands on his commander, to prevent his fighting, or shall make a revolt in the ship, every such offender shall be adjudged a pirate and a felon. The persons who are the objects of this section of the act are all described in general terms, which might embrace the subjects of all nations. But is it to be supposed, that if, in an engagement between an English and a French ship of war, the crew of the one or the other should lay violent hands on the captain, and force him to strike, that this would be an offence against the act of congress; punishable in the courts of the United States? On this extended construction of the general terms of the section, not only the crew of one of the foreign vessels forcing their captain to surrender to another, would incur the penalties of the act, but if, in the late action between the gallant Truxton and a French frigate, the crew of that frigate had compelled the captain to surrender, while he was unwilling to do so, the would have been indictable as felons in the courts of the United States. But surely, the act of congress admits of no such extravagant construction.

His colleague, Mr. Marshall said, had cited and particularly relied on the ninth section of the act. That section declares *that if a citizen shall commit any of [14] the enumerated piracies, or any act of hostility, on the high seas, against the United States, under color of a commission from any foreign prince or state, he shall be adjudged a pirate, felon and robber, and shall suffer death. This section is only a positive extension of the act to a case which might otherwise have escaped punishment. It takes away the protection of a foreign commission from an American citizen, who, on the high seas, robs his countrymen. This is no exception from any preceding part of the law, because there is no part which relates to the conduct of vessels commissioned by a foreign power; it only proves that, in the opinion of the legislature, the penalties of the act could not, without this express provision, have been incurred by a citizen holding a foreign commission. It is, then, most certain, that the act of congress does not comprehend the case of a murder committed on board a foreign ship of war.

The gentleman from New York has cited 2 Wooddeson 428, to show, that the courts of England extend their jurisdiction to piracies committed by the subjects of foreign nations. This has not been doubted. The case from Wooddeson is a case of robberies committed on the high seas, by a vessel without authority. There are ordinary acts of piracy, which, as has been already stated, being offences against all nations, are punishable by all. The case from 2 Wooddeson, and the note cited from the same book, by the gentleman from Delaware, are strong authorities against the doctrines contended for by the friends of the resolutions.

It has also been contended, that the question of jurisdiction was decided at Trenton, by receiving indictments against persons there arraigned for the same offence, and by retaining them for trial, after the return of the *habeas corpus*. Every person in the slightest degree acquainted with judicial proceedings, knows, that an indictment is no evidence of jurisdiction; and that in criminal cases, the question of jurisdiction will

[15] seldom be made, but by arrest of judgment, after conviction. *The proceedings after the return of the *habeas corpus* only prove, that the case was not such a case as to induce the judge immediately to decide against his jurisdiction. The ques-

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tion was not free from doubt, and therefore, might very properly be postponed, until its decision should become necessary.

It has been argued by the gentleman from New York, that the form of the indictment is, itself, evidence of a power in the court to try the case. Every word of that indictment, said the gentleman, gives the lie to a denial of the jurisdiction of the court. It would be assuming a very extraordinary principle, indeed, to say, that words inserted in an indictment, for the express purpose of assuming the jurisdiction of a court, should be admitted to prove that jurisdiction. The question certainly depended on the nature of the fact, and not on the description of the fact. But as an indictment must necessarily contain formal words, in order to be supported, and as forms often denote what a case must substantially be, to authorize a court to take cognisance of it, some words in the indictments, at Trenton, ought to be noticed. The indictments charge the persons to have been within the peace, and the murder to have been committed against the peace, of the United States. These are necessary averments, and to give the court jurisdiction, the fact ought to have accorded with them. But who will say that the crew of a British frigate, on the high seas, are within the peace of the United States, or a murder committed on board such a frigate, against the peace of any other than the British government?

It is then demonstrated, that the murder with which Thomas Nash was charged, was not committed within the jurisdiction of the United States, and consequently, that the case stated was completely within the letter and the spirit of the 27th article of the treaty between the two nations. If the necessary evidence was produced, he ought to have been delivered up to justice. It was an act to which the American nation was bound by a most solemn compact. To have tried him for the murder, would have been mere mockery. To have condemned and executed him, the court having no jurisdiction, would have been murder: to have acquitted and discharged him, would have been a breach of faith and a violation of national duty.

*But it has been contended, that although Thomas Nash ought to have been delivered up to the British minister, on the requisition made by him in the name of his government, yet the interference of the president was improper. This, Mr. Marshall said, led to his second proposition, which was, that the case was a case for executive and not judicial decision. He admitted implicitly the division of powers stated by the gentleman from New York, and that it was the duty of each department to resist the encroachments of the others. This being established, the inquiry was, to what department was the power in question allotted?

The gentleman from New York had relied on the second section of the third article of the constitution, which enumerates the cases to which the judicial power of the United States extends, as expressly including that now under consideration. Before he examined that section, it would not be improper, to notice a very material misstatement of it, made in the resolutions offered by the gentleman from New York. By the constitution, the judicial power of the United States is extended to all *cases* in law and equity, arising under the constitution, laws and treaties of the United States; but the resolutions declare the judicial power to extend to all *questions* arising under the constitution, treaties and laws of the United States. The difference between the constitution and the resolutions was material and apparent. A case in law or equity was a term well understood, and of limited signification. It was a controversy between parties which had taken a shape for judicial decision. If the judicial power extended to every question under the constitution, it would involve almost every subject proper for legislative discussion and decision; if to every question under the laws and treaties of the United States, it would involve almost every subject on which the executive could act. The division of power which the gentleman had stated, could exist no longer, and the other departments would be swallowed up by the judiciary. But it was apparent, that the resolutions had essentially misrepresented the constitution. He did not charge the gentleman from New York with intentional misrepresentation; he would not attribute to *him such an artifice, in any case, much less in a case where detection was so easy and so certain. Yet this substantial departure from

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the constitution, in resolutions affecting substantially to unite it, was not less worthy of remark, for being unintentional. It manifested the course of reasoning by which the gentleman had himself been misled, and his judgment betrayed into the opinions those resolutions expressed.

By extending the judicial power to all *cases* in law and equity, the constitution had never been understood to confer on that department any political power whatever. To come within this description, a question must assume a legal form for forensic litigation and judicial decision. There must be parties to come into court, who can be reached by its process, and bound by its power; whose rights admit of ultimate decision by a tribunal to which they are bound to submit. A case in law or equity, proper for judicial decision, may arise under a treaty, where the rights of individuals acquired or secured by a treaty are to be asserted or defended in court: as, under the fourth or sixth article of the treaty of peace with Great Britain, or under those articles of our late treaties with France, Prussia and other nations, which secure to the subjects of those nations their property within the United States: or, as would be an article which, instead of stipulating to deliver up an offender, should stipulate his punishment, provided the case was punishable by the laws and in the courts of the United States. But the judicial power connot extend to political compacts: as, the establishment of the boundary line between the American and British dominions; the case of the late guarantee, in our treaty with France; or the case of the delivery of a murderer under the 27th article of our present treaty with Britain.

The gentleman from New York has asked, triumphantly asked, what power exists in our courts to deliver up an individual to a foreign government? Permit me, said Mr. Marshall, but not triumphantly, to retort the question—By what authority can any court render such a judgment? What power does a court possess to seize any individual, and determine that he shall be ^{*18]} adjudged by a foreign tribunal? Surely, our courts possess no such power, yet they must possess it, if this article of the treaty is to be executed by the courts.

Gentlemen have cited and relied on that clause in the constitution, which enables congress to define and punish piracies and felonies committed on the high seas, and offences against the law of nations, together with the act of congress declaring the punishment of those offences, as transferring the whole subject to the courts. But that clause can never be construed to make to the government a grant of power, which the people making it did not themselves possess. It has already been shown, that the people of the United States have no jurisdiction over offences committed on board a foreign ship, against a foreign nation. Of consequence, in framing a government for themselves, they cannot have passed this jurisdiction to that government. The law, therefore, cannot act upon the case. But this clause of the constitution cannot be considered, and need not be considered, as affecting acts which are piracy under the law of nations. As the judicial power of the United States extends to all cases of admiralty and maritime jurisdiction, and piracy under the law of nations is of admiralty and maritime jurisdiction, punishable by every nation, the judicial power of the United States, of course, extends to it. On this principle, the courts of admiralty, under the confederation, took cognisance of piracy, although there was no express power in congress to define and punish the offence.

But the extension of the judicial power of the United States to all cases of admiralty and maritime jurisdiction, must necessarily be understood with some limitation. All cases of admiralty and maritime jurisdiction which, from their nature, are triable in the United States, are submitted to the jurisdiction of the courts of the United States. There are cases of piracy by the law of nations, and cases within the legislative jurisdiction of the nation. The people of America possessed no other power over the subject, and could, consequently, transfer no other to their courts; and it has already been proved, that a murder committed on board a foreign ship of war is not comprehended within this description.

^{*19]} The consular convention with France has also been relied ^{*on}, as proving the act of delivering up an individual to a foreign power, to be in its nature

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judicial, and not executive. The ninth article of that convention authorizes the consuls and vice-consuls of either nation to cause to be arrested, all deserters from their vessels, "for which purpose the said consuls and vice-consuls shall address themselves to the courts, judges and officers competent." This article of the convention does not, like the 27th article of the treaty with Britain, stipulate a national act, to be performed on the demand of a nation; it only authorizes a foreign minister to cause an act to be done, and prescribes the course he is to pursue. The contract itself is, that the act shall be performed by the agency of the foreign consul, through the medium of the courts; but this affords no evidence that a contract of a very different nature is to be performed in the same manner.

If is said, that the then president of the United States declared the incompetency of the courts, judges and officers, to execute the contract, without an act of the legislature. But the then president made no such declaration. He has said, that some legislative provision is requisite to carry the stipulations of the convention into full effect. This, however, is by no means declaring the incompetency of a department to perform an act stipulated by treaty, until the legislative authority shall direct its performance.

It has been contended, that the conduct of the executive, on former occasions, similar to this, in principle, has been such as to evince an opinion, even in that department, that the case in question is proper for the decision of the courts. The fact adduced to support this argument, is the determination of the late president, on the case of prizes made within the jurisdiction of the United States, or by privateers fitted out in their ports. The nation was bound to deliver up those prizes, in like manner as the nation is now bound to deliver up an individual demanded under the 27th article of the treaty with Britain. The duty was the same, and devolved on the same department. *In quoting the decision of the executive on that case, the gentleman from New York has taken occasion to bestow a high encomium on the late president, and to consider his conduct as furnishing an example worthy the imitation of his successor. It must be cause of much delight to the real friends of that great man, to those who supported his administration, while in office, from a conviction of its wisdom and its virtue, to hear the unqualified praise which is now bestowed on it by those who had been supposed to possess different opinions. If the measure now under consideration shall be found, on examination, to be the same in principle with that which has been cited by its opponents, as a fit precedent for it, then may the friends of the gentleman now in office indulge the hope, that when he, like his predecessor, shall be no more, his conduct too may be quoted as an example for the government of his successors. [20]

The evidence relied on to prove the opinion of the then executive on the case, consists of two letters from the secretary of state, the one of the 29th of June 1793, to Mr. Genet, and the other of the 16th of August 1793, to Mr. Morris. In the letter to Mr. Genet, the secretary says, that the claimant having filed his libel against the ship William, in the court of admiralty, there was no power which could take the vessel out of court, until it had decided against its own jurisdiction; that having so decided, the complaint is lodged with the executive, and he asks for evidence to enable that department to consider and decide finally on the subject. It will be difficult, to find in this letter an executive opinion, that the case was not a case for executive decision. The contrary is clearly avowed. It is true, that when an individual claiming the property as his, had asserted that claim in court, the executive acknowledges in itself a want of power to dismiss or decide upon the claim thus pending in court. But this argues no opinion of a want of power in itself to decide upon the case, if, instead of being carried before a court, as an individual claim, it is brought before the executive, as a national demand. A private suit, instituted by an individual, asserting his claim to property, can only be controlled by that individual. The executive can give no direction concerning it. But a public prosecution, *carried on in the name of the United States, can, without impropriety, be dismissed at the will of the government. [21] The opinion, therefore, given in this letter, is unquestionably correct; but it is certainly

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misunderstood, when it is considered as being an opinion, that the question was not in its nature a question for executive decision.

In the letter to Mr. Morris, the secretary asserts the principle, that vessels taken within our jurisdiction ought to be restored, but says, it is yet unsettled, whether the act of restoration is to be performed by the executive or judicial department. The principle, then, according to this letter, is not submitted to the courts—whether a vessel captured within a given distance of the American coast, was or was not captured within the jurisdiction of the United States, was a question not to be determined by the courts, but by the executive. The doubt expressed is, not what tribunal shall settle the principle, but what tribunal shall settle the fact. In this respect, a doubt might exist, in the case of prizes, which could not exist in the case of a man. Individuals on each side claimed the property, and therefore, their rights could be brought into court, and there contested, as a case in law or equity. The demand of a man, made by a nation, stands on different principles.

Having noticed the particular letters cited by the gentleman from New York, permit me now, said Mr. Marshall, to ask the attention of the house to the whole course of executive conduct on this interesting subject. It is first mentioned, in a letter from the secretary of state to Mr. Genet, of the 25th of June 1793. In that letter, the secretary states a consultation between himself and the secretaries of the treasury and war (the president being absent), in which (so well were they assured of the president's way of thinking in those cases) it was determined, that the vessels should be detained in the custody of the consuls in the ports, "until the government of the United States shall be able to inquire into, and decide on the fact." In his letter of the 12th of July 1793, the secretary writes, the president has determined to refer the questions concerning prizes "to persons learned in the laws." And he requests that *certain vessels [22] enumerated in the letter should not depart "until *his* ultimate determination shall be made known." In his letter of the 7th of August 1793, the secretary informs Mr. Genet, that the president considers the United States as bound "to effectuate the restoration of, or to make compensation for, prizes which shall have been made of any of the parties at war with France, subsequent to the 5th day of June last, "by privateers fitted out of our ports." That it is consequently expected that Mr. Genet will cause restitution of such prizes to be made. And that the United States "will cause restitution" to be made "of all such prizes as shall be hereafter brought within their ports by any of the said privateers." In his letter of the 10th of November 1793, the secretary informs Mr. Genet, that, for the purpose of obtaining testimony to ascertain the fact of capture, within the jurisdiction of the United States, the governors of the several states were requested, on receiving any such claim, immediately to notify thereof the attorneys of their several districts, whose duty it would be, to give notice "to the principal agent of both parties, and also to the consuls of the nations interested, and to recommend to them to appoint, by mutual consent, arbiters to decide whether the capture was made within the jurisdiction of the United States, as stated in my letter of the 8th instant, according to whose award, the governor may proceed to deliver the vessel to the one or the other party." "If either party refuse to name arbiters, then the attorney is to take depositions on notice, which he is to transmit for the information and decision of the president." "This prompt procedure is the more to be insisted on, as it will enable the president, by an immediate delivery of the vessel and cargo to the party having title, to prevent the injuries consequent on long delay." In his letter of the 22d of November 1793, the secretary repeats, in substance, his letter of the 12th of July and 7th of August, and says, that the determination to deliver up certain vessels, involved the brig Jane of Dublin, the brig Lovely Lass, and the brig Prince William Henry. He concludes with saying, "I have it in charge to inquire of you, sir, whether these three brigs have been given up according to the determination [23] *of the president, and if they have not, to repeat the requisition, that they may be given up to their former owners." Ultimately, it was settled, that the fact should be investigated in the courts, but the decision was regulated by the principles established by the executive department

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The decision, then, on the case of vessels captured within the American jurisdiction, by privateers fitted out of the American ports, which the gentleman from New York has cited with such merited approbation; and which he has declared to stand on the same principles with those which ought to have governed in the case of Thomas Nash; which deserves the more respect, because the government of the United States was then so circumstanced as to assure us, that no opinion was lightly taken up, and no resolution formed, but on mature consideration. This decision, quoted as a precedent, and pronounced to be right, is found, on fair and full examination, to be precisely and unequivocally the same with that which was made in the case under consideration. It is a full authority to show, that, in the opinion always held by the American government, a case like that of Thomas Nash is a case for executive, and not judicial decision.

The clause in the constitution, which declares, that "the trial of all crimes, except in cases of impeachment, shall be by jury," has also been relied on as operating on the case, and transferring the decision on a demand for the delivery of an individual from the executive to the judicial department. But certainly, this clause in the constitution of the United States cannot be thought obligatory on, and for the benefit of, the whole world. It is not designed to secure the rights of the people of Europe and Asia, or to direct and control proceedings against criminals, throughout the universe. It can then be designed only to guide the proceedings of our own courts, and to prescribe the mode of punishing offences committed against the government of the United States, and to which the jurisdiction of the nation may rightfully extend.

It has already been shown, that the courts of the United States were incapable of trying the crime for which Thomas Nash was delivered up to justice; the question to be determined was, not how his crime should be tried and punished, but whether he *should be delivered up to a foreign tribunal, which was alone capable of trying and punishing him. A provision for the trial of crimes in the courts of the [24] United States, is clearly not a provision for the performance of a national compact for the surrender to a foreign government of an offender against that government. The clause of the constitution declaring that the trial of all crimes shall be by jury, has never even been construed to extend to the trial of crimes committed in the land and naval forces of the United States. Had such a construction prevailed, it would most probably have prostrated the constitution itself, with the liberties and the independence of the nation, before the first disciplined invader who should approach our shores. Necessity would have imperiously demanded the review and amendment of so unwise a provision. If, then, this clause does not extend to offences committed in the fleets and armies of the United States; how can it be construed to extend to offences committed in the fleets and armies of Britain or of France, or of the Ottoman or Russian empires?

The same argument applies to the observations on the seventh article of the amendments to the constitution. That article relates only to trials in the courts of the United States, and not to the performance of a contract for the delivery of a murderer not triable in those courts.

In this part of the argument, the gentleman from New York has presented a dilemma of a very wonderful structure indeed. He says, that the offence of Thomas Nash was either a crime or not a crime. If it was a crime, the constitutional mode of punishment ought to have been observed: if it was not a crime, he ought not have been delivered up to a foreign government, where his punishment was inevitable. It has escaped the observation of that gentleman, that if the murder committed by Thomas Nash was a crime, yet it was not a crime provided for by the constitution, or triable in the courts of the United States; and that if it was not a crime, yet it is the precise case in which his surrender was stipulated by treaty. Of this extraordinary dilemma then, the gentleman from New York is, himself, perfectly at liberty to retain either form. He says, it was *made a crime by treaty, and is punished by sending the offender out of the country. The gentleman is incorrect in every part of his statement. [25] Murder on board a British frigate is not a crime created by treaty. It would have been a crime of precisely the same magnitude, had the treaty never been formed. It is not punished, by sending the offender out of the United States. The experience of

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this unfortunate criminal, who was hung and gibbeted, evinced to him that the punishment of his crime was of a much more serious nature than banishment from the United States.

The gentleman from Pennsylvania, and the gentleman from Virginia, have both contended, that this was a case proper for the decision of the courts, because points of law occurred, and points of law must have been decided in its determination. The points of law which must have been decided, are stated by the gentleman from Pennsylvania to be, first, a question whether the offence was committed within the British jurisdiction; and secondly, whether the crime charged was comprehended within the treaty.

It is true, sir, these points of law must have occurred, and must have been decided: but it by no means follows, that they could only have been decided in court. A variety of legal questions must present themselves, in the performance of every part of executive duty, but these questions are not, therefore, to be decided in court. Whether a patent for land shall issue or not, is always a question of law, but not a question which must necessarily be carried into court. The gentleman from Pennsylvania seems to have permitted himself to have been misled by the misrepresentation of the constitution, made in the resolutions of the gentleman from New York; and in consequence of being so misled, his observations have the appearance of endeavoring to fit the constitution to his arguments, instead of adapting his arguments to the constitution. When the gentleman has proved that these are questions of law, and that they must have been decided by the president, he has not advanced a single step toward proving that they were improper for executive decision. The question, whether vessels captured within three miles of the American coast, or by privateers *fitted out in the

* 26] American ports, were legally captured or not, and whether the American government was bound to restore them, if in its power, were questions of law, but they were questions of political law, proper to be decided, and they were decided by the executive, and not by the courts.

The *casus fœderis* of the guaranty was a question of law, but no man would have hazarded the opinion, that such a question must be carried into court, and can only be there decided. So the *casus fœderis* under the 27th article of the treaty with Britain is a question of law, but of political law. The question to be decided is, whether the particular case proposed be one in which the nation has bound itself to act, and this is a question depending on principles never submitted to courts. If a murder should be committed within the United States, and the murderer should seek an asylum in Britain, the question whether the *casus fœderis* of the 27th article had occurred, so that his delivery ought to be demanded, would be a question of law, but no man would say it was a question which ought to be decided in the courts. When, therefore, the gentleman from Pennsylvania has established, that in delivering up Thomas Nash, points of law were decided by the president, he has established a position whch in no degree whatever aids his argument.

The case was, in its nature, a national demand, made upon the nation. The parties were the two nations. They cannot come into court to litigate their claims, nor can a court decide on them. Of consequence, the demand is not a case for judicial cognoscence. The president is the sole organ of the nation, in its external relations, and its sole representative with foreign nations. Of consequence, the demand of a foreign nation can only be made on him. He possesses the whole executive power. He holds and directs the force of the nation. Of consequence, any act to be performed by the force of the nation, is to be performed through him. He is charged to execute the laws. A treaty is declared to be a law. He must then execute a treaty, where he, and he alone, possesses the means of executing it.

*The treaty, which is a law, enjoins the performance of a particular object. *27] The person who is to perform this object is marked out by the constitution, since the person is named who conducts the foreign intercourse, and is to take care that the laws be faithfully executed. The means by which it is to be performed, the force of the nation, are in the hands of this person. Ought not this person to per-

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form the object, although the particular mode of using the means has not been prescribed? Congress unquestionably may prescribe the mode; and congress may devolve on others the whole execution of the contract; but till this be done, it seems the duty of the executive department, to execute the contract by any means it possesses.

The gentleman from Pennsylvania contends that, although this should be properly an executive duty, yet it cannot be performed, until congress shall direct the mode of performance. He says, that although the jurisdiction of the courts is extended, by the constitution, to all cases of admiralty and maritime jurisdiction, yet if the courts had been created, without any express assignment of jurisdiction, they could not have taken cognisance of causes expressly allotted to them by the constitution; the executive, he says, can, no more than courts, supply a legislative omission. It is not admitted, that in the case stated, courts could not have taken jurisdiction; the contrary is believed to be the correct opinion. And although the executive cannot supply a total legislative omission, yet it is not admitted or believed, that there is such a total omission in this case.

The treaty, stipulating that a murderer shall be delivered up to justice, is as obligatory as an act of congress making the same declaration. If, then, there was an act of congress in the words of the treaty, declaring that a person who had committed murder, within the jurisdiction of Britain, and sought an asylum within the territory of the United States, should be delivered up by the United States, on the demand of his Britannic majesty, and such evidence of his criminality as would have justified his commitment for trial, had the offence been here committed; could the president, who is bound to execute the laws, have justified *a refusal to deliver up the criminal, [*28] by saying that the legislature had totally omitted to provide for the case?

The executive is not only the constitutional department, but seems to be the proper department to which the power in question may most wisely and most safely be confided. The department which is intrusted with the whole foreign intercourse of the nation, with the negotiation of all its treaties, with the power of demanding a reciprocal performance of the article, which is accountable to the nation for the violation of its engagements with foreign nations, and for the consequences resulting from such violation, seems the proper department to be intrusted with the execution of a national contract like that under consideration.

If at any time policy may temper the strict execution of the contract, where may that political discretion be placed so safely as in the department whose duty it is to understand precisely the state of the political intercourse and connection between the United States and foreign nations, to understand the manner in which the particular stipulation is explained and performed by foreign nations, and to understand completely the state of the Union? This department, too, independent of judicial aid, which may, perhaps, in some instances, be called in, is furnished with a great law-officer, whose duty it is to understand and to advise when the *casus fœderis* occurs. And if the president should cause to be arrested, under the treaty, an individual who was so circumstanced as not to be properly the object of such an arrest, he may perhaps, bring the question of the legality of his arrest before a judge, by a writ of *habeas corpus*.

It is then demonstrated, that according to the practice, and according to the principles of the American government, the question, whether the nation has or has not bound itself to deliver up any individual, charged with having committed murder or forgery, within the jurisdiction of Britain, is a question, the power to decide which rests alone with the executive department. It remains to inquire, whether, in exercising this power, and in performing the duty it enjoins, the president has committed *an unauthorized and dangerous interference with judicial decisions. [*29]

That Thomas Nash was committed, originally, at the instance of the British consul, at Charleston, not for trial in the American courts, but for the purpose of being delivered up to justice, in conformity with the treaty between the two nations, has been already so ably argued by the gentleman from Delaware, that nothing further can be

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added to that point. He would, therefore, Mr. Marshall said, consider the case as if Nash, instead of having been committed for the purposes of the treaty, had been committed for trial. Admitting even this to have been the fact, the conclusions which have been drawn from it were by no means warranted.

Gentlemen had considered it as an offence against judicial authority, and a violation of judicial rights, to withdraw from their sentence a criminal against whom a prosecution had been commenced. They had treated the subject, as if it was the privilege of courts to condemn to death the guilty wretch arraigned at their bar, and that to intercept the judgment, was to violate the privilege. Nothing can be more incorrect than this view of the case. It is not the privilege, it is the sad duty of courts, to administer criminal judgment; it is a duty to be performed at the demand of the nation, and with which the nation has a right to dispense. If judgment of death is to be pronounced, it must be at the prosecution of the nation, and the nation may, at will, stop that prosecution. In this respect, the president expresses constitutionally the will of the nation, and may rightfully, as was done in the case at Trenton, enter a *nolle prosequi*, or direct that the criminal be prosecuted no further. This is no interference with judicial decisions, nor any invasion of the province of a court. It is the exercise of an indubitable and a constitutional power. Had the president directed the judge at Charleston to decide for or against his own jurisdiction, to condemn or acquit the prisoner, this would have been a dangerous interference with judicial decisions, and ought to have been resisted. But no such direction has been given, nor any such decision been required. If the president determined that Thomas

Nash ought to have been delivered up to the British government *for a murder ^{*30]} committed on board a British frigate, provided evidence of the fact was adduced, it was a question which duty obliged him to determine, and which he determined rightly. If, in consequence of this determination, he arrested the proceedings of a court, on a national prosecution, he had a right to arrest and stop them, and the exercise of this right was a necessary consequence of the determination of the principal question. In conforming to this decision, the court has left open the question of its jurisdiction. Should another prosecution of the same sort be commenced, which should not be suspended, but continued by the executive, the case of Thomas Nash would not bind as a precedent against the jurisdiction of the court. If it should even prove that, in the opinion of the executive, a murder committed on board a foreign fleet was not within the jurisdiction of the court, it would prove nothing more: and though this opinion might rightfully induce the executive to exercise its power over the prosecution, yet if the prosecution was continued, it would have no influence with the court, in deciding on its jurisdiction. Taking the fact, then, even to be as the gentlemen in support of the resolutions would state it, the fact cannot avail them.

It is to be remembered, too, that in the case stated to the president, the judge himself appears to have considered it as proper for executive decision, and to have wished that decision. The president and judge seem to have entertained on this subject the same opinion: and in consequence of the opinion of the judge, the application was made to the president.

It has been demonstrated: 1st. The case of Thomas Nash, as stated to the president, was completely within the 27th article of the treaty between the United States of America and Great Britain. 2d. That this question was proper for executive and not for judicial decision; and 3d. That in deciding it, the president is not chargeable with an interference with judicial decisions.

After trespassing so long, Mr. Marshall said, on the patience of the house, in ^{*31]} arguing what had appeared to him to be the *material points growing out of the resolutions, he regretted the necessity of detaining them still longer, for the purpose of noticing an observation, which appeared not to be considered by the gentleman who made it as belonging to the argument. The subject introduced by this observation, however, was so calculated to interest the public feelings, that he must be excused for stating his opinion on it.

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The gentleman from Pennsylvania had said, that an impressed American seaman, who should commit homicide, for the purpose of liberating himself from the vessel in which he was confined, ought not to be given up as a murderer. In this, Mr. Marshall said, he concurred entirely with that gentleman. He believed the opinion to be unquestionably correct, as were the reasons that gentleman had given in support of it. He had never heard any American avow a contrary sentiment, nor did he believe a contrary sentiment could find a place in the bosom of any American. He could not pretend, and did not pretend, to know the opinion of the executive on the subject, because he had never heard the opinion of that department; but he felt the most perfect conviction, founded on the general conduct of the government, that it could never surrender an impressed American, to the nation, which, in making the impressment, had committed a national injury. This belief was in no degree shaken by the conduct of the executive, in this particular case.

In his own mind, it was a sufficient defence of the president, from an imputation of this kind, that the fact of Thomas Nash being an impressed American was obviously not contemplated by him, in the decision he made on the principles of the case. Consequently, if a new circumstance occurred, which would essentially change the case decided by the president, the judge ought not to have acted under that decision, but the new circumstance ought to have been stated. Satisfactory as this defence might appear, he should not resort to it, because to some it might seem a subterfuge. He defended the conduct of the president, on other and still stronger ground. The president had decided that a *murder* committed on board a British frigate, on the high seas, was within the jurisdiction of *that nation, and consequently, within the [**32 27th article of its treaty with the United States. He, therefore, directed Thomas Nash to be delivered to the British minister, if satisfactory evidence of the murder should be adduced. The sufficiency of the evidence was submitted entirely to the judge. If Thomas Nash had committed a murder, the decision was, that he would be surrendered to the British minister; but if he had not committed a murder, he was not to be surrendered.

Had Thomas Nash been an impressed American, the homicide on board the *Hermoine* would, most certainly, not have been a murder. The act of impressing an American, is an act of lawless violence. The confinement on board a vessel, is a continuation of that violence, and an additional outrage. Death committed within the United States, in resisting such violence, would not have been murder, and the person giving the wound could not have been treated as a murderer. Thomas Nash was only to have been delivered up to justice, on such evidence, as, had the fact been committed within the United States, would have been sufficient to have induced his commitment and trial for murder. Of consequence, the decision of the president was so expressed, as to exclude the case of an impressed American liberating himself by homicide.

He concluded with observing, that he had already too long availed himself of the indulgence of the house to venture further on that indulgence, by recapitulating, or reinforcing, the arguments which had already been urged.

NOTE II.

On the Laws of Louisiana.

In a note to a former volume of these reports (Vol. 3, p. 202, note), the editor attempted to give a slight sketch of the sources from which the local laws of Louisiana have been *derived. From that statement, the learned reader will perceive, [**33 that they mainly spring from the Spanish law, with the following valuable history of which, the editor has been favored by Mr. Alexander Porter, Jr., of Attakapas, in the state of Louisiana, by whom it was translated and compiled from the original

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Spanish writers. The editor has taken the liberty of subjoining a few explanatory remarks to those made by Mr. Porter, and intended to illustrate the facts stated in the history.

History of the Spanish Law.

The laws of Spain, in common with all the kingdoms of modern Europe, seem to have suffered a variety of changes, in the revolutions that took place, at different times, in her government, and in the gradual advances that the nation made from barbarism and poverty, to the comparative wealth and civilization, which distinguish her present condition. Spain, while a part of the Roman empire, was governed, like all the other provinces, by the laws of Rome; and those principles of jurisprudence which now preserve their influence there, from the superiority of their wisdom, and the respect which is due to the immutable dictates of justice and truth on which they are founded, once had force and authority, from being promulgated and acted on by the ruling power of the state. (a)

On the conquest of Spain by the Goths, it may be readily supposed, that a barbarous people, such as we know them to have been, were badly calculated to relish or ^{*34]} adopt laws befitting *the condition of a rich and polished people. Hence, we find, on the establishment of these invaders in that country, the Imperial or Roman jurisprudence fell immediately into disuse; and for a considerable period after the conquest, the usages and customs of the Goths were the only rule of action. A settled residence, however, in the country, producing a state of society widely different from the migrating and ever-changing condition to which they had formerly been accustomed, created the necessity of something better calculated to meet the wants of their new situation; and laws and decrees of various kinds began to be passed at their national councils. At these meetings, the clergy assisted; and it may readily be conceived, from their education and ability, that they were the sole persons, in those ages, capable of putting them in a shape by which they could be transmitted to posterity.

From these decisions of their national councils, and from various edicts of the Gothic kings, a work was promulgated in the 693d year of the Christian era, which bears the name of "Fuero Juzgo." (b) This first code of the nation was divided into

(a) No one can contemplate without emotion the great fortune and fame of the Roman people. "Comme si les grandes destinées de Rome n'étoient pas encore accomplies : Elle regne dans toute la terre par sa raison, après avoir cessé d'y regnée par son autorité. On diroit en effet que la justice n'ait dévoilé pleinement ses mystères qu'aux jurisconsultes Romains. Legislateurs encore plus que jurisconsultes, de simple particuliers dans l'obscurité d'une vie privée ont mérité par la supériorité de leurs lumières de donner des loix à toute la postérité. Lois aussi entendues que durables toutes les nations les nations les interrogent encore à présent et chacune en reçoit des réponses d'une éternelle vérité. C'est peu pour eux d'avoir interprété la loi de douze tables et l'édit du Préteur, ils sont les plus sur interprètes de nos loix mêmes ; ils prétent pour ainsi dire, leur esprit à nos usages, leur raison à nos coutumes, et par les principes, qu'ils nous donnent, ils nous servent de guides lors même que nous marchons dans une route qui leur étoit inconnue." (Œuvres de D'Aguesseau, tom. 1, p. 157, ed. 1787.)

(b) This is among the earliest, though not the first code, published by those nations, who, after destroying the Roman empire, settled themselves in the south of Europe. The most ancient is the Salic law, thought to derive its appellation from the Salians, who inhabited the country from the Leser to the Carbonian wood, on the confines of Brabant and Hainault. It was written in the Latin language, about the beginning of the fifth century, by Wisogastus, Bordogastus, Sologastus and Widowgastus, chiefs of the nation. The Burgundian and Ripuarian codes are nearly of as great antiquity. That of the Lombards, the most famous of all the systems of laws published by those barbarians, was written in Teutonic Latin in the 643d year of the Christian era, about half a century before the "Fuero Juzgo." This first effort of Spain in jurisprudence is totally overlooked, or rather seems to have been unknown to Buler, the learned author of the *Horæ Juridicæ*. Gibbon observes of this code, that it had been treated by the President Montesquieu (*Esprit des Loix*, lib. 28, c. 1), with excessive severity. But he

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twelve books, and subdivided into various titles. The first book treated of the elections of kings, (a) and of legislators, and the *mode of passing laws. (b) The [*_35 second, of judges, civil judgments, and the manner of prosecuting actions. The third, of marriages, successions, &c. The fourth and fifth, of the alienation of property belonging to the church, donations, contracts. The three following books are occupied with criminal law; the form of accusations, and the penalties attached to various crimes. The ninth contains the rules respecting fugitive slaves, deserters, &c. The tenth treats of partitions of lands, prescriptions. The eleventh, of the violation of sepulchres, of the sick, of physicians, of merchants. In the twelfth and last, of equity, of heretics, and of injuries.

This code, say the Spanish writers, though excellent in many of its parts, was better calculated for an elective monarchy than for that which now exists in Spain; and more conformable to the necessities of a warlike people, among whom, arts, agriculture and commerce had made little progress, than to a nation which (according to them) has made such eminent progress in them all.

*This code, however defective it may have been, formed the political constitution of the kingdom, until the invasion of the Moors, in the year 714, [*_36 nearly annihilated the Spanish monarchy. The Goths, who saved themselves from the storm, were obliged to retire to the mountains of Asturias. Cooped up in this narrow part of the kingdom, and engaged in continual wars, waged with their invaders, to preserve their existence or extend their dominions, it is not to be presumed, that the improvement of their laws could occupy much of their attention, or any great progress be made in a science which owes a great part of its perfection, in every country, to the quiet and blessings of peace. Accordingly, we find, that during the time the monarchy remained in that situation, their government and their laws partook in a great measure of that feudal system which about this period began to obtain so much force in all the countries of Europe, acting in some with more, and in others, with less vigor, according as the circumstances of the particular country were in a greater or less degree favorable to its progress. The king, it appears, dur-

(Gibbon) says of it: "I dislike the style; I detest the superstition; but I shall presume to think, that the civil jurisprudence displays a more civilized and enlightened state of society, than that of the Burgundians, or even of the Lombards." Gibbon's Decline and Fall of the Roman Empire, vol. 6, c. 38, note 125.

(a) In Castile, the people, or rather the nobility, asserted the right of trying and deposing their kings; in Castile and Arragon, the kings were long elective; and in all the Gothic monarchies in Spain, the power of the crown was extremely limited. Robertson, Hist. of Charles V., vol. 1, § 3, notes 31, 32, 33.

(b) The legislative authority in the Spanish monarchy was long vested jointly in the King and the Cortes, the latter consisting of the nobility, the dignified clergy, and the deputies or *procuradores* of the cities and towns. Even after the Cortes ceased to be regularly assembled, and the government assumed the form of an absolute monarchy, it continued to be the usage to convene the Cortes, in the lifetime of the reigning king, in order that they might take an oath of fidelity to his eldest son, as heir-apparent of the crown. This ceremony was performed during the reign of the late king

Charles IV., in 1788, when the Cortes were assembled for the sole purpose of swearing fidelity to his son, Ferdinand VII., the present monarch. Under the ancient constitution, no duties or taxes could be enacted from the cities and towns, except what were freely granted in the Cortes, by the deputies of these communities. The law establishing this privilege was enacted in 1328, not many years after the celebrated English statute *de tallagio non concedendo*, securing the same right to the English people. "It is curious fact, that this law, though violated in practice, was still retained in the Spanish *Recopilacion*, till the reign of Charles IV., when it was expunged, in the insolence of despotism, within a few years of that revolution which precipitated the degraded monarch from his throne, and restored to his people, not that only, but all the ancient rights of their fathers." The constitution which was established in consequence of this revolution, was abolished by Ferdinand VII., on his return to Spain in 1814, but has again been restored by another revolution, the accounts of which have just reached us; and which, it is to be hoped, may establish the liberties of the Spanish people on a permanent basis.

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ing this period, on making conquests from the Moors, distributed the lands among the nobles who assisted him in person and with their vassals, during the wars. To the large cities and towns, various privileges were extended from time to time, as they were conquered and annexed to the Spanish monarchy.(a)

This change of situation in the condition of the people, the increase of power given to the nobles, by the division of conquered lands, and the privileges extended to the cities, created a necessity for new regulations. Accordingly, in the year 992, a code was published entitled "Fuero Viejo." This work was divided into five books, each comprehending various titles. The first contained the laws by which the extent of the relative duties flowing from the king to the people, and from the people to the king, were ascertained ; the obligation of vassals to their lords, and the extent of protection which the latter owed to the former ; rules for the government of judicial *37] *combats ; the prohibition of the use of armed force by individuals ; of vassals attached to the soil ; of the inhabitants of free towns and their laws ; and concludes with a title of the penalties inflicted on the powerful (*los Poderosos*), who vexed or oppressed their vassals in towns, by unjustly seizing their provisions from them. In the second book, were included the penal laws against various classes of crimes. In the third, titles directing the formalities which parties should observe who present their plaints in justice ; of the various kinds of proofs and sentences ; and this book concludes with titles which treat of debts and suretyship. In the fourth, are given the laws which govern contracts ; the manner of acquiring the dominion of things ; of public works, and the construction of mills. In the fifth and last, are found dispositions relative to the portion settled by the husband on his wife ("las Arras"), inheritances, partition of lands which were given to rent ; and it concludes with the titles appertaining to tutors, disinheritances, legitimate and illegitimate children, with an appendix to the whole.

In this work, say the modern Spanish writers, were found the same defects as in the "Fuero Juzgo." There is the same want of good and wholesome regulations for the protection of agriculture, arts and commerce : and the various titles which speak of judicial combats, the use of armed force by private individuals, with various regulations of a similar nature, plainly show, that the king, at this period, had not sufficient power to curb the haughty and licentious nobles, and restrain their actions within limits compatible with private security and public order. A knowledge, however, of this code is even now considered as highly necessary in that country to those who aspire to the exalted ranks of their profession ; it being regarded as eminently useful to the perfect understanding of many modern laws which treat of vassalage ; the dominion of things considered as appendages to landed estate ; the prerogatives of nobles, grandes, &c.

However justly this code of laws, as well as that of the "Fuero Juzgo," may be entitled to the censure of the Spanish writers of the present day, and although provisions compatible with such a state of society as then existed would be found *38] *totally inconsistent with the well-being of any of the kingdoms of modern Europe, yet it may be questioned, if any other of the nations at present existing in that portion of the globe can boast of codes of equal antiquity and value ; and from the date of the promulgation of them, it would appear, that while England and the other nations of Europe were yet in the darkest stages of confusion and ignorance, Spain, by reducing her laws to a permanent form, was making no inconsiderable progress toward civilization.

Between the date of the promulgation of the "Fuero Viejo" in the year 992, and the year 1255, at which period was promulgated the "Fuero Real," two circumstances occurred, which occasioned a material change, not only in the laws of Spain,

(a) Robertson, Hist. of Charles V., vol. 1, § 3, note 34. Municipal corporations are of greater antiquity in Spain than in any other European country, except Italy. It was the

prerogative of the crown to erect them ; but the right was often delegated to the clergy and nobility. Their immunities were very extensive.

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but indeed of all the nations of Europe. The one was the discovery, at Amalfi, of the code and pandects of Justinian, a work which astonished Europe, just emerging from barbarism, and which, as it contained the collected wisdom of the Roman jurists, became at once an object of study and admiration to all men whose education placed it within their reach. The other was the collection of the decretals of the church, privately executed by a monk called Gratian, in the year 1151, and subsequently enlarged and improved by a compilation of authorities made in the year 1236, in virtue of an order to that effect made by Pope Gregory IX.

During the period of time that intervened between the discovery of the Pandects in 1137, and the publication of the "Fuero Real" in 1255, it is rather difficult to ascertain, what authority the former code obtained in Spain. The modern Spanish writers state (perhaps from a laudable feeling of national pride), that the Roman jurisprudence has never been considered as the law of the land on the peninsula; and it is not, at this time, binding as an authority. However true this may be, when applied to the present state of jurisprudence in that country, matured and improved as it has been, by the experience of a long succession of ages; and enriched, as it must be, by the incorporation of all that is most valuable in the Roman law; yet it may be fairly questioned, if it had not, during the interval we speak of, nearly superseded the use of the old Spanish *codes. This conclusion may be safely drawn: first, from its acknowledged superiority over the ill-digested and barbarous laws of Spain, and indeed, of every other nation then existing; a superiority so striking as to be recognised even by the rudest and most uncivilized people to whom it was known. Secondly, from the influence of the clergy in that age—their well-known attachment to this system of laws—the zeal with which they labored for its introduction in every country of Europe, and their almost invariable success. (a) Lastly, from the very laws of the Spanish kings themselves, the codes published by their directions, viz., the "Fuero Real" in the year 1255, and the "Partidas" in 1260. Nearly all that is excellent in each of these compilations, seems to have been borrowed from the Roman law, and hence the presumption strongly arises, that the sovereigns of that country, finding the use of the latter becoming general, it was thought more politic, to sanction it by the authority of the state: accomplishing at once two useful objects by this measure; soothing national pride, and rejecting all those laws which were inconsistent with the then state of society in Spain.

Of the collection of Decretals (or decrees of the Pope before mentioned), viz., those made by the Monk Gratian, in his private capacity, and those made by Raymundo De Penafort, in pursuance of an order of Pope Gregory IX., the latter only are received as authority in Spain. In the work executed by De Penafort, the method of the Roman pandects is very closely pursued. It is divided into five books, each of which are again subdivided into various titles. In the first, after various preliminaries, connected with a canonical *collection, it treats of the dignities of persons, of ecclesiastical judgments; which latter form also the subject-matter of the second book. In the third, after treating again of the persons of ecclesiastics, and their benefices and prebendaries, some titles are subjoined, upon the rules applicable to the construction of various contracts—how those ought to be interpreted which have for their object church property, or which appertain to its jurisdiction, by reason

(a) These observations on the authority which the Roman law had in Spain, are not translated from the Spanish writers, but are my own ideas on the subject, introduced in the text, instead of a note, as better keeping up a connected view of the whole subject. The conclusions which I have drawn, as to the influence of the civil law, are quite in opposition to the declarations of many Spanish authors; but they appear to me, for the reasons above stated,

fair and natural. The immense influence of the clergy, in Europe, during the middle ages, is well known. They had, at one time, nearly succeeded in supplanting the common law in England, and contributed essentially to the establishment of the civil law, all over the continent, either as the only municipal code, or as supplementary to it, in all cases where it was silent or defective.

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of the personal privilege of the party defendant. The remainder of this book is occupied with the immunity of churches, of the regular clergy, and other matters of this nature. The fourth book is entirely occupied with the laws of the church respecting marriage, its antecedents and consequences. And the fifth and last treats of criminal jurisprudence, and of the penalties affixed to ecclesiastical crimes, such as simony and other offences committed by persons belonging to the church. It also contains provisions respecting church censures, and concludes, in imitation of the pandects, with the titles, the signification of words, and maxims of law. (*Reglas del Derecho*.) As the sixth, and other later collections, pursue the same method with that above mentioned, a particular account of them is deemed unnecessary.

In this state of the civil, criminal and canonical jurisprudence of Spain, the Holy King Ferdinand III., about the middle of the 13th century, gave much more force, extension and solidity to the Spanish monarchy than it possessed in former periods : as well by the glorious conquest of the kingdoms of Cordova and Seville, as by the prudence and sagacity with which he governed the countries he inherited and subdued. This prince, and his son Alonzo (surnamed the Wise), feeling that the multitude of particular jurisdictions, and the exorbitant privileges conceded to the nobility and gentry, divided and weakened the kingdom, determined, for the purpose of avoiding its entire desolation, to form a general body of laws, or code, which, by its operation, might unite all classes of society, and at the same time preserve a regular gradation of rank ; prevent or destroy the dangerous and horrible effects of feudal anarchy ; confine the powerful nobles within the limits due to the prince ; terminate the factions and discords between the families ^{*41]} of the great and their respective vassals ; and finally, establish good order, by a judicious and correct administration of justice. The death of Ferdinand III., which took place a short period after the conquest of Seville in 1252, prevented him from carrying into effect his salutary and necessary projects. His son, however (Alonzo the Wise), who inherited his kingdoms, and, as it appears, all his father's views on this subject, carried his predecessor's intentions into complete operation by the formation of two codes, the first called the "Fuero Real," and the second the Partidas ; the former was executed in the year 1255, and was designed as a precursor to the great work of the Partidas. The "Fuero Real" is divided into four books, each composed of different titles. The first commences with the laws which direct the observance of the Christian faith ; the preservation of the king and his children ; presenting all the obligations of a Christian and a subject, as forming the basis of sound morals and correct conduct in private life ; afterwards follow the titles respecting the alienation of church property ; and it concludes with those respecting public officers ; V. G., alcades, lawyers, notaries-public, &c. The second book is altogether taken up with rules respecting judicial proceedings ; of the competent tribunals ; of the commencement of suits ; the "*litis contestatio*," or joining issue : the modes of proof, and exceptions thereto ; and concludes with the mode of regulating final judgments. The third book is principally occupied with the regulations respecting matrimony, jointures ("*las arras*") acquests and gains, and the division of lands which are rented out (*se dan a Plazos*) ; afterwards of legacies, and estates in trust, inheritances, tutorships, and other points incident to these matters. From the tenth to the twentieth and last title of this book, are to be found the laws concerning various classes of contracts. The fourth and last book treats principally of Apostates, Jews, Saracens and their slaves. These regulations are followed by an enumeration of various penalties affixed to different crimes ; and it concludes with the law respecting adoptions, emancipations, pilgrims and ships.

^{*42]} From this analysis it will be seen, that the "Fuero Real" is a code enacted for the correct administration of civil and criminal jurisprudence among the different classes of the people, and the various provinces of the kingdom. In a word, it may be compared, as to its nature and object, to the institutes of Justinian, the primary object of which is the rights of persons and things ("dericho particular"), in which point of view, its excellence has been long admired. But as the public law makes no part of its object, it has not touched on it; or, if mentioned at all, merely

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as incident to, or connected with, the subjects of which the said code professedly treats.

The Partidas, which was concluded and published by the direction, and under the auspices, of Don Alonzo the Wise, in 1260, is a complete body of law (*el cuerpo completo*) which combines the public with the private law, all digested and prepared, says the author (from which the account of this code is taken), in a most scientific, just, solid, Christian and equitable manner; and which has not, perhaps, its equal in all Europe. The first Partidas is an exact compendium of the canon law, as it existed at that epoch. The second is a refined summary of the ancient laws and customs of the nation, comprising in itself, and combining, the greatest political wisdom with a perfect legal history. The third, fifth and sixth Partidas contain an abridgment of all that is most valuable in the Roman law, respecting judgments, contracts and last wills and testaments, each of which are well accommodated to the state of the monarchy at that time; and to the deciding and settling doubtful points of the civil law. (a) The fourth is a compendium of the civil and canon laws appertaining to espousals, matrimony and their material incidents; *and the seventh and last is that which [*43] treats of crimes and their penalties, concluding, in the manner of the pandects and decretals, with titles of the signification of words and rules of law.

This work, for the praise of which it has been a subject of regret to the Spanish writers, that their language is inadequate, comprehends so many rules of religion and justice, and of pure and Christian policy, that a volume would be necessary to state (according to them) even the principal ones. For in truth, they add, what regulations can be conceived better adapted to national happiness, than that which points out the mode of succession to the kingdom? What more convenient and honorable than that which prescribes that the king ought to honor all classes of useful subjects, including even laborers and artisans, by reason of their utility to the state? Where can anything be found more conformable to true religion, and the spirit of the Evangelist, than that which directs that he who is recently converted to the Holy Catholic Church should be honored and respected; what more honorable and equitable, than that which confines the punishment of crimes to the true delinquents, abolishing attainders and corruption of blood? and what more congenial to population, than that which promotes matrimony by the most cogent and persuasive reasons?

Notwithstanding its various and superlative merits, on account of the jealousy of the nobles, and of the fatal wound they found it would inflict on their privileges, and from other causes which began to operate after its formation, this code was not published until the year 1348, in the celebrated Cortes held in the *Alcala de Hemas*, under the reign of Alonzo XI. And even then, it is probable, the death of this monarch, which took place in the year 1350, impeded, in a considerable degree, the effect it would otherwise have had. Its complete and beneficial operation may be dated from the year 1505, under the reigns of the celebrated Don Fernando and Donna Juana, in the famous Cortes held in the city of Toro.

During the time that intervened from the formation of the Partidas, to its first publication in the Cortes of Alcala, were *promulgated in the year 1310, "las Leyes de Estilo," which amount in number to 252, without any division into books or other parts. The greater part of these treat of judgments, civil as well as criminal; then follows a description of the persons who may appear in court, and the proofs necessary to adduce them. Others again treat of contracts and last wills. As there are forms or modes of proceedings before the judges and tribunals, in the order

(a) An historical commentary upon the Partidas, was published at Madrid, in 1808, by Marina, the celebrated historian of Spain, in which valuable work, he gives an account of the institutions of Leon and Castile; relates the efforts of Ferdinand III., and Alonzo the Wise, in municipal legislation; and analyzes the Par-

tidas, showing in what respects that celebrated code deviates from the ancient common law of Spain, and in what manner it was corrupted (according to him) from its primitive simplicity, by an absurd imitation of the canon and civil law.

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in which the judgments are obtained, it is a natural consequence, that the said laws should include all that was practised, at that time, in litigating causes in the courts of justice; following, as a rule of action, that which was contained in the laws of Fero, and even, in some particular cases, against the provisions of the latter; as a special custom, legitimately introduced, derogates from the general laws. Finally, these laws of Estilo are taken notice of in our subsequent laws, and observed whenever it appears that they have been generally practised on.

From this statement of the various codes, it will be seen, that until the middle of the fourteenth century, the jurisprudence of Spain consisted in the general and ancient usages and customs of the nation; reduced to codes which were called the Feros, and that which belonged to the practice of the courts formed the Leyes de Estilo. For although the Partidas were then composed, which included a considerable number of civil and canonical decisions, corresponding to all the branches of private and public law, yet as they were not published until the year 1348, in the Cortes of Alcavala, there could not, consequently, be any authority attached to them, on contracts, or in courts of justice.

From this epoch, and particularly from the period of the Cortes held at Toro, in the year 1505, the aspect of the national law gradually changed: 1st. Because the Partidas being then published, they applied to all cases where there was not a particular statute (*fkuero*) on the subject. 2d. Because the professors of the law, in these ages, being passionately inclined, as well to the study of the canon as of the civil law, a great many of the principles of the former system were introduced, and remained in force, with certain modifications, to this day.

*Some changes were made in these, and several new laws or ordinances were published, under the name of "Pragmaticas," from time to time, as necessity or the situation of the state required them. When they amounted to a considerable number, they were collected into one or more volumes, by virtue of a Royal Ordinance, and acquired legislative force. Of this class, was the first code of the Ordinance of Alcavala, made and authorized in the year 1348. It is divided into 32 titles, each composed of different laws, relative to the manner of conducting suits, regulations on the subject of contracts and testaments, and penalties affixed to the commission of certain crimes. The second is that which comprehends the 83 laws which were made and published in the celebrated Cortes held at Toro, in the year 1505: providing for the solemnities of testaments, the right of succeeding *ab intestato*, and by will. The legacies of the third and fifth, given by the testator to one heir in preference to another; the order of succession for the nobles of Spain; the support or aliment which fathers owe to their natural children; the penalties of adultery, and other incidental titles, which are inserted in the correspondent titles of the Recopilacion.(a)

Before and after the Cortes of Toro, there were made several collections of ordinances, proclamations, and other royal determinations; which were published, from time to time, as the circumstances of the monarchy required it. The first of which is known by the name of the "Ordenamiento Real," authorized and published by the Catholic King and Queen, Ferdinand and Isabella, in the year 1496, distributed into eight books, and then into different titles, in which were contained the entire or partial repeals that had been made of the Feros, or ancient laws; also a few of the new provisions introduced. But *as these are all inserted in the Recopilacion, with corresponding titles, a further explanation is unnecessary under this head.(b)

(a) These laws of "Toro" are all included in the Recopilacion, but they are introduced into the latter work as new laws. Thus, in the Spanish law writers, we frequently find references made to them in this way, Law 20 of Toro, which is Law of the Recopilacion, &c.

(b) The "Ordenamiento Real," seems to have been a work or collection of the same kind with

the Ordinance of Alcavala, viz., collections of the royal ordinances or Pragmaticas. The latter collection comprised those up to the year 1348; the former, from that time up to the year 1496. The Law of Toro seems to have originated in the cortes or national assemblies, or, at least, to have been first promulgated there.

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The Recopilacion was first published in the year 1567, in virtue of an order made by Philip II. It includes the laws which are not repealed by the Ordenamiento Real, and the Ordenamiento del Alcala; all those of Toro and others, which had been published in the *interim*. From the year 1567 to 1777, there have been published various editions of this work with some short additions. But under the latter denomination, we do not include the "*Autos accordados*," or resolutions or decrees of the council authorized and published by the king, who by a royal order united them in one volume, divided them into books and titles corresponding to those of the Recopilacion, and published them, for the first time, in the year 1745. They now form the third and last volume of this work, and are always printed with the original collection.

This work is divided into nine books, and composed of divers titles. The method used in it is well calculated to attain the object which the very name it bears would seem to imply; and without any great labor, it is easy to find in it those edicts or laws which we have at any time occasion to examine. The first book treats exclusively of the Catholic religion and ecclesiastical matters, and contains thirteen titles. The second book, in its commencement, treats of laws in general; after which follow many titles prescribing the duties of the presidents of audiences, chancellors, judges and inferior officers of courts. The most instructive title in this book, is that which speaks of the king's council ("*el concejo del Rey*"). The third begins with laying down rules and regulations that ought to be observed in the various tribunals; it afterwards treats of the affairs of justice in cities and provinces *(*los corregidores*), contains a variety of dispositions, with respect to the alcades, or officers charged with the authority of permitting exports, &c. ; the president and council of Biboa; the council charged with that branch of rural economy connected with the management of cattle, (a) and concludes with regulations for the examination and reception of physicians, surgeons, apothecaries, farriers, &c.

[*47]

In the first title of the fourth book, are found necessary rules and regulations for the proper maintenance of the royal jurisdiction. From thence, to the 22d title, is occupied with the law of the different species of judgments; some decisions of the ancient law on the subject; the mode of carrying on suits, and the time given for their termination; rules with regard to pleas, answers, the taking of testimony, the practice to be pursued in the courts of the first and second instance; proceedings against persons in contempt, &c. From the 23d to the 33d title is found the law defining the duties of sheriff, jailer, and the fees allowed them by law.

The fifth book is principally occupied with three subjects, and their incidents, viz: first, marriage; second, inheritances or successions; and third and last, of contracts, concluding with the titles relative to banks and their officers, goldsmiths, &c., and the regulations established with respect to bankers, &c. In this book, say the Spanish writers, the most worthy of attention is the fourth title, which speaks of commissioners appointed to make wills; a singular authority, and not of any antiquity in their jurisprudence. The sixth, which treats of an heir who receives a legacy of the third or fifth of the property of *the testator. The seventh, which provides for the succession of nobles, it being the first in any of the collections of the laws of Spain, where we find a distinct title appropriated to this subject. The fifteenth title prescribes the formalities which ought to be observed with regard to taxes, respecting which there had been, anciently, various disputes.

The provisions or titles of the sixth book, are more conformable than those of any

(a) This is a curious title. The assembly is composed of the richest and most extensive owners of cattle, sheep, &c. A member of the council presides at their deliberations, and they meet once every year. This meeting is called "*el honorado concejo de las mestas*," an expression which does not admit of a literal translation. The Recopilacion contains a vari-

ety of provisions establishing the authority of this council, defining its limits. It may be gathered from the existence of this tribunal, and from the anxiety displayed by the Spanish government, from time to time, by its laws on this subject, what vast importance was attached to the inestimable flocks of merinos, of which they were for ages the sole owners.

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other in the Recopilacion to the ancient codes of Spain, *los fueros antiguos*, and those which are contained in the second Partidas. They treat of knights and of gentlemen, of towns, of vassals, of cattle, and fortresses; of the cortes; of ambassadors, inspections, tributes, ports; of those exempted from taxes, and not subject to the prohibition which prevents certain articles from being exported. And the book concludes with the titles respecting the hunter, gamekeeper, and fowler of the king. One of these titles is respecting the young of horses of a noble race.

The seventh begins with the matters that conduce to the good government of corporations; of the rents and property of councils; of the privileges of cities; of taxes; of public limits and commons. Then follow various titles which have no connection either with each other, or with the antecedent ones; as, the tenth speaks of ships; the eleventh, which speaks of artisans; the twelfth, which contains regulations with respect to dress. From the thirteenth to the seventeenth, is taken up with rules respecting the cloth manufactories, and concludes with those of chandlers and manufacturers of tallow, and the tanners and braziers of the kingdom.

The eighth book maintains a more perfect connection between its title and the matters contained therein. It begins with the preparatory steps for the ascertaining of offences, and then proceeds to the twenty-third title, with the penalties affixed to each crime, according to its grade; among which, say the Spanish authors, is worthy of note, the eighth, which imposes the pain of death ("ultimo suppicio"), with other penalties, against any person who sends a challenge or accepts one. In this provision, *49] they say, is seen the difference between the *ancient* and present state of the monarchy. The authority of the laws was not then sufficient to punish the individuals attached to, or connected with, families of vast opulence and power, who might commit violations of good order; duels were, therefore, permitted; regulations fixed for carrying them publicly into effect, and the strongest vengeance of the law, as well as the more dreadful punishment of public contempt, awaited those who, either injured or injuring, failed to resort to this mode to obtain satisfaction, or give redress. The nobles, at last, as the light of knowledge began to dawn, perceived the superior advantages of recurring to the laws, instead of resorting to these public and solemn combats. A change, correspondent to the alteration in the general opinion, took place, and duels are now placed on the same footing in Spain, as in every other well-regulated country in Europe, condemned by the laws of God and man, forbidden by the maxims of religion; yet still practiced by the obedience of all men to a false code of honor, which is unequal in its principles, and almost always cruel in its operations. (a)

The ninth and last book is occupied with details in all its branches of the royal treasury; the office of treasurer and auditor of the public exchequer; of those who compose the treasury council. Then follow the judicial regulations for the recovery *50] of taxes, of the royal rents, &c. In continuation, are *found*, the tariff of duties levied by the king on each article sold within the kingdom, the confiscation of contraband, &c.

(a) The institution of judicial combats, or trial by battle, was universally established in Europe, by the barbarous nations who established themselves on the ruins of the Roman empire (Montesquieu, *Esprit des Loix*, lib. 28, c. 14, 18; Gibbon, Decline and Fall, &c., vol. 6, c. 38, note 84; Robertson, Hist. of Charles V., vol. i, § 1, note 322), and was even transported by their posterity into the kingdoms founded by them in the East, during the crusades, as appears by that venerable monument of feudal jurisprudence the *Assise of Jerusalem*. (Gibbon, Decline and Fall, &c. vol. 9, c. 58). "It

has been slowly abolished by the laws and manners of Europe," and had a legal existence even in England (though not practically used), so recently as the year 1818, when it was formally suppressed by act of parliament, in consequence of the attempt to resort to it in the appeal of murder prosecuted in the case of *Ashford v. Thornton*, which will be found reported in 1 Barn. & Ald. 405, and in which the ingenuity of the learned judges was perplexed to contrive the means of evading this species of trial, which was demanded by the accused.

Laws of Louisiana.

A more extensive analysis has been given of this work than of any other, because, as it is last in time, it is first in authority. The author, from whom this account is principally taken, observes, that in the work entitled, "Autos accordados," there are wanting many titles, which are to be found in the Recopilacion. Since the publication of the Recopilacion, there have been issued by the kings of Spain, a vast number of proclamations, decrees, instructions for governors of Spanish America, "Royal cedulas," which have not as yet been compiled, although there was an order of the king in council to that effect. The want of a general collection of these laws, is very frequently and seriously deplored by the Spanish lawyers.

From this short statement of the rise and progress of the Spanish law, it will be seen, that the antient codes of Spain have been, like that of almost every other country in Europe, nearly supplanted by modern changes and improvements ; yet an acquaintance with them is necessary to him who wishes to understand the laws of his country, and aspires to rise to the higher honors of his profession. This knowledge, indeed, has become indispensable, since the order of council, passed the 4th of December 1713, in reference to many laws anterior to the "Fuero Juzgo," and which are found in that work, the Partidas, the Ordenamientos, the first law of Toro, the new Recopilacion, &c. It provides, that in the conducting and deciding of causes, the courts of justice shall be governed by the Recopilacion, the ordinances and decrees, the laws of the Partidas, and the other codes ("Los otros fueros"), notwithstanding it is said they have become obsolete : and in case nothing can be found on the subject, in any of these codes or laws, then that recurrence shall be had to the sovereign authority to decide on them. This decree was confirmed by Philip V., June 12th, 1714 ; directing the ancient laws which had not been repealed to be observed, although they might have been generally considered as void by *non-user*.

Between all these codes, and the laws of the Indies, there *exists a great [**51] connection. In the American provinces of Spain, the study of the civil law is a part of their education at the universities ; and by the laws for the government of these provinces, it is expressly provided, that where the Recopilacion de las Indias is wanting in provisions for any case that may arise, recourse shall be had to the laws of Castile or Spain.

The "Recopilacion de las Indias," the collection of laws of the Spanish provinces, is very similar to the "Recopilacion," of which so much has been said, both in its order and materials. In the first book, are inserted all the definitions concerning points of ecclesiastical law. In the second, after speaking of laws in general, it prescribes the order of government for the council of the Indies, and the other superior and inferior tribunals thereof. The third begins with the subject of the royal domain, and provides for its officers ; then treats of viceroys, presidents and governors, and of military affairs ; and concludes with the title concerning ceremonies, post-offices and Indian couriers. The fourth book commences with the laws relative to discoveries by sea and land ; treats afterward of cities, their population and of their rights and contributions ; of gold and silver mines, and incidental matters ; and concludes with regulations for the pearl fishery, and the manufactory of cloth. The fifth book treats, principally, of the boundaries and divisions of the different governments ; after which follow many miscellaneous matters, *e. g.*, that of the Holy Brotherhood, of the assembly for the police of cattle ; of physicians and apothecaries ; of the order of judicial proceedings ; and concludes with a title respecting the domicil of individuals. The sixth book is occupied nearly throughout with the laws respecting Indians, the commandants placed over them, &c. The seventh is taken up with criminal jurisprudence. The eighth, with the laws respecting the royal treasury ; and the ninth, with regulations respecting the armada, or fleets by means of which the commerce of Spain was formerly carried on with the colonies. But these regulations are now obsolete.

This work, it may be seen from the analysis of it, is of a *very limited [**52] nature, and seems almost entirely confined to regulations respecting the functionaries of the government in those countries ; leaving the subject of contracts, the rights of persons and things, &c., to be regulated by those laws which are in force in

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old Spain respecting them. The order in which those laws govern, may be seen by reference to this short history, applying to them this concise, but universal maxim, that those which are last in date are first in authority.

The ordinance of Bilboa is a commercial code of great value.

NOTE III.

On the subject of Prize Law.

In order to complete the information contained in the former notes to these reports, on the subject of prize law, the editor has thought proper to subjoin to the present volume the text of the chapters of the *Consolato del Mare*, on that subject, as translated by Dr. Robinson, and of the principal ordinances regulating the practice of the tribunals on the European continent, in matters of prize, which are found scattered in different books, not always accessible to the general reader. The prize code of Spain is, in general, copied from that of France; but wherever any considerable differences occur, the editor has noted them in the margin. The prize codes of the new states, which have recently arisen in Spanish America, and which are now engaged in war with the parent country, are also modelled upon those of France and Spain, as will be seen by a reference to the prize ordinance of Buenos Ayres, annexed to the 4th volume of these reports. These pieces will show, that, except the severe rule condemning the goods of a friend, found on board the ship of an enemy, and the more relaxed principle of free ships, free goods, both of which have occasionally been adopted by

*53] certain powers, together with some other less important *anomalies, the leading principles of prize law, as now administered, have been established and acted upon by the principal maritime states of the world, from a very early period.

As a further apology for inserting them in this place, the editor begs leave to refer the learned reader to the following observations of Sir William Grant, in a question arising upon a warranty of neutrality, in a policy of insurance, alleged to be falsified by a sentence of a French court of admiralty, grounded on the ordinances of France. "These ordinances," says that accomplished judge, "have been misunderstood; sometimes by the French courts of admiralty themselves, and sometimes by the courts in this country. Those in France considered these ordinances as making the law, and as binding on neutrals, and have, therefore, sometimes declared, in the same breath, that the property was neutral, and yet that it was liable to condemnation: whereas, all that was meant by those ordinances was, to lay down rules of decision conformable to what the lawyers and statesmen of the country understood to be the just principles of maritime law. When Louis XIV. published his famous ordinance of 1681, nobody thought that he was undertaking to legislate for Europe, merely because he collected together, and reduced into the shape of an ordinance, the principles of the marine law as then understood and received in France. I say, as understood in France, for although the law of nations ought to be the same in every country, yet, as the tribunals which administer that law are wholly independent of each other, it is impossible, that some differences should not take place in the manner of interpreting and administering it, in the different countries which acknowledge its authority. Whatever may have been since attempted, it was not, at the period now referred to, supposed that one state could make or alter the law of nations; but it was judged convenient, to declare certain principles of decision, partly for the purpose of giving a uniform rule to their own courts, and partly for the purpose of apprising neutrals what that rule was. And it was truly observed at the bar, in the course of the argument, that it

*54] has been matter of complaint against us (how justly is another *consideration), that we have no code by which neutrals may learn how they may protect

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themselves against capture and condemnation. Now, this court, in this case, seems to us to have well and properly understood the effect of their own ordinances. They have not taken them as positive laws, binding upon neutrals, but they refer to them as establishing legitimate presumptions, from which they are warranted to draw the conclusion which it is necessary for them to arrive at, before they are entitled to pronounce a sentence of condemnation." Marshall on Ins. 426.

EXTRACT FROM THE CONSOLATO DEL MARE.

CHAP. 273.—Of Merchant Vessels captured by an Armed Ship.

§ 1. If an armed ship or cruiser meets with a merchant vessel belonging to an enemy, and carrying a cargo, the property of an enemy, common sense will sufficiently point out what is to be done ; it is, therefore, unnecessary to lay down any rules for such a case.

§ 2. If the captured vessel is neutral property, and the cargo the property of enemies, the captor may compel the merchant vessel to carry the enemy's cargo to a place of safety, where the prize may be secure from all danger of re-capture, paying to the vessel the whole freight, which she would have earned at her delivering port ; and this freight shall be ascertained by the ship's papers, or in default of necessary documents, the oath of the master shall be received as to the amount of the freight.

§ 3. Moreover, if the captor is in a place of safety, where he may be secure of his prize, yet is desirous to have the cargo carried to some other port, the neutral vessel is bound to carry it thither ; but for this service, there ought to be a compensation agreed upon between them ; or, in default of any special agreement, the merchant vessel shall receive for that service the ordinary freight that any other vessel would have earned for such a voyage, or even more ; and this is to be understood ^{*55} of a ship that has arrived in the place where the captor may secure his prize ; that is to say, in the port of a friend ; and going on an ulterior voyage to that port, to which the captor wishes her to carry the cargo which he has taken.

§ 4. If it shall happen, that the master of the captured vessel, or any of the crew, shall claim any part of the cargo as their own, they ought not to be believed on their simple word ; but the ship's papers or invoice shall be inspected ; and in defect of such papers, the master and his mariners shall be put to their oaths ; and if, on their oaths, they claim the property as their own, the captor shall restore it to them ; regard being paid, at the same time, to the credit of those who swear and make the claim.

§ 5. If the master of the captured vessel shall refuse to carry the cargo, being enemy's property, to some such place of safety, at the command of the captor, the captor may sink the vessel, if he thinks fit, without control from any power or authority whatever, taking care to preserve the lives of those who are in her. This must be understood, however, of a case where the whole cargo, or, at least, the greater part, is enemy's property.

§ 6. If the ship should belong to the enemy, the cargo being, either in the whole or in part, neutral property ; some reasonable agreement should be entered into, on account of the ship now become lawful prize, between the captor and the merchants owning the cargo.

§ 7. If the merchants refuse to enter into such an agreement, the captor may send the vessel home to the country whose commission he bears ; and in that case, the merchants shall pay the freight, which they were to have paid at the delivering port ; and if any damage is occasioned by this proceeding, the captor is not bound to make compensation, because the merchants had refused to treat respecting the ship, after it had become lawful prize ; and for this further reason also, that the ship is frequently of more value than the cargo she carries.

§ 8. If, on the other hand, the merchants are willing to come to a reasonable

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agreement, and the captor, from arrogance, or other wrong motives, refuses to agree and ^{*56]} forcibly sends the *cargo away, the merchants are not bound to pay the whole, nor any part of the freight ; and besides, the captor shall make compensation for any damage he may occasion to them.

§ 9. If the capture should be made in a place where the merchants have it not in their power to make good their agreement, but are, nevertheless, men of repute, and worthy to be trusted, the captor shall not send away the vessel, without being liable to the damage ; but if the merchants are not men of known credit, and cannot make good their stipulated payment, he may then act as it is above directed.

CHAP. 287.—Of Cases of Re-capture.

§ 1. If a ship is taken by the enemy, and afterwards another ship of a friend comes up, and effects a re-capture, the vessel, and all that is in her, shall be restored to the former proprietors, on payment of a reasonable salvage, for the expense, and trouble and danger that have been incurred ; but this is to be understood of re-captures effected within the seigniory or territorial seas of the country, to which the captured vessel belongs, or before the enemy had secured the vessel to himself in a place of safety.

§ 2. If the re-capture has been effected, within the enemy's territories, or in a place where the enemy was in entire possession of his prize, that is, in a place of security, the proprietors shall not recover, nor shall the re-captors claim any salvage ; for they are entitled to the whole benefit of the re-capture, without opposition from any rights of seigniory, or the claims of any person whatever.

§ 3. If an enemy, having made a capture of a vessel, quits his prize, on appearance of another vessel, either from fear, or from any doubt that he may entertain of her, and the vessel, on whose account the captured ship was abandoned, takes possession of the vessel that has been relinquished, and brings her into port, she shall be restored to the proprietor or his heirs, without opposition, on payment of a reasonable salvage, ^{*57]} to be *fixed by agreement between the parties, or if the parties cannot agree, by the arbitration of creditable persons.

§ 4. If it should happen, that any one abandons his vessel through fear of his enemy, and any friendly vessel falls in with the ship that has been deserted, and brings her into a place of security, that is to say, in a case where the finding vessel has not retaken the ship from the enemy, and where the enemy had not carried her into a place of security, and had not taken her from the owner, the finders shall have no claim to the vessel, nor to the cargo on board, but by the use and custom of the sea, they may demand a reasonable salvage, to be settled, either by agreement, or by reference to the arbitration of creditable persons ; for it is not fit that any one should endeavor to take undue advantage of the misfortunes of another, since he cannot foresee what may happen to himself ; and because, every one should be ready to submit his disputes, especially, in cases like the present, to the arbitration of two unexceptionable persons.

§ 5. It is besides to be understood, in all that has been said, that everything shall be done without fraud ; for no man can tell what may be his own case ; and it sometimes happens, that the deceit and injury which a person attempts to practice on others, light upon himself : therefore, if any persons, knowing that a ship is going on a voyage, where she must be exposed to danger or alarm from the enemy, fit out a vessel, with a view, and for the purpose of doing injury to that ship or any other, in making salvage at their expense ; or with a design of getting possession of the ship and cargo : if it can be proved against them, that they went out with any such intention, such persons shall not be entitled to any salvage on the ship or cargo, although the owner may have abandoned her ; nor even, although she may have been taken by the enemy.

§ 6. If those who fitted out the vessel cannot establish, in proof, that they did not arm with any of the before-mentioned intentions ; or if it should be proved against

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them, that they armed for the purpose of doing injury to any one, or generally to all whom they might meet, in the form and manner of enemies; in such a case, whether they bring in a vessel, with or *without a cargo—whether it shall be retaken from the enemy, or merely found by them, they shall take no benefit from it, but the whole shall be restored to the former proprietors; and moreover, such persons, so arming, shall be delivered over to justice, to be treated as robbers and pirates, if the fact can be established in proof. [58]

§ 7. If they are not convicted of such an intention, having either retaken or found a vessel in any of the situations above mentioned, they shall be entitled to their full right and benefit, according to the preceding regulations. But if the matter shall remain in doubt, or if it shall rest with them to disprove the charge, neither they, nor any that were with them, nor any that are interested in the event, shall be received to give evidence in their favor; nor shall any person of a covetous disposition, nor any one who may be suspected of being biased by money, be a witness for them.

§ 8. If an enemy shall have made a capture of a vessel or cargo, and shall afterwards abandon it, voluntarily, and not from any fear or apprehension of any vessel coming upon him; and if any persons shall find the vessel or cargo that has been voluntarily abandoned, and bring it to a place of security, the property shall not be acquired to them, if any owner can be found; but they shall receive a reasonable salvage, to be fixed, at the discretion of reputable persons of the place, to which the ship or goods shall be carried.

§ 9. If, after the expiration of a reasonable time, no owner comes forward, the finders shall receive for their salvage one-half of the proceeds, and the other half shall be applied in the manner that has been expressed and declared in a preceding chapter. (a)

§ 10. If the enemy, being in possession of any ship or cargo, shall not have deserted it voluntarily, but shall have been obliged to abandon it, by storm or tempest, or on account of any ship or vessel by whom he may have been alarmed, the same rule shall be observed, as if the enemy had quitted the same voluntarily, and of his own accord. [59]

§ 11. If the enemy, after a capture, comes to any place where he takes a ransom for his prize, if the proprietors wish to have their vessel or cargo again, he or they who have ransomed her, are bound to deliver her up to the original owners, on payment of the debt and charges, and some further allowance besides, if they choose to accept it.

§ 12. If an enemy, on capture of a ship or cargo, shall make a gift of it; such a donation or gift shall not be valid, on any account; except that if a gift is made of the ship or cargo, to those to whom it belonged, such donation shall be valid. But if the captor bargains with the master, in these words, “We are willing to give you your ship for nothing, but must have a ransom for the cargo,” such a donation shall not be good; because, in the case of which we are now speaking, the enemy had not carried it to a place of security, so as to say, that he might not lose it; notwithstanding that he might so far have obtained power over his prize, as to be able to burn or sink it; though, in such case, it would be totally lost both to him and to the owner; it is to be understood, therefore, that if the cargo is ransomed, the master to whom his ship has been so given, is bound to contribute to the ransom paid for the cargo, according to the value of the ship; and the same rule shall be observed, *è contra*, also, and applied equally to the ransom of ship or cargo.

§ 13. If the captor shall have taken the prize to a place of security; that is, if it

(a) In chapter 249, the same proportion of a moiety is given to the finder of goods found floating in port, &c., after the expiration of a year and a day, if no owner appears to claim. The other moiety was to be divided into two parts, of which the Lord of the Jurisdiction was to retain one; and to apply the other to pious

purposes, for the soul of the proprietor—“*Al hora la giustitia debba dare a quello che trovata l'haverà, la metà per suo beveraggio, et della metà che rimanerà, debba fare la giustitia due parti; et può pigliarne lui unaparte, et l'altra che rimane, debbela dare per amor di Dio, dove a lui piace, per l'anima di quello, di chi sarà stata.*

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shall have been carried out of the seas of the enemy, where a re-capture might be effected; if when the captor shall have it in safe possession, and in his own power, he shall make a donation, or sale of the ship or cargo, such a donation or sale shall be valid, without exception, from any quarter; unless he, to whom the donation was made, should have accepted it, with an intention of doing a kindness to the *owner, and for his ^{*60]} benefit; in that case, he may restore it, if he pleases; but otherwise, he is not compellable by any person, nor on any account.

§ 14. If, however, he to whom the property belonged, can show that there has been any fraud in the business, the donation shall not, on any account, avail; but he to whom it was made, ought to be seized by the lord of the country, and punished in goods and in person, according to the circumstances of the case; and the ship or cargo shall be restored to the former owner.

§ 15. If the ship or cargo shall have been sold by the enemy to any one, the sale shall be valid, provided that he, who has purchased, can show that the sale was made to him by the enemy, in a place of security, that is, where the enemy held the goods in question, *in suo dominio*; and in case any one, who pretends to have acquired the ship or cargo by a just title, cannot prove the asserted sale, it shall not be valid; and if the former owner appears, and can make proof of his property, it shall be restored to him. The evidence of these disputed claims shall be discussed before two reputable persons of the country where the dispute arises, and without fraud; and if any fraud is discovered, the party against whom the fraud is proved, shall be bound to pay to the other party, costs, damages and interest; and besides, the party consenting to the fraud shall be delivered over to the justice of the country.

§ 16. If the master, or person acting for him, recovers the ship or cargo, by any means, he is bound to make restitution to the proprietors, according to their several proportions, on payment of the expenses *pro rata*.

§ 17. If the master shall redeem any part of the cargo, or make any agreement, with the consent of the major part of his copartners, by which he shall regain the ship or cargo, he may compel them to contribute, by course of justice, because they are as much under an obligation to him, as if they had agreed to take part in building or purchasing a new ship.

§ 18. But if the master makes any agreement, without the consent of his partners, or the major of them, they are not *bound to anything, unless they like it; nor ^{*61]} is the master answerable to them for the rights and interests which they had in the ship, at the time of capture; saving for any previous accounts which might be still remaining unsettled, respecting their shares in the ship or cargo, at the time it was taken by the enemy.

§ 19. If the original proprietors are disposed to resume their shares, and the master makes any opposition, the justice of the country may compel him to acquiesce; for there can be no ground of reasonable resistance on his part, if they are willing to pay their proportion of the expense; and it would be manifestly unjust, that any one should dispossess the rest of their property.

§ 20. But if the master, or any one for him, redeems his ship or cargo, after the enemy has gained a just title in it, and those who were part-owners refuse to pay, as before specified, the master, or his agent, ought to repeat his demand upon them, several times, and call upon them to pay their share; and if they still refuse, it shall be put up to auction, with permission of the government, and be disposed of to the best bidder.

§ 21. If the ship or cargo shall be sold for more, after such refusal, than the ransom paid, the surplus shall be paid to the owners, according to their shares, if the master chooses it; otherwise, he is not obliged. And the master shall have the privilege of retaining the goods in question, at the price that others are willing to give for them.

§ 22. If the sale shall not produce so much as the ransom; if the master made the ransom without the consent of his partners, they are not bound for the deficiency, unless they choose it; and therefore, it is reasonable, that the master, or his agent,

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should have the privilege of retaining, at the price that any other person would give, as the deficiency would fall upon him ; saving, however, that if any of the partners are inclined to resume their shares, they are bound to make good the deficiency to him *pro rata*. All the reasonings, and cases, and conditions above mentioned, shall be taken under the supposition that the enemy had carried the prize into a place of security ; *and that the ransom or sale had been made fairly, and without [*62] fraud.

POSTSCRIPT.—It may not be improper to add, as an observation pointing out the chasm between the regulations of this ancient code, and the prize ordonances of particular countries, and the provisions made in public treaties, in later times, on the subject of prize, that neither the laws of Oleron, nor the ordonances of Wisbuy, nor the Guidon, nor the ordonances of the Hanse Towns, contain any regulations respecting the general law of prize ; scarcely mentioning the subject, except incidentally, amongst the accidents to which merchant vessels are liable. There are, in the Black Book of the Admiralty, a few, and but a few, articles respecting it. In the ordonances of Barcelona, of 1340, there are also a few articles, but relating rather to the division of interest between the captors, than to the general subject.

EXTRACTS FROM THE CODE DES PRISES.

Articles relatifs aux Prises, Extraits de L'Ordonnance de Charles VI., sur le fait de l'Admiraulté. Du 7 Decembre 1400.

ART. III. Se aucun de quelque estat qu'il soit, mettoit sus aucun nauire à ses propres despens pour porter guerre à nos ennemis, ce sera par le congé et consentement de nostredit admiral ou son lieutenant, lequel a ou aura au *droict de son dit office* la cognissance, iuridiction, correction et punition de tous les faits de ladite mer et des dependances, criminellement et ciuillement, &c.

ART. IV. De toutes les prises qui d'oresnauant se feront sur la mer, par quelques gens que ce soyent, tenant nostre partie, ou souz ombre et couleur de nos guerres, leurs prisonniers en seront amenez ou apportez à terre deuers nostre admiral, ou son lieutenant, lequel tantost et incontinent les examinera auant que nulle chose se descende, pour s'gauoir le pays dont ils sont, et à qui appartiennent les biens s'aucuns biens y auoit, pour garder iustice, et faire restituer ceux qui sans cause auoyent esté dommagez, si le cas estoit trouué tel.

*ART. VI. Que d'oresnauant, s'aucune telle prinse se fait, ledit admiral ou son lieutenant s'informera deuement et le plus veritablement que faire se pourra, aux preneurs et à chacun à part de la maniere de la prinse, du pays ou coste où elle aura esté faite ; verra et ferra veoir les marchandises et les nefz par les gens cognossans à ce. Et par bonne et meure délibération regardera par la conscience ou contention, les dépositions d'iceux preneurs ainsi faite en secret, ou par la veuë desdites prises, *s'il y a vraye apparence qu'elles fuissent de nos ennemis*, auquel cas icelles seront déliurées aux preneurs, en prenant leurs noms pour en auoir recouure sur eux, s'aucume poursuite en estoit faite, avec inuentaire des biens. Et s'il y a mieux et plus évidente présumption par aucuns des moyens dessusdits, qu'il y eust quelque faute, et que lesdites prises fussent des contrées de nostre royaume, ou des pays de nos alliez, icelles prises en ce cas seront par nostredit admiral mises en seure garde, aux despens de la chose, ou desdits preneurs, si le cas le requiert, jusques à temps compétent, dedans lequel sera fait diligence d'en séauoir la vérité. Et si lesdits preneurs estoient gens soluables, et qu'avec ce ils baillassent bonne et seure caution desdites prises, icelles deuement apprécierées et inuentoriées, se pourront bailler à iceux preneurs, s'il n'y a trop grande suspicion.

ART. VII. Et si aucuns desdits preneurs en leur voyage en especial auoient commis faute telle qu'ils fussent attaicts d'auoir enfrondé aucuns nauires, ou noyez les

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corps des prisonniers ou iceux prisonniers descendus à terre en aucune loingtaine coste, pour celer le larrecin et meffait, voulons que sans quelque délay, faueur ou déport, nostredit admiral en face faire punition et iustice selon le cas.

ART. VIII. Lesdits preneurs empeschans aucun marchands, *nauire ou marchandise* sans cause raisonnable, ou qu'ils ne soyent nos aduersaires, nostredit admiral fera deuement restituer le dommage, et ne permettra plus l'vsage qu'ont à ce contre raison tenué, iceux preneurs, en quoy ils ont fait et donné de grands dommages à aucun de *64] nos alliez par feinte, ou fausse couleur qu'ils mettoyent de non cognostre s'ils estoient *nos aduersaires, ou non, qui est chose bien damnable, contre raison et iustice, que homme soubs telle couleur deust porter dommage, ou destourbier.

ART. IX. Pour ce qu'il est voix et publique renommée, que quand aucune prinse est maintenant faict sur nos ennemis, les preneurs sont si accoustumez de faire et vser de leurs volontez et à leur profit, qu'ils ne gardent en rien l'vsage que l'on dict anciennement en ce estre ordonné : mais sans traicté de justice souuent inobéiens, pillent et rompent coffres, et prennent ce qu'ils peuuent. En quoi nostredit admiral et les seigneurs et gens d'autre estat qui ont mis sus les nauires à grands despens, sont excessiuement fraudez, et si aduient par faute de iustice souuent de grandes questions, noyses entre les preneurs, qui sans craincte, et par cy-deuant chacun de sa volonté sans en estre punis en ont ainsi vsé.

ART. X. Et quand aucune prinse estoit trouuée appartenir à nos subjects et estoit par justice restituée, on ne pouuoit trouuer les biens, ne gauoir qui les auoit euz, nous auons ordonné que d'oresnauant l'vsage ancien sera en ceste partie estroittement gardé sans enfraindre : c'est à s'gauoir, que s'il y a aucun qui rompe coffre, balle ou pippe, ou autre marchandise que nostredit admiral ne soit présent en sa personne pour luy, il forfera sa part du butin et si sera par iceuy admiral puny selon le meffait.

ART. XI. Si nostredit admiral, ou aucun de ses lieutenans, n'estoient en personne aux entreprises qui se feront sur ladite mer pour tenir ordre à iustice entre ceux de ladite entreprise, les maistres, chefs, capitaines ou patrons, auant leur partement, feront serment, ainsi que dessus est dit, qu'à leur pouuoir ils deffendront nos subjects sans leur porter dommage. Et toutes les prises qu'ils feront, les ameneront à terre, et en donneront cognoscance certaine audit admiral et luy déliureront ceux qui pour le voyage auront commis quelque meffait contre nosdites ordonnances, ou autrement.

ART. XII. De toutes les prises qui se feront par ladite mer, les vendus butins et départemens en seront faicts deuant nostredit admiral, ou son lieutenant, qui fera *65] retenir par-deuers *luy, d'iceux biens, ject et compte, pour y auoir recours, pour ceux qui en auront besoin, et pouuoir cognostre le fait et estat d'icelles prises.

ART. XVIII. A ce que ledit admiral dit auoir droit sur les prisonniers prins sur la mer, et par ladite mer, lesquels droicts leur aduendront souuent, qu'en demeurera la part moindre, ceux qui les auront prins; d'oresnauant nostredit admiral ne se pourra ayder de chose qui en ait esté vsé, mais déclarons que sur lesdits prisonniers il ne pourra demander que son dixiesme, avec le droit de son sauf-conduict, ny auoir la garde d'iceux, sinon en tant que monteroit le faict et portion de son dixiesme, s'il n'estoit prisonnier de si grand prix et les preneurs de si petite essence, qu'il ne fust pas bon les laisser en leurs mains. Excepté que si aucun, sans congé ou consentement dudit admiral ou personne de par luy, mettoit quelques prisonniers à finance, il (par priuilege de son office) pourra prendre lesdits prisonniers en sa main, en payant ladite finance; et sur le prix rabatu son droit de dixiesme.

Articles Extraits, de l'Edit. concernant la Jurisdiction de Admirauté de France. Du mois de Mars 1584.

ART. XXIV. Si une nef estrangere veut entrer en un port ou havre de nostredit Royaume, faire ne le peut, sans l'autorité et congé de nostredit admiral ou de ses commis, si par fortune ou tourmente de mer n'y estoit entrée par force; et qu'aucun pilote ne l'ameine, et la puisse guider ne conduire audit havre sans demander congé à

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nostre dit admiral. Et d'avantage incontinent ils seront tenus venir vers nostredit admiral, ou son dit lieutenant audit lieu, pour faire entendre le lieu dont ils viennent. Et aussi à ce que nostredit admiral ou son dit lieutenant les puisse interroger de ce qu'ils auroyent veu en leur voyage, pour nous en avertir si besoing estoit.

ART. XXXIII. De toutes les prises qui se feront en mer, soit par nos sujets, ou autres tenans nostre party, et tant soubs ombre et couleur de la guerre qu'autrement, les prisonniers *ou pour le moins deux ou trois des plus apparents d'iceux seront [*_66 amenez à terre, devers nostredit admiral, ou son vis-admiral, ou lieutenant, pour, à plustost que faire se pourra, estre par lui examinez et ouys, avant qu'aucune chose des dits prises soit descendie; afin de savoir le pays delà où ils seront, à qui appartiennent les navires et biens d'iceux, pour, si la prinse se trouve avoir esté bien faite, telle la declarer, si non, et ou il se troueroit mal faite, la restituer a qui cile appartiendra; en enjoignant par ces dites presentes audit admiral, vis-admiral, ou lieutenant ainsi le faire. Et sur ce faire et administrer bonne et briefue justice et expedition.

ART. XXXV. Si aucuns si trouvent avoir commis faute en leur voyage, soit d'avoir mis a fonds aucun navires, ou robbé des biens d'iceux, ou noyé les corps des marchands, maistres, conducteurs, et autres personnes desdits navires, ou iceux descendus à terre en aucun loingtaine coste, pour celer le larcin et malfait, ou bien quand il adviendroit comme il a fait quelques fois, qu'aucuns d'eux se trouvans les plus forts, viendront à ranconner à argent les navires de nos sujets, ou d'aucuns nos amis et alliez: Voulons que sans quelque delay, faveur ou deport, ledit admiral en face ou face faire justice et punition, telle que ce soit exemples à tous autres, deues informations des cas preallablement faites, et selon qu'il sera cy-après ordonné.

ART. XXXVII. Et pour ce que souventes fois quand une prise estoit faite sur nos ennemis, les preneurs estoient si coustumiers de user de leur volontez pour leur profit, qu'ils ne gardoyent l'usage toujours et de toute ancienneté sur ce ordonné et observé, mais sans crainte de justice, comme innobediens et pilleurs, eux estans encorés sur mer rompent les coffres, balles, boujettes, malles, tonneaux et autres vaisseaux, pour prendre et piller ce qu'ils peuvent des biens de la prise, en quoy ceux qui ont équippé et mis sur les navires a gros despens sont grandement foullez, dont advient souvent de grandes noises débats et contentions. Nous prohibons et deffendons à tous chefs, maistres, contre-maistres, patrons, quarteniers, soldats et compagnons, de ne faire aucune ouverture des coffres, balles, &c., ny autres vaisseaux de quelques prises qu'ils facent, ny aucunes choses desdits prises receler, transporter, vendre, ny *es- [*_67 changer, ou autrement allier, ains ayant a representer le tout desdites prises, ensemble les personnes conduisans le navire audit admiral, ou vice-admiral, le plustost que faire se pourra, pour en estre fait et disposé selon qu'il appartiendra, et comme contiennent nos presentes ordonnances, et ce sur peine de confiscation de corps et des biens.

ART. XXXVIII. Quand une prinse faite et amenée à terre, est trouvée appartenir à nos sujets, amis et alliez, et il est ordonne qu'elle sera restituée, l'on ne peut trouver les biens, ny savoir qui les a euz, de sorte que les pauvres marchands, à qui elle est adjudicée ne scavent a qui avoir recours. Nous avons ordonné, que d'oresnavant si aucun rompt coffres, balles, pippes, et autres marchandises, que nostredit admiral n'y soit present, ou personne pour lui et par son commandement, il perdra sa part du butin, et sera puni par nostredit admiral ou son lieutenant, corporellement selon le meffait, ensorte que tous les autres y prendront exemple.

ART. XXXIX. Pour ce aussi que plusieurs bourgeois, proprietaires et avictuailleurs des navires nos sujets, nous ont cy-devant fais remonstrer, que jagoit ce qu'ils facent faire les dits navires, et icelles equipent, et founissent d'artillerie et autres munitions de guerre et de vivres, pour grever et offencer nos ennemis et adversaires, le tout à grand frais et despens, neantmoins ne leur est baillé que la huitiesme pour leur portions de butins qui sont gaignez sur nosdits ennemis et adversaires, qui n'est chose suffisante, eu esgard aux grands frais mises et despences qui leur convient faire, à faire faire lesdits navires, et icelles equiper, munir et avictuiller, qui est cause que les-

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dits bourgeois, propriétaires et avictuailleurs, ne peuvent mettre sus, et nos servir de grands et puissans navires, ainsi qu'ils pourroient faire, si desdits butins raisonnable et compétente portion leur estoit distribuée. Nous à ce qui d'oresnavant ils ayent plus grande occasion et vouloir de faire faire et entretenir bons, grands, forts, et puissans vaisseaux, dont puissions estre servis et secourus en nos guerres contre nos dits ennemis et adversaires, et iceux amplement equiper, munir, et garnir de toutes chose requises *68] pour la guerre, avons ordonné *et ordonnons qu'iceux bourgeois et autres aus- quels appartierdront aucuns navires, après le dixesme de nostredit admirail pris et deduit sur la totalité de la prise et butin, qui feront lesdits navires, auront et prendront la quarte partie du surplus d'icelles pris et butin, soit de marchandises, prisonniers, rancons, et quelques que soient les dits prises et butin, sans aucune chose en reserver n'y excepter; et de trois duarts restans, les avictuailleurs en auront quart et demi, et les mariniers, et autres compagnons de guerre autre quart et demy, pour le partir entre eux en la maniere accoustumée.

ART. XLIII. Pour obvier à tout desordre et confusion, et à ce qu'à chacun son droit soit gardé, voulons et ordonnons, que les maistres, contre-maistres, gouverneurs, et autres ayans charge des navires ameinnent les personnes, navires, vaisseaux, marchandises et autres biens qu'ils prendront a leur voyage, *au mesme port et Havre, donte ils seront partis* pour faire le dit voyage, ou au lieu de leur reste, sur peine de perdre tout le droit, qu'ils auront en la dite prise et butin, et d'amende arbitraire; le tout à appliquer audit admirail, à la charge et jurisdiction du quel sera le dit port dont ils seront partis, et outre de punition corporelle, sinon que par force d'ennemis, ou par tempeste ils feussent contraints eux sauver en autre port; esquels cas seront tenus estans arrivés esdits autres ports et Havres, advertir lesdits officiers de la dite admiraulté, pour estre presens à l'inventaire desdites marchandises, avant qu'en deschilager aucune sur lesdites peines, et en rapporter certificat desdits officiers esdits Havres dont ils seront partis, pour estre delivré ausdits marchands, propriétaires et victuailleurs; ce qui aura en semblable lieu, pour les navires qui font voyages hors ce royaume en marchandises ou autrement.

ART. XLV. Et pour ce que plusieurs gens de guerre desdits navires voudroyent dire plusieurs biens tenir nature de pillage, pour par ce moyen les appliquer à leur profit, au prejudice de ceux qui équipent et arment lesdits navires, nous avons dit et déclaré, dijons et déclarons suivant nos anciennes Ordonnances, que nulle chose pourra estre *dit pillage*, qui excede la valeur de dix escus.

*ART. XLVIII. Avons defendu et defendons sur peine de prison et confis- *69] cation de biens, a tous marchans de quelque estat, qualité ou condition qu'il soient, d'acheter, eschanger, permuter, ou prendre par don, ou autre couleur ou condition que ce soit, ne de celer ou occulter par eux au autres, directement ou indirectement, les marchandises et biens depredez, et amenez de la mer, avant que le dit admirail, au son dit lieutenant, ait déclaré les prises *estre justes et de bon et licide gain*.

ART. XLI. Si aucun navire de nos subjets pris par nos ennemis, a esté entre leur mains jusques a vingt-quatre heurs, et après il soit recoux et repris par aucune de nos navires de guerre, ou autres de nos subjets, la prise sera déclarée bonne; mais si la dite reprise est faite auparavant les vingt-quatre heures, il sera restitué avec tout ce qui étoit dedans, et aura toutesfois *le navire de guerre*, qui l'aura recoussé et reprise, letiers.

ART. LXII. Et pour autant que en faisant prisene en mer par nos navires et autres de nos subjets, plusieurs se presentent souvent pour y avoir part, soubs ombre qu'ils veulent alleguer *avoir veu prendre la dite prise, et oy l'artillerie durant le combat*, encores qu'ils n'ayent esté l'occasion que l'ennemys se soit rendu pour crainte d'iceux; et afin d'éviter et obvier aux differents qui se pourront mouvoir sur celles injustes demandes; il ne sera loisible à aucun navire, a qui qu'il soit appartenant, de demander aucune part et portion aux prises qui se feront, si ce n'est qu'ils ayent combatu, au fait tell effort, que pour son debvoir l'ennemys ait amené ses voiles, ou bien qu'il en ait esté en quelque partie cause; *dont les prisonniers seront creuz par sermant*; si ce n'est qu'il y eust en promesse entre les uns et les autres, de departir les prises faites en présence ou absence.

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Art. LXIV. La où aucun navire à la semonce, qui leur sera faite par les navires de guerre de *nous* et de nos *subjets*, ameneront libérallement sans aucune résistance leurs voiles et *monsteront leur chartres parties, et recognoissance aux dits navires de guerre*, il ne leur sera fait aucun tort; mais si le capitaine du navire de guerre, ou ceux de son équipage lui robbent **aucune chose*, ils seront tenus ensemblement, et l'un saul [70] et pour le tout, à la restitution entière, et avec ce condamnez réaument et de fait et executez à la mort et supplice de la roué, non-obstant l'appel, pourvenu que audit jugement y assistent six avocats on notables personnes de conseil, qui orront de bouche les prisonniers, et seront tenus signer le dictum.

Art. LXV. Pour ce qu'il est à considerer que ayant par nous ou autres de nos *subjets, armé un, deux, ou plusieurs* navires en guerre pour chercher l'aventure de profiter sur l'ennemy, l'on ne peut moins faire que discouvrant navire à veue, ou plus prez, que de courir après pour s'avoir s'il est amy ou ennemy, au moyen de ce que la plus grande part des navires des amis et alliez sont de même construction, que ceux des cités ennemis, aussi que bien souvent dedans ledits navires d'amis et alliez, les marchandises, qui y sont, appartiennent auxdits ennemis, ou bien il y a marchandises prohibez: Nous afin d'esclarcir nos gens et *subjets*, de ce qu'ils auront affaire en ce que dessus, pour n'y faire faute et erreur, dont ils puissent estre repris; avons permis et permettons, voulons et nous plaist, que tous navires de guerre de nous et de nos dits *subjets*, discouvrans à veue ou plus près, autres navires soient d'amis, allies ou d'autres, pourront courir après et les semondre d'amener les voiles, et estans refusans de ce faire après cette semonce, leur tenir artillerie jusques à les contraindre par force, en quoy faisant venant au combat, par la temerité ou oppiniastreté de ceux qui seront dans les dits navires, et là dessus estans pris, nous voulons et entendons la dite prise estre dite et déclarée bonne.

Art. LXIX. Et pour ce que par cy-devant soubs coleur des pratiques et intelligences, que ont *aucuns* de nos allies et confederez avec nos ennemis, lorsqu'il y avoit aucune prise faite sur mer par nos *subjets*, plusieurs procés se suscitoient, par nos dits alliez, voulant dire que les biens, pris en guerre, leur appartenent, soubs ombre de *quelque part et portion qu'ils avoient avec nosdits ennemis*, dont se sont ensuyies grosses condamnations à l'encontre de nosdits *subjets*; au moyen de quoi, iceux nos *subjets* ont depuis craint esquiper navires **en guerre*, pour nos faire fermer et endommager nos dits ennemis: Nous pour remedier à telles fraudes, et afin que nos dits *subjets* reprennent leur courage, et ayant meilleur desir et occasion d'esquiper navires en guerre par mer, avons voulu et ordonné, voulons et ordonnons, que si les navires de nos dits *subjets* sont, en temps de guerre, prises par mer d'aucuns navires appartenans à autres nos *subjets* ou à nos alliez, confederez ou amis, esquels y ait biens, marchandises ou gens de nos ennemis, ou bien aussi navires de nosdits ennemis, esquelles y ait personnes, marchandises, ou autres biens de nos dits *subjets*, confederez et alliez (in ord. 1543, ou esquels nosdit *subjet* ou alliez, furent personniers en quelques portions,) que le tout soit déclaré de bonne prise—et dès à présent comme pour lors, avons ainsi déclaré et déclarons par ces présentes, comme si le tout appartenoit à nosdits ennemis. Mais pourront nosdits alliez et confederez, faire leur traffic par mer, dedans navires qui soient de leur obéissance et subjection, et par leur gens et *subjets*, sans y accueillir nos ennemis, et adversaires; less quels biens et marchandises ainsi chargés, ils pourront mener et conduire où bon leur semblera, pourveu que ce ne soyent munitions de guerre, dont ils voulissent fortifier nosdits ennemis. Auquel cas nous avons permis et permettons à nosdits *subjets*, les prendre, et amener en nos ports et havres, et les dites munitions retenir, selon l'estimation raisonnable, qui en sera faite par nostredit *admiral*, ou son dit lieutenant.

Art. LXX. Et pour ce qu'il pourroit advenir, qu'aucuns de nosdits alliez et confederez, voudroyent porter plus grande faveur à nosdits ennemis, et adversaires, que à nous, et à nosdits *subjets*, et à ceste cause, voudroyent dire et soustenir *contre* vérité, que les navires pris en mer par nosdits *subjets* leur appartiendroyent, ensemble la marchandise, pour en frauder nosdits *subjets*; voulons et ordonnons, qu'incontinent après la prise et abordement de navire, nosdits *subjets* facent diligence de recouvrer la chart

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partie, et autres lettres concernant la charge du navire; et incontinent a leur arrivement à terre, les mettre par devers le lieutenant de nostredit admirail, afin de cognoistre à qui le navire et marchandises appartienent; et où *ne seroit trouvée ^{72]} charte partie dedans lesdits navires, ou que le maistre et compagnons l'eussen jettée en la mer, pour en celer la verité, voulons que les dits navires ainsi prins, avec les dits biens et marchandises estans, dedans, soyent declarez de bonne prise.

Sur la Navigation, Ordonnance du Roi de Suede, 19 Feb. 1715.

1. Le Roi voulant bien permettre, non seulement à ses propres sujets, mais aussi à *ceux des puissances étrangères*, d'aller en course sur tous ceux qui contreviendront à ce reglement; un chacun qui souhaitera d'avoir une commission d'Armateur, l'obtiendra de Sa Majesté ou de ses amiraux: mais ceux qui ne seront pas munis d'une telle commission, n'auront point la permission d'aller en course.

2. Lorsqu'un armateur fera un signal, ou donnera la chasse à un vaisseau, le maître sera obligé de lui obéir et de le respecter: de venir à son bord avec ses documens, ou de les envoier par quelqu' autre: En cas que l'armateur trouve que le vaisseau ou sa charge, ou tous les deux ensemble, soient confiscables, il gardera les documens, après les avoir fait sceller par le propriétaire, et fera aussi sceller les écouteilles du vaisseau avec son cachet et celui du maître.

3. Si l'armateur trouve par les documens que le vaisseau et sa charge ne soient pas de bonne prise, il pourra encore envoier quelqu'un à bord du vaisseau, pour examiner si les documens ne sont point defectueux; et en cas qu'ils soient trouvez conformes à la verité, il laissera aller le vaisseau sans lui causer aucun dommage.

4. Si le vaisseau, à qui on aura fait le signal, tâche de se soustraire, et s'il est ensuite pris par force, le maître sera obligé de donner satisfaction à l'armateur.

5. Un vaisseau, qui fera la moindre resistance à un armateur, perdra par là sa liberté, et sera de bonne prise, quoiqu'il ne l'eût pas été sans cela.

6. L'armateur ayant faite une prise, devra l'annoncer au Juge du lieu où il l'aura ^{73]} conduite, et lui produira le protocole *et les documens scellez: Il sera permis, à la requisition de l'armateur, de faire débarquer le maître et son équipage; mais le vaisseau et sa charge resteront à la garde dudit armateur, qui sera obligé de restituer le tout, en cas que l'un et l'autre soient declarez libres.

7. Tous les vaisseaux qui seront amenez à Karelkroon, ou dans les ports à côté du Sund, seront jugez par des personnes établies pour cet effet, et ensuite par des conseillers de l'amirauté de Karelkroon; ceux qui seront conduits à Gottenbourg ou aux environs, seront jugez par l'amirauté de Gottenbourg; et ceux qui seront amenez à Stralsund ou dans quelques ports d'Allemagne, seront jugez par l'Amirauté de Stralsund. Ces jugemens devront se faire sans aucun retardement, et il ne sera pas seulement permis aux maîtres des vaisseaux, d'envoyer chercher ailleurs de nouvelles preuves pour leur justification. Mais en cas que l'affaire soit si embrouillée, qu'on ait besoin de plus grands éclaircissements, on déchargerera les effets jusqu'à ce tems là.

8. Tous les vaisseaux appartenant aux ennemis ou à leurs sujets, seront confiscables, sans avoir égard aux lieux d'où ils viennent et où ils vont.

9. De même que tous les vaisseaux neutres qui négocient dans les places de la Mer Baltique, enlevées au Roi, y compris les Isles et Havres sur les côtes de Finlande, Ingermelande, Oestlande, Livonie et Courlande.

10. Comme aussi les vaisseaux construits ou achetez dans des places ennemis, et qui n'ont pas été dans des endroits libres.

11. Les documens indispensables dont les maîtres de vaisseaux doivent être munis, sont le contract de la construction du vaisseau, le contract d'achat ou de transport; et l'acte de jaugeage du vaisseau, par ou l'on puisse voir si sa capacité ou grandeur, y mentionnée, se rapporte aux contracts de construction et d'achat, comme aussi à la lettre de mer ou attestation de l'amirauté, par laquelle on puisse voir le lieu à qui le vaisseau appartient, le nom du capitaine, si les fretteurs ne sont pas ennemis, et où le vaisseau est destiné: le tout devaut être attesté *par serment, tant des capitaines que des fretteurs. Toute la charge devra aussi être spécifiée dans le même passport, avec le

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nom du propriétaire, et le seing du magistrat du lieu; et les attestations que les officiers de la douane pourroient donner à cet égard, ne seront point valables, quand même les magistrats seroient absens.

12. Tous les vasseaux qui auront des documens doubles ou contradictoires, en sorte que selon quelques uns ils soient confiscables, et selon quelques autres libres, seront néanmoins declarez de bonne prise.

13. Tous les effets apartenans à des sujets ennemis, ou envoyez pour leur compte, seront confiscables, dans quelque vaisseau que ce soit qu'ils soient trouvez.

14. Comme aussi les effets des sujets neutres, qui se trouveront dans des vaisseaux ennemis.

15. De même que tous les effets qui vont ou viennent des Havres mentionnez dans l'article IX.

16. Tous les effets, de quelque valeur qu'ils soient, seront pareillement confiscables, lorsqu'on ne trouvera pas à bord les preuves nécessaires; savoir, un certificat attesté des freteurs par serment, et signé par le magistrat du lieu, spécifiant en general la charge, à qui elle appartient, et où elle est destinée; comme aussi les connoissemens, contenant en particulier et par division ladite charge, et pour le compte et risque de qui elle est. Le capitaine sera aussi tenu d'être muni de pareils certificats et documens, pour la portion qu'il pourroit avoir dans la charge, avec la liste et les marques desdits effets, qui doivent se rapporter avec les connoissemens. Tous les connoissemens qui ne seront pas entierement remplis, sont tellement defendus, qu'ils rendront le vaisseau confiscable comme aussi divers connoissemens d'une même sorte de marchandise ou doubles connoissemens. Et quoiqu'il soit spécifié dans l'article XI. quels documens on doit produire pour la franchise du vaisseau et de sa charge; on pourra néanmoins en exiger encore d'autres, comme la chartepartie, comptes de facture, lettres de correspondance, listes des des douanes, et autres pareils; après quoi on jugera si le vaisseau est franc ou non.

*17. Les effets qui auront des documents doubles ou contradictoires, seront [*75] confiscables comme les vaisseaux, Article XII.

18. De même que toutes les marchandises de contrebande, qui peuvent être employées pour la guerre.

19. Tous les vasseaux qui viennent ou vont à une place des ennemis, avec leurs charges, seront tenis pour confiscables.

20. Les vasseaux qui s'éloigneront de leur route, seront aussi confiscables, lorsqu'ils ne pourront pas justifier qu'ils y ont été contraints par tempête ou mauvais tems.

21. Comme il doit y avoir sur chaque vaisseau un rolle de tout l'équipage, signé par le magistrat du lieu à qui il appartient, avec le nom du lieu de la naissance de chaque matelot, et à qui il appartient: Sa Majesté veut qu'il n'y ait fur chaque vaisseau, qu'un quart de matelots nez dans les païs ennemis; sous peine d'être confisqué de même que les vasseaux qui n'auront pas de rolles ou listes.

22. En cas qu'une partie du vaisseau ne soit pas libre, et que l'autre le soit, toutes les parties dudit vaisseau seront confiscables.

23. Tout ce qui sera déclaré de bonne prise, apartiendra entierement à l'armateur et à ceux qui auront fait l'armement, sans qu'on en retienne la moindre chose pour le Roi, ou pour le public."

Ordinance of his Majestie the King of Denmark, Norway, the Vandals, and Goths, &c., &c. Dated 23d Sept. 1659. (a)

We, Friederich the Third, by the Grace of God, King of Denmark, Norway, &c., &c., do hereby make known to all persons; *Whereas, in our most gracious declaration, respecting those who trade by sea, bearing date the 30th August

(a) In 1793, the Danish government issued the following proclamation respecting the trade of Danish subjects, in the war which was then just broke out.

" We, by the Grace of God, Christian VII., &c. It is only by strictly observing the rules and provisions stipulated for by our treaties with foreign powers, that the merchants of our

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last, it is set forth—concerning the certificates for ships (the sea-briefs), as well as the certificates for the goods and cargo, on board ships which are destined to Sweden, or to other territories and towns belonging to the Crown of Sweden, or now in possession of the Swedes, as long as this war shall continue : viz., in what form they shall be composed and made out, so as to be deemed sufficient by the court of admiralty, and to avail and benefit those persons, that shall produce them in court. Now, to the end that every person may know it, and in a right manner and form furnish ships and goods with certificates ; therefore, we have most graciously ordered and consented, and do also hereby order and consent, that all and every certificate made, taken out or granted, for free ships and goods in neutral places, and by neutral persons, ship-masters and owners, as long as this war continues, must, in their letter and true meaning, manner and form, be of the tenor as here follows.

*1. The certificate for the ships (which must be made upon oath, and with ^{*77]} fingers erect, by every ship-owner, or ship-master, before the magistrates of his own town or place) must, in its letter and true meaning, be of the tenor as hereunder ; and the said certificate must likewise be signed and sealed by the usual sworn secretary or notary ; and besides them, as further ordered on this subject, in our aforesaid most gracious declaration.

We, N. N. and N. N., conjunctively, ship-master and owner, of the ship N. N., of the burden of N. lasts, now commanded by Captain N. N., do hereby certify, that the aforesaid ship belongs to no other person, but solely to us, in true right of property, and that no enemy, or other person besides ourselves, aforesaid, has any share or interest therein ; also, that neither with our conjunctive knowledge and will, or with the knowledge and will of either of us, shall any goods belonging to enemies be laden therein. So help us God, and his holy Word !

2. And that the certificate, which is required to be taken upon oath, and with fingers erect, for every ship's cargo, and goods and merchandise on board, by every merchant or freighter, before the magistrates of his own town or place, must likewise be signed in the manner aforesaid, and must in its letter and true meaning be of the following tenor :

I, N. N., inhabitant and burgher in N. N., do hereby and by virtue of these presents certify, that all such goods as shall be laden in the ship N. N., whereof N. N. is master, destined to N. N., and which shall be specified in this certificate, with their denominations and marks, do belong to no other person whatever, in this world, besides myself solely and only, and were purchased with my own property or means. Also, that they do solely go for my own account and risk ; and this not in appearance only, or for color sake, so that by means of some clandestine agreement with enemies,

kingdoms can enjoy the security which our neutrality has procured for the Danish flag, during the present calamities of the war. We therefore order,

Art. 3. As the principles of neutrality do not permit any neutral vessel to enter a port blockaded by any of the belligerent powers, or to have articles on board, considered as contraband, and destined for states at war, or their subjects, or, finally, such as already belong to them ; the magistrates must inform the parties concerned of these principles, and be careful that the required oath contains also the engagement to receive nothing on board, which may be comprised in the undermentioned denominations.

Art. 4. By contraband, is understood, fire-arms and other species of arms, horses, harness, and in general, every article necessary for the con-

struction and repair of vessels, with the exception, however, of unwrought iron, beams, boards, and planks of deal and fir.

Art. 6. In the treaty of commerce and alliance of 1670, with England, it is stipulated, that amongst the ship's papers, there should be in time of war, a certificate to prove that the cargo belongs to a neutral power. In order, therefore, to prevent all cause of dissatisfaction on either side, we have ordered the magistrates in our ports to deliver the certificates required on this subject, and also our consuls in foreign ports ; and the former as well as the latter are enjoined to affix their signature to them.

Art. 14. The certificates respecting the neutrality of the vessel, as well as the cargo, must be granted under the forms prescribed by the council of commerce."

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I am collusively to cover the said goods by this declaration, as if they were for my own account and risk, until they are brought in safety, and that then they shall belong to, and be sold for account of, enemies ; but *that they do *bond fide* [*78] belong to myself solely, without fraud. So help me God, and his holy Word !

And in this certificate there must be inserted a true specification of all the goods, belonging to each certificant, which he has thus caused to be laden, and marked with his proper mark. Inasmuch as such certificates that are of a different tenor, or affirmed to in a manner different from the above mentioned, shall be considered of no value, before our court of admiralty, whosoever the claimant may be, or wherever he may be found with such, upon the seas ; but they shall be, and remain of no value, even as those certificates are held and considered, which, in a judicial manner, or otherwise, are proved to be false; inasmuch as, by and with the advice of our beloved councillors of state, we have, by these presents, so enacted it, and have before issued orders concerning the same, in our most gracious declaration.

3. And whereas, in our aforesaid most gracious declaration, as well as in all the passports granted by us, it is prohibited to carry, or bring any sorts of contraband goods to and from Sweden, and the countries and places belonging thereto, or at present possessed by them. Now, that every person may know what sort of goods it is which are considered and deemed as contraband, we have on that subject made and given this specification and declaration to wit :

1. The following goods will be regarded as contraband, viz., all sorts of ammunition, arms, gunpowder, matches, and saltpetre; also, saddles, horse-harness and horses; further, oak ships' timber, and all sorts of ships' materials and apparel, such as sail-cloth, tackling, cordage, and whatever else is considered necessary and useful for carrying on war, besieging, blockading, or other military operations, by land and by sea.

2. The following shall likewise be considered as contraband and prohibited goods, to wit: All sorts of provisions for food and beverage, as well as all sorts of coarse and fine salt, without any distinction whatever, none excepted ; save, solely, all sorts of wines, brandy, and spices (or grocery ware), and also such quantity of herrings and salt, as are destined to Narva or *Reval, from which places traffic is carried on [*79] with the Russian towns and countries; to the end that the trade of Russia may be carried on unmolested; which articles we have graciously, out of a special consideration, consented to have excepted, and to allow that they may be freely conveyed to Narva aforesaid, and the before-named Livonian cities.

3. The following goods shall also be reckoned as contraband, viz., calamine, cotton, and whatever else serves for the furtherance of all sorts of manufactures, made, woven, or otherwise put together in Sweden, and the countries and towns under its dominion. Also, such articles as are cast, smith's work, or wire drawn, whether they be of copper, brass, iron, lead or other materials, or what is made either of metal, linen or wool, wheresoever they are met with, on board of free, or unfree ships, belonging to Swedish subjects. Under this description are to be understood, all sorts of ordnance and cannon, mortars of brass or iron, small or great, all sorts of arms, armor, arms for the use of cavalry or infantry, anchors and anchor-stocks, nails, spikes and bolts ; also all sorts of ready-made house furniture and cooper's articles ; together with copper and all other coins, being the property of Swedish subjects, and exported from the dominions of Sweden, although they should be found on board of ships belonging to free or neutral places and persons as aforesaid ; nevertheless, that on that account, free ships and goods belonging to neutral persons, shall not be subject to confiscation, if with such legal and proper certificates, as above described, they can judicially be proved to be such.

4. But such goods as, in the before-mentioned manner, are satisfactorily proved to belong to free places and neutral persons, and by them are exported from Sweden in ships of their own, whether it be iron in bars, osmund (moonworth), refined copper (original Gaar-copper), brass wire, and copper in plates; further, all sorts of grain, and greasy articles (or fatmongery); also, hides and skins, and all other Swedish goods,

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being raw materials, or not made up or manufactured in Sweden, or other countries
 *80] and cities belonging to Sweden; also, flax, *hemp, wax, fir building-timber,
 deals, laths, Gotland lime and lime-stones, all sorts of flags and other stones,
 together with masts, spars, tar, pitch, pot and wood ashes, clap-board, pipe-staves
 peltry, and other Russia leather, and Russian goods, are not herewith understood or
 prohibited to be exported, *i. e.*, out of Sweden, but are hereby permitted and allowed,
 so that for the sake of maintaining commerce they may be freely exported by neutral
 towns and persons, in their ships, by their factors, in the manner aforesaid; and that
 on the other hand, they may also freely import into Sweden all sorts of silk articles,
 cloths, and such like fine shop-ware, and current goods, which are not properly and
 directly necessary and useful for any purpose of war; but all such free goods as are
 found or met with, or overtaken in ships that are not free, shall and must after all
 (without any exception) be subject to confiscation as good prize. According to which
 our admiralty-council board, and servants thereof, and all and every our officers,
 cruisers and commanders of ships, having commissions, as well as all others, whether
 they be our friends, neighbors or enemies, who are carrying on any commerce and
 traffic by sea, and are minded to continue the same, during the present war, have to
 conform themselves, and to beware of losses. Given in our Palace at Copenhagen, the
 23d of September, in the year 1659, under our seal.

(L. S.)

FRIEDERICH.

From the French Ordinance of 1681.

LIVRE III : TITRE IX.

§ 2. Des Prises.

Art. 3. Défendons à tous nos sujets, de prendre commissions d'aucuns rois, princes ou états étrangers, pour armer des vaisseaux en guerre, et courir la mer sous leur ban-nière, si ce n'est par notre permission, à peine d'être traités comme pirates.

*81] *4. Seront de bonne prise tous vaisseaux appartenants à nos ennemis, ou commandés par des pirates, forbans ou autres gens courant la mer sans commission d'aucun prince ni état souverain.

5. Tout vaisseau combattant sous autre pavillon que celui de l'état dont il a commission, ou ayant commission de deux différens princes ou états, sera aussi de bonne prise; et s'il est armé en guerre, les capitaines et officiers seront punis comme pirates.

6. Seront encore de bonne prise les vaisseaux avec leur chargement, dans lesquels il ne sera trouvé chartes-parties, connaissemens ni factures. Faisons défenses à tous capitaines, officiers et équipages des vaisseaux preneurs, de la soustraire, à peine de punition corporelle.

7. Tous navires qui se trouveront chargés d'effets appartenants à nos ennemis, et les marchandises de nos sujets ou alliés qui se trouveront dans un navire ennemi, seront pareillement de bonne prise.

8. Si aucun navire de nos sujets est repris sur nos ennemis, après qu'il aura demeuré entre leurs mains pendant 24 heures, la prise en sera bonne; et si elle est faite avant les 24 heures, il sera restitué au propriétaire, avec tout ce qui étoit dedans, à la réserve du tiers qui sera donné au navire qui aura fait la recoussie.

9. Si le navire, sans être recous, est abandonné par les ennemis, ou si, par tempête ou autre cas fortuit, il revient en la possession de nos sujets, avant qu'il ait été conduit dans aucun port ennemi, il sera rendu au propriétaire qui le réclamera dans l'an et jour, quoiqu'il ait été plus de 24 heures entre les mains des ennemis.

10. Les navires et effets de nos sujets ou alliés, repris sur les pirates, et réclamés dans l'an et jour de la déclaration qui en aura été faite en l'amirauté, seront rendus aux propriétaires, en payant le tiers de la valeur du vaisseau et des marchandises, pour frais de recoussie.

11. Les armes, poudres, boulets, et autres munitions de guerre, même le chevaux et

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équipages qui seront transportés *pour le service de nos ennemis, seront confisqués, en quelque vaisseau qu'ils soient trouvés, et à quelque personne qu'ils appartiennent, soit de nos sujets ou alliés.

12. Tout vaisseau qui refusera d'amener ses voiles, après la semonce qui lui en aura été faite par nos vaisseaux ou ceux de nos sujets armés en guerre, pourra y être contraint par artillerie ou autrement; et en cas de résistance et de combat, il sera de bonne prise.

13. Défendons à tous capitaines de vaisseaux armés en guerre, d'arrêter ceux de nos sujets, amis ou alliés, qui auront amené leurs voiles et représenté leur charte-partie ou police de chargement, et d'y prendre ou souffrir être pris aucune chose, à peine de la vie.

14. Aucuns vaisseaux pris par capitaines ayant commission étrangère, ne pourront demeurer plus de vingtquatre heures dans nos ports et havres, s'ils n'y sont retenus par la tempête, ou si la prise n'a été faite sur nos ennemis.

15. Si dans les prises amenées dans nos ports par les navires de guerre armés sous commission étrangère, il se trouve des marchandises qui soient à nos sujets ou alliés, celle de nos sujets leur seront rendues, et les autres ne pourront être mises en magasin, ni achetées par aucune personne, sous quelque prétexte que ce puisse être.

16. Aussitôt que les capitaines des vaisseaux armés en guerre, se seront rendus maîtres de quelques navires, ils se saisiront des congés, passe-ports, lettres de mer, chartres-parties, connaissemens, et de tous autres papiers concernant la charge et destination du vaisseau, ensemble des clés des coffres, armoires et chambres, et feront fermer les écoutilles et autres lieux où il y aura des marchandises.

17. Enjoignons aux capitaines qui auront fait quelque prise, de l'amener ou envoyer, avec les prisonniers, au port où ils auront armé, à peine de perte de leur droit, et d'amende arbitraire, si ce n'est qu'ils fussent forcés par la tempête ou par les ennemis, de relâcher en quelque autre port; auquel cas ils seront tenus d'en donner incessamment avis aux intéressés à l'armement.

*18. Faisons défenses, à peine de la vie, à tous chefs, soldats es matelots, de couler à fond les vaisseaux pris, et de descendre les prisonniers en des îles ou côtes éloignées, pour celer la prise. [*83]

19. Et où les preneurs ne provant se charger du vaisseau pris, ni de l'équipage, enleveraient seulement les marchandises, ou relâcheraient le tout par composition, ils seront tenus de se saisir des papiers, et d'amener, au moins, les deux principaux officiers du vaisseau pris, à peine d'être privés de ce qui leur pourrait appartenir en la prise, même de punition corporelle, s'il y échet.

20. Défendons de faire aucune ouverture des coffres, balots, sacs, pipes, barriques, tonneaux et armoires; de transporter ni vendre aucunes marchandises de la prise, et à toutes personnes d'en acheter ou receler, jusqu'à ce que la prise ait été jugée, ou qu'il ait été ordonné par justice, à peine de restitution du quadruple et de punition corporelle.

21. Aussitôt que la prise aura été amenée en quelques rades ou ports de notre royaume, le capitaine qui l'aura faite, s'il y est en personne, sinon celui qu'il en aura chargé, sera tenu de faire son rapport aux officiers de l'amirauté, de leur représenter et mettre entre les mains les papiers et prisonniers, et de leur déclarer le jour et l'heure que le vaisseau aura été pris, en quel lieu, ou à quelle hauteur; si le capitaine a fait refus d'amener les voiles ou de faire voir sa commission ou de faire voir sa commission ou son congé, s'il a attaqué ou s'il s'est défendu, quel pavillon il portait, et les autres circonstancess de la prise et de son voyage.

22. Après la déclaration rééue, les officiers de l'amirauté se transporteront incessamment sur le vasseau pris, soit qu'il ait mouillé en rade, ou qu'il soit entré dans le port, dresseront procès-verbal de de la quantité et qualité et des marchandises, et de l'état auquel ils trouveront les chambres, armoires, écoutilles et fond de celle du vaisseau, qu'ils feront ensuite fermer et sceller du sceau de l'amirauté; et ils y établiront des gardes pour veiller à la conservation du scellé et pour empêcher le divertissement des effets.

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*23. Le procès-verbal des officiers de l'amirauté sera sait en présence du capitaine ou maître du vaisseau pris; et s'il est absent, en la présence de deux principaux officiers ou matelots de son équipage; ensemble du capitaine ou autre officier du vaisseau preneur, et même des réclamateurs s'il s'en présente.

24. Les officiers de l'amirauté entendront sur le fait de la prise, le maître ou commandant du vaisseau pris, et les principaux de son équipage, même quelques officiers et matelots du preneur, s'il est besoin.

25. Si le vaisseau est amené sans prisonniers, chartes-parties ni connaissemens, les officiers, soldats et équipage de celui qui l'aura pris, seront séparément examinés sur les circonstances de la prise, et pourquoi le navire a été amené prisonniers: et seront le vaisseau et les marchandises visités par experts, pour connaître, s'il se peut, sur qui la prise aura été faite.

26. Si, par la déposition de l'équipage et la visite du vaisseau et des marchandises, on ne peut découvrir sur qui la prise aura été faite, le tout sera inventorié, apprécié, et mis sous bonne et sûre garde, pour être restitué à qui il appartiendra, s'il est réclamé dans l'an et jour, sinon partagé comme épave de mer, également entre nous, l'amiral et les armateurs.

27. S'il est nécessaire, avant le jugement de la prise, de tirer les marchandises du vaisseau, pour en empêcher le dépérissement, il en sera fait inventaire en présence de notre procureur et des parties intéressées, qui le signeront, si elles peuvent signer, pour ensuite être mises sous la garde d'une personne solvable, ou dans des magasins fermant à trois clés différentes, dont l'une sera délivrée aux armateurs, l'autre au receveur de l'amiral et la troisième aux réclamateurs, si aucun se présente, sinon à notre procureur.

28. Les marchandises qui ne pourront être conservées, seront vendues sur la réquisition des parties intéressées, et adjugées au plus offrant, en présence de notre procureur, à l'issue de l'audience, après trois remises d'enchères, de trois jours en trois jours, les proclamations préalablement faites, et affiches mises en la manière accoutumée.

30. Enjoignons aux officiers de l'amirauté de procéder incessamment à l'exécution de arrêts et jugemens qui interviendront sur le fait des prises, et de faire faire incontinent et sans délai, la délivrance des vaisseau, marchandises et effets dont la main levée sera ordonnée, à peine d'interdiction, de cinq cents livres d'amende, et de tous dépens, dommages et intérêts.

31. Sera prise, avant partage, la somme à laquelle se trouveront monter les frais du déchargement et de la garde du vaisseau et des marchandises, suivant l'état qui en sera arrêté par le lieutenant de l'amirauté, en présence de notre procureur et des intéressés.

Règlement du 17 Février 1694, concernant les Passeports accordés aux Vaisseaux ennemis, par les Puissances neutres.

Art. 1. On n'aura aucun égard aux passeports des princes neutres, auxquels ceux qui les auront obtenus se trouveront avoir contrevenu, et ces vaisseaux seront considérés comme étant sans aveu.

2. Un même passeport ne pourra servir que pour un seul voyage.

3. Les passeports seront considérés comme nuls, quand il y aura preuve que le navire pour lequel ils sont expédiés n'était alors dans aucun des ports du prince qui l'a accordé.

4. Tout vaisseau qui sera de fabrique ennemie, ou qui aura eu originairement un propriétaire ennemi, ne pourra être censé neutre, s'il n'en a été fait une vente par devant les officiers publics qui doivent passer cette sorte d'actes, et si cette vente ne se trouve à bord, et n'est soutenue d'un pouvoir authentique, donné par le premier propriétaire lorsqu'il ne vend pas lui-même.

5. Les connaissemens trouvés à bord, non signés, seront nuls et regardés, comme des actes informes.

*Ordonnance du 12 Mai 1696, touchant la manière de juger les Vaisseaux qui échouent, ou qui sont Portés aux Côtes de France par tempête ou autrement.

Sa Majesté étant informée qu'il est servenu quelques contestations à l'occasion du jugement des vaisseaux échoués, soit à l'égard de ceux qui, étant de fabrique ennemis, ne se sont trouvés munis d'aucun contrat, soit par rapport aux marchandises sans connaissance, sous prétexte que le règlement du 17 Février 1694, paraît n'avoir été fait que pour les vaisseaux pris, et que l'article de l'ordonnance de 1681, qui confisque les marchandises sans connaissance, est inséré dans le titre des prises; à quoi sa Majesté désirant pourvoir, en sorte que les vaisseaux marques, et les marchandises véritablement ennemis, mais souvent réclamées par des sujets des princes neutres, ne puissent être sustraits, en aucun cas, à la juste confiscation établie par les lois de la guerre, et par les ordonnances anciennes et nouvelles; sa Majesté a ordonné et ordonne que les vaisseaux qui échoueront sur less côtes, et qui seront portés par la tempête ou autrement, seront jugés suivant les articles de l'ordonnance de 1681, insérés dans le titre des prises, et le règlement du 17 Février 1694; ce faisant, que tout vaisseau échoué qui sera de fabrique ennemie, ou qui aura eu originairement un propriétaire ennemi, ne pourra être censé neutre, mais sera confisqué en entier au profit de sa Majesté, s'il n'en a été fait une vente par devant les officiers publics qui doivent passer ces sortes d'actes, et si cette vente ne se trouve à bord et n'est accompagnée d'un pouvoir authentique, donné par le premier propriétaire lorsqu'il ne vend pas lui-même. Ordonne pareillement sa Majesté, que les marchandises chargées sur les vaisseaux échoués, dont il ne se trouvera à bord aucun connaissance, seront et demeureront entièrement confisquées à son profit; n'entend néanmoins sa Majesté, comprendre dans la présente ordonnance, les vaisseaux échoués, dont les papiers se seraient perdus à l'occasion de la tempête et par le malheur du naufrage, en cas que le capitaine ou le commandant en fasse d'abord sa déclaration, et que l'état ^{du vaisseau}, et les circonstances de l'échouement, ^[*87] le puissent faire présumer ainsi; auquel cas, sa Majesté ordonne que les réclamateurs seront seulement tenus de rapporter une nouvelle expédition du contrat d'achat, et le double des connaissemens.

Extrait de Règlement du 21 Octobre 1744, concernant les Prises faites sur Mer, et la Navigation des Vaisseaux neutres pendant la guerre.

Art. 1. Fait sa Majesté défenses aux armateurs François d'arrêter en mer, et d'amener dans les ports de son royaume, les navires appartenant aux sujets des princes neutres, sortis d'un des ports de leur domination, et chargés pour le compte des sujets desdits princes neutres, de marchandises du crû ou fabrique de leur pays, pour les porter en droiture en quelqu'état que ce soit, même en ceux avec qui sa Majesté est en guerre, pourvu néanmoins qu'il n'y ait sur lesdits navires aucunes marchandises de contrebande.

2. Leur fait pareillement défenses d'arrêter les navires appartenant aux sujets des princes neutres, sortis de quelqu'autre Etat que ce soit, même de ceux avec lesquels sa Majesté est en guerre, et chargés, pour le compte desdits sujets des princes neutres, de marchandises qu'ils auront prises dans le pays ou état d'où ils seront partis, pour s'en retourner en droiture dans un des ports de la domination de leur souverain.

3. Comme aussi leur fait défenses d'arrêter les navires appartenant aux sujets des princes neutres, partis des ports d'un état neutre ou allié de sa Majesté, pourvu qu'ils ne soient chargés de marchandises du crû ou fabrique de ses ennemis, auquel cas les marchandises seront de bonne prise, et les navires relâchés.

4. Défend pareillement sa Majesté, auxdits armateurs, d'arrêter les navires appartenant aux sujets desdits princes neutres, sortis des ports d'un état allié de sa Majesté, ou neutre, pour aller dans un port d'un état ennemi de sa Majesté, pourvu qu'il n'y ait sur lesdits navires aucunes marchandises de contrebande, ni du crû ou

fabrique des ennemis de sa Majesté, dans lequel *cas lesdites marchandises seront de bonne prise, et les navires seront relâchés.

5. Si dans les cas expliqués par les articles 1, 2, 3, et 4 de ce règlement, il se trouvait sur lesdits navires neutres, de quelque nation, qu'ils fussent, des marchandises ou effets appartenant aux ennemis de sa Majesté, les marchandises ou effets seront de bonne prise, quand même elles ne seraient pas de fabrique du pays ennemi, et néanmoins les navires relâchés.

6. Tous connaissemens trouvés à bord, non signés, seront nuls et regardés comme actes informes.

§ 3. Règlement du 26 Juillet 1778, concernant la Navigation des Bâtimens neutres en temps de guerre.

Art. 1. Fait défenses, Sa Majesté, à tous armateurs, d'arrêter et de conduire dans les ports du royaume les navires des puissances neutres, quand même ils sortiraient des ports ennemis, ou qu'ils y seraient destinés, à l'exception toutefois de ceux qui portaient des secours à des places bloquées, investies ou assiégées. A l'égard des navires des états neutres, qui seraient chargés de marchandises de contrebande destinées à l'ennemi, ils pourront être arrêtés, et lesdites marchandises seront saisies et confisquées; mais les bâtimens et le surplus de leur cargaison seront relâchés, à moins que lesdits marchandises de contrebande ne composent les trois quarts de la valeur du chargement; auquel cas les navires et la cargaison seront confisqués en entier. Se réservant au surplus sa Majesté, de révoquer la liberté postée au présent article, si les puissances ennemis n'accordent pas le réciproque dans le délai de six mois, à compter du jour de la publication du présent règlement.(a)

2. Les maîtres des bâtimens neutres seront tenus de justifier sur mer de leur propriété neutre par les passeports, connaissemens, factures et autres pièces de bord, l'une desquelles au moins constatera la propriété neutre, ou en contiendra une *énonciation précis: et quant aux chartes-parties et autres pièces qui ne seraient pas signées, veut sa Majesté qu'elles soient regardées comme nulles et de nul effet.

3. Tous vaisseaux pris, de quelque nation qu'ils soient, neutres ou alliés, desquels il sera constaté qu'il y a eu des papiers jetés à la mer, ou autrement supprimés ou distraits, seront déclarés de bonne prise avec leurs cargaisons, sur la seule preuve des papiers jetés à la mer, et sans qu'il soit besoin de examiner quels étaient ces papiers, par qui ils ont été jetés, et s'il en est resté suffisamment à bord pour justifier que le navire et son chargement appartiennent à des amis ou alliés.

4. Un passe-port ou congé ne pourra servir que pour un seul voyage, et sera réputé nul, s'il est prouvé que le bâtimen pour lequel il aurait été expédié n'était, au moment de l'expédition, dans aucun des ports du prince qui l'a accordé.

5. On n'aura aucun égard aux passe-ports des puissances neutres, lorsque ceux qui les auront obtenus se trouveront y avoir contrevenu, ou lorsque les passe-ports exprimeront un nom de bâtimen différent de l'énonciation qui en sera faite dans les autres pièces de bord, à moins que les preuves du changement de nom avec l'identité du bâtimen, ne fassent partie de ces mêmes pièces, et qu'elles aient été regues par des officiers publics du lieu du départ, et enregistrées par devant le principal officier public du lieu.

6. On n'aura parcelllement égard aux passe-ports accordés par les puissances neutres, ou alliées, tant aux propriétaires qu'aux maîtres des bâtimens, sujets des états ennemis de sa Majesté, s'ils n'ont été naturalisés ou s'ils n'ont transféré leur domicile dans les états desdites puissances, trois mois avant le premier Septembre de la présente année; et ne pourront lesdits propriétaires et maîtres de bâtimens, sujets des états ennemis, qui auront obtenu lesdites lettres de neutralité, jouir de leur effet, si depuis

(a) The same freedom of commerce not having been granted by Great Britain, this privilege was revoked by France, on the 14th of

January 1779, in respect to the United Provinces, except the city of Amsterdam. See 1 Code des Prises 345.

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qu'elles ont été obtenues, ils sont retournés dans les tats ennemis de sa majesté pour y continuer leur commerce.

7. Les bâtimens de fabrique ennemie, ou qui auront eu un propriétaire ennemi, ne pourront être réputés neutres ou alliés, *s'il n'est trouvé à bord quelques pièces [*90] authentiques, passées, devant des officiers publics, qui puissent en assurer la date, et qui justifient que la vente ou cession en a été faite à quelqu'un des sujets des puissances alliées ou neutres, avant le commencement des hostilités, et si ledit acte translatif de propriété de l'ennemi, au sujet neutre ou allié, n'a été dûment enregistré par-devant le principal officier du lieu du départ, et signé du propriétaire ou du porteur de ses pouvoirs.

8. A l'égard des bâtimens de fabrique ennemie qui auront été pris par les vaisseaux de sa Majesté, ceux de ses alliés ou de ses sujets, pendant la guerre, et qui auront ensuite été vendus aux sujets des états alliés ou neutres, ils ne pourront être réputés de bonne prise s'il ne se trouve à bord des actes en bonne forme, passés par-devant les officiers publics à ce propos, justificatifs tant de la prise que de la vente ou adjudication qui en aurait été faite ensuite aux sujets desdits états alliés ou neutres, soit en France soit dans les ports des états allies; faute desquelles pièces justificatives tant de la prise que de la vente, lesdits bâtimens seront de bonne prise.

9. Seront de bonne prise tous bâtimens étrangers sur lesquels il y aura un subrégargue marchand, commis ou officier-major d'un pays ennemi de sa Majesté, ou dont l'équipage sera composé au-delà du tiers de matelots sujets des états ennemis de sa Majesté, ou qui n'auront pas à bord de rôle d'équipage arrêté par les officiers publics des lieux neutres d'où les bâtimens seront partis.

10. N'entend sa Majesté comprendre dans les dispositions du précédent article, les navires dont les capitaines ou les maîtres justifieront, par actes trouvés à bord, qu'ils ont été obligés de prendre les officiers-majors ou matelots, dans les ports où ils auront relâché, pour remplacer ceux du pays neutre qui seront morts dans le cours du voyage.

11. Veut sa Majesté que, dans aucun cas, les pièces qui pourraient être rapportées après la prise des bâtimens, puissent faire aucune foi, ni être d'aucune utilité, tant aux propriétaires desdits bâtimens qu'à ceux des marchandises qui pourraient y avoir été chargées: voulant sa Majesté qu'en toutes occasions, l'on n'ait égard qu'aux [*91] seules pièces trouvées à bord.

12. Tous navires des puissances neutres, sortis des ports du royaume, qui n'auront à bord d'autres denrées et marchandises que celles qui y auront été chargées, et qui se trouvent munis de congés de l'amiral de France, ne pourront être arrêtés par les armateurs Français, ni ramenés par eux dans les ports du royaume sous quelque prétexte que ce puisse être.

13. En cas de contravention de la part des armateurs Français aux dispositions du présent règlement, il sera fait main-levée des bâtimens et des marchandises qui composent leur chargement, autres toutefois que celles sujettes à confiscation, et lesdits armateurs seront condamnés en tels dommages et intérêts qu'il appartiendra.

14. Ordonne sa Majesté que les dispositions du présent règlement auront lieu pour les navires qui auraient échoué sur les côtes dépendant de ses possessions.

15. Veut au surplus sa Majesté, que les dispositions du titre des prises de l'ordonnance de la marine, du mois d'Août, 1681, soient exécutées selon leur forme et teneur, en tout ce à quoi il n'aura pas été dérogé par le présent règlement.

DANISH PRIZE INSTRUCTIONS OF 1810.

We, Frederick the sixth, by the Grace of God, King of Denmark and Norway, the Wends and Goths, Duke of Sleswick Holstein, Storman, Ditmarsk and Oldenburg, make known:

That whereas, we find it corresponding with circumstances, to renew the acts for privateering from our dominions, which for some time had been stopped, and to

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establish new regulations, according to which prize cases are to be acted and decided upon, we hereby do publish such rules, recalling our former will of 24th of September 1807, concerning privateering and the lawful decision of prizes.

*92] § 1. No person or persons within our dominions are permitted *to act as privateer, without being furnished with a lawful commission for this purpose. Such commissions are henceforth to be issued out from the royal board of admiralty, and are to be furnished with the seal of the said court. Such commissions to be granted to none but such persons as either by birth or naturalization have acquired the privileges of Danish citizens, or to other ships or vessels but such as carry guns, or the crew of which at least are furnished with weapons.

§ 2. Every ship or vessel that proceeds to sea on privateering, is to be commanded by a person who is skilful in navigation, and who, before he is intrusted with his commission, has signed his name upon oath to these regulations, and promised to obey them, as well as any other orders communicated to him, through our royal board of admiralty.

§ 3. The commissions for privateers are to be to the following purport: "According to his majesty's most gracious orders, it is hereby made known to all persons concerned, that —, owner of the ship or vessel —, burden — lasts, according to the royal bill, dated the 28th of March 1810, has obtained permission to fit out the said ship or vessel, commanded by —, in order to cruise against our enemies (being furnished with guns or other weapons), for the purpose of capturing, or if necessary, destroying all ships or vessels belonging to the crown of Great Britain, or its subjects, or of stopping and carrying in, in order to be lawfully examined, such ships as are suspected to belong to the said power, or to be connected with it, in a manner incompatible with the laws of neutrality. The owner has deposited the security ordered, and the commander has declared upon his sacred oath to obey the royal orders issued out for privateering, as well as such others as may be given from the royal board of admiralty for this purpose.

The Royal Board of Admiralty, Copenhagen.

Signed and sealed."

*93] § 4. Petitions to obtain commissions for privateering are to be *sent in to the magistrate of that place whence the ship or vessel destined for privateering is to be fitted out. He who obtains such a commission ought, as security for such damage as might be occasioned by an illicit use made of the commission, to find bail to the magistrate for a certain sum from 1000 to 15,000 rix dollars. The magistrate in fixing this sum is to take reference to the number of the crew of the ship, so that security, at all events, be given to the amount of 1000 rix dollars, but as to the rest, that the sum of 100 rix dollars is computed for each man on board. Further, are the owners, as well as the commander (the former with the vessel, the latter with his person and property), responsible for all such damage that may be done to the ship captured.

§ 5. Those privateers to whom lawful commissions have been granted, are allowed to carry the royal Danish pendant and ensign, with our royal cypher in the middle of it, referring ourselves, as to the rest, to the regulations ordered in the bill of the 11th of January 1748.

§ 6. The privateer is bound, as far as it lies in his power, to take and carry in for condemnation all such ships and vessels, as belong to and are proved to be the property of the subjects of the crown of Great Britain. He is also permitted to bring in for examination, every other ship or vessel, the neutrality of which, according to the 10th section of these regulations, is not lawfully proved, or against which grounded suspicions may be formed, upon any of the reasons mentioned in the 12th section. Further, he is authorized to carry in all such ships as may have passed the Sound or the Belt, without paying the duty ordered, and which, consequently, have no certificate; the penalty (being the double of the duty ordered) to be forfeited to him.

§ 7. No privateer is allowed (under punishment of losing his commission, or any other punishment according to circumstances) to stop any ship or make any use of his commission, within the territories of a friendly or neutral power, which generally are supposed to reach one league from shore. *With regard to privateering at

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Oresound, it is to be observed, that the privateers must avoid approaching the Swedish batteries or shore, so near that they might be reached by their guns.

§ 8. As we acknowledge, as an inevitable rule, that free ships constitute free goods, we hereby most positively forbid every cruiser furnished with commission as privateer, to capture any ship belonging to powers that are neutral or in friendly relation with us (whomsoever the cargo may belong to), provided the papers regarding the ship or the expedition are in proper order, and the ship has no contraband of war on board, bound to any country belonging to his Britannic majesty, nor be under any of those predicaments mentioned in the 6th section as subject to condemnation.

§ 9. As free ship constitutes free cargo, thus, on the other hand, hostile ship constitutes hostile cargo.

§ 10. The ship's papers, which, according to the eighth section, ought to be in proper order, are the following: The sea-passport issued out by the government of that country whereof the ship's owner is a subject, or by a magistrate authorized by such government. Instead of this document, however, any other legal document, proving that the commander, by that government whose real subject he is, mediate or immediate, is authorized to use that neutral flag he sails under, on his present voyage, shall be accepted of and credited. The bill of sale or purchase of the ship, in case he that had the ship built disposed of her to another, then both documents (as well that of her building as that of the purchase) requisite, provided both circumstances be not mentioned in one and the same document. In case the ship formerly had been captured as prize, as such condemned, then the act of condemnation serves in lieu as well of the document stating where the ship was built, as of the bill of purchase; this is, however, upon a condition, that a proper document of the auction held over the ship, or any other proper document, proving the lawful disposal of her, is annexed to the act of condemnation. To ships which, after having been formerly condemned in a foreign state, and to those bought by neutral citizens, proceeding ^{*thence}, only with ballast, home, the act of condemnation, with the document of this auction, or any other document, of her being transferred to another person, ought to be a full substitute, in lieu of the other papers ordered, the ship's journal excepted. [95]

Bill of gauge, which must be issued out by the officer appointed to measure ships at the place where the ship is stated to belong to; it must agree with the passport, or, which is instead of it, the list or roll of the crew properly certified by the respective officers; a full and clear account of all the persons found on board, and not stated in the roll, is also requisite. This list also must prove, that neither the captain, mate, supercargo, factor, commissioner, nor more than one-third part of the crew, are British subjects. The receipt for having paid the duty or custom; this document is also to state where the cargo was shipped, and whither it was bound. The charter-party or bill of lading, or if no charter-party was written, then only the bill of lading, which ought to state whither the ship was bound. And finally, the ship's journal of the whole voyage mentioned in the passport, with an exception of such ships which only sail from one port in the Baltic to another.

§ 11. As good and lawful prizes are to be considered: All such ships as evidently belong to the crown of Great Britain, or to subjects of his Britannic majesty, in whatever part of the world they may reside. Such ships as carry on a smuggling trade to or from Great Britain, or the countries which are under the dominions of the said power, by feigned and forged papers of clearance, as well outward as homeward bound, sail to the above-mentioned countries, from such places wherein no clearance is allowed, or from these countries to a place where no admittance from thence is allowed. Such ships as, either entirely or partly, are loaded with contraband of war, and which are proved to be bound to harbors in Great Britain, or which have on board officers or privates that ^{*are} engaged, or are to be engaged, in the service of the enemy, as well as such ships that might approach a squadron which blockades a Danish city or harbor, or province, in order to trade with the enemy for provisions or refreshments. Such ships, the crew of which with force oppose the examination of the privateer. In like manner, those ships that, notwithstanding their flag is considered

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neutral, as well with regard to Great Britain, as the powers in war with the same nation, still either in the Atlantic or Baltic, have made use of English convoy. Such Danish, Norwegian, or, relative to Great Britain, hostile ships, which, after having been captured by the enemy, is re-captured, a third part of the value of the ship and cargo thus re-captured, is due to the captor, whether such ship be taken before or after the expiration of the space of twenty-four hours, the two-thirds to be returned to the owner. If such ships, on the contrary, are re-captured, which as well with regard to us, as to the enemy, are neutral, the re-captor is to be paid an equivalent for his danger and trouble according to the decision of the court of justice.

§ 12. As suspected and subject to a further examination may be brought in : Such ships as are not furnished with the documents mentioned in the tenth section ; such ships as have double papers or documents, which according to appearance are false ; such ships, from which papers have been thrown overboard, or by other means destroyed, particularly if this has taken place, after the privateer was within sight ; those ships the commanders of which have refused to comply with the privateer's request to open such recesses, wherein contraband of war, or documents relating to the expedition of the ship, are suspected to be concealed. Ships under the above-named predicaments are to be treated according to the preceding sections, provided the suspicion against them be not removed, by authentic proofs of their neutrality and lawful destination.

*§ 13. As contraband of war (as mentioned in the 11th section) are to be considered guns, mortars, and all kinds of weapons, pistols, bombs, grenades, balls, fire-locks, flint-stones, matches, gunpowder, saltpetre, sulphur, breast-plates, swords, bandoliers, cartouches, saddles and bridles : such articles as the above mentioned, however, excepted, as are necessary to the defence of the ship and crew.

When the privateer meets a ship that sails under a friendly or neutral flag, he is to hail the commander, in order to make him come on board with his ship's documents. If these are in proper order, he is directly to suffer the ship to proceed on her voyage, without demanding anything of whatever nature. If on the contrary, he finds ground to suspect unfair dealing, he is allowed to go on board the vessel, to examine her more thoroughly.

§ 14. During this examination, he must not venture to break open any drawers, chests, trunks, barrels, casks, or anything else, wherein the cargo may be put up, nor in any wrongful manner investigate into such part of the cargo that may lay scattered about in the ship ; but when he has a suspicion of contraband of war, or suspicious papers, being concealed anywhere, he is to order the commander to open such recesses which are supposed to contain them, and afterwards again to lock them. That privateer who acts contrary to these orders, is to pay the damage, forfeit his commission, and besides, be punished according to the circumstances.

§ 15. If a privateer brings in a ship, he is forbid, under the same penalty as mentioned in the 14th section, to unload, sell, change, or, in any other way, to dispose of, or part with, any part of the cargo, but he ought, in concert with the captain, purser or mate of the ship captured, as far as possible, to seal and lock up the whole of the cargo unopened (as far as the preservation of the cargo does not require the contrary), until his arrival at any of those places that are mentioned afterwards.

*§ 17. In case of necessity, he is permitted to take victuals and *ammunition out of the ship captured, but he is to give the master of her a list of it, signed by himself. If the ship carried in afterwards be condemned in his favor what has been thus taken away is to be deducted from his share ; but in case the ship be not condemned, he is to refund in money what has been taken out of the ship.

§ 18. All papers, passports, letters and journals, the privateer, after having perused them, shall be obliged to put up and seal, to which the master of the ship adds his. They remain in the possession of the privateer, unopened, until they may be delivered up to the magistrate of the place where the ship is brought in.

§ 19. The privateer is to proceed to sea from a harbor within our dominions ; the prizes he may happen to make, during the expedition, are to be carried to such a toll-

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place in Denmark, Norway, Sleswick or Holstein, as he may find most convenient, or to the nearest place where he may be protected by military force, but to no foreign places, at the risk of losing his commission and the sum deposited as security, unless he is forced to do so, by stress of weather, for want of provisions, or by being pursued by the enemy; and if this be the case, he shall be bound (without meanwhile breaking the bulk) to proceed with the first favorable wind to a custom-place within our dominions.

§ 20. If the cargo, however, consists of goods, which according to their nature easily are spoiled, or the ship, through average, cannot proceed on her voyage, he is permitted to apply to the magistrate of the place where he enters, in case it be within our dominions, and in foreign countries, to the nearest Danish consul, who are to take such measures as are the most proper for the preservation of the ship and cargo.

§ 21. As soon as the privateer enters into any harbor within our dominions, with a prize, he is directly to apply to the judge of the place, who immediately, and at farthest within 24 hours, is to undertake and finish the examination, as well of the privateer and her crew, as of the master of the ship captured, together with the crew and passengers; he is minutely to examine and cross-examine them about the ship's course, according to the journal and other circumstances; he is to investigate into the *authenticity of the ship's documents mentioned in the 10th section, the passports of the passengers, their situation on board, voyage and errand, as well as the place where the ship was seized, the conduct of the privateer before, under and after the capture, and in short, he is to examine into everything necessary to the illustration of the case. [*99]

§ 22. During the proceeding, it is the duty of the judge, in general, to consider the interest of both parties in the most careful manner, and before the final decision, summon as well the privateer as in particular the master of the ship captured, to declare whether they wish for any further illustrations, or have any thing further to observe, upon which he is to receive and to reflect upon the claims of both parties. The utmost attention and zeal in this respect are hereby inculcated on all judges, the more so, as, in order to promote the quick expedition and discharge of justice, so necessary in legal proceedings (and in particular for the ship captured that may expect a release), we have suffered the parties to meet by proxies before the high court of admiralty.

§ 23. The judge, attended by two citizens residing at the place, duly sworn, is to take down a true inventory, and it is to be observed: that this is to be taken of the cargo, according to the contents of the ship's documents, and no unloading to take place, unless the privateer insists upon it, or the judge has grounded suspicions of unfair dealing, which might be discovered by the unshipping, or other circumstances might render it necessary for the preservation of the cargo.

§ 24. This being observed, and the case by the respective judges discussed, so far that sentence at the prize court may be pronounced, the proceedings of the court ought to be taken by the secretary, and to be sent by a speedy messenger to the said court, together with the inventory and the rest of the documents. The judge then informs both parties that the case will be decided upon by the prize court, as soon as possible, and that no further summons before that court will take place.

§ 25. To judge of prize cases in the first instance, we have appointed: *A prize court for the Islands of Zealand, Lolland, Falster, Moen, and neighboring islands (the island of Samsoe excepted); it is held at Copenhagen: One for the northern parts of Jutland, and the dioceses of Fyon and Samsoe; this is held at Aarhus: One for the dukedoms of Sleswick and Holstein, held at Flensburgh: One for each of our provinces of our kingdom of Norway, held in the capital of the respective province: One for the islands of Bornholm and Christiansoe, held at Ronne. Each of these courts to be constituted of a *justitiarius* (president) and two assessors, among whom an officer of our navy. A secretary is appointed at each of these courts.

§ 26. If the prize court finds any further illustrations necessary in a case, the court

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ought to charge the judge who has held the examination, to procure such as may be wanted.

§ 27. At the making up of the sentence, every circumstance ought most minutely to be considered ; no other letters or proofs, however, ought to be taken into consideration, but such as were found on board the ship when she was captured, as it is only left to the high court of admiralty to decide how far any of the parties may be allowed to produce further evidence or proofs. The final issue of the sentence of the prize court is to be published in the official journal of the province, by the secretary of the court; the sentence itself, upon the demand of the parties, is immediately to be copied and delivered to them for their further use.

§ 28. If any of the parties wish to appeal from the sentence of the prize court, he ought to declare such intention, within twenty-four hours after the annunciation of the sentence, to his opponent, and afterwards, within the space of eight weeks, procure summons from the high court of admiralty, which is held in our royal residence, Copenhagen, and give proper warning to the judge and his opponent, agreeably to the bill of

*101] April 30th, 1806, containing the instructions for the high court of admiralty. *The summons of appeal in Zealand are applied for in the high court of admiralty ; out of Zealand, the chief magistrates; and at Bornholm and at Christianoe, the governors are authorized to issue out such summons in behalf of the high court of admiralty. When the case is decided by the said court, no further appeal is granted.

§ 29. If a privateer bring in a ship, for any other causes than those authorized in this our royal bill, he is not only to defray all the expenses of the case, but moreover to repay all the damage suffered by the ship, on account of this seizure. If, on the contrary, the capture is upon probable cause, the privateer is without any responsibility, though the ship, upon the ground of certain circumstances, is released ; in this case, the expenses arising from the case and capture, are to be defrayed out of the ship. If any of the parties, without any sufficient ground, appeal from the sentence pronounced, he may expect (if his opponent insists upon it) to be sentenced to pay the loss he thereby may have suffered, besides the expenses of the law-suit.

§ 30. When any ship captured, is condemned in favor of the captor, he is not allowed to dispose of the ship and cargo, according to pleasure, but both parts are to be sold, generally, at the place where the ship is brought in. Out of the amount of the sale, beside the usual salary, one *per centum* is to be paid to the hospital of invalid sailors, at Copenhagen, which sum it is the duty of the judge to receive and transmit to the direction of the said institution, receiving their acquittance.

§ 31. The privateers are exempt from paying the usual duty ; no clearance of duty is consequently requisite, at their setting out ; at their return, they need only to announce their arrival at the custom-house, in order that it may be ascertained they import no goods. Out of the goods, on the contrary, which are carried in and condemned, all duties of every denomination are to be paid, similar to other goods imported.

§ 32. The expenses before the court in prize cases, we have fixed in a particular bill for this purpose ; in the like manner *we have ordered the sum to be paid for *102] commissions of privateering.

§ 33. Every captor of a ship, either hostile or suspected, is to provide for the victualling the crew, from the time of the capture, till the sentence of the prize court is pronounced ; the expenses to be defrayed out of the ship, when the case is closed. In the like manner, and upon the same condition, the victualling of the crew of the ship captured, while the case is pending before the high court of admiralty, is to be furnished by the captor, provided the sentence of the prize court be appealed from by the captor. The captor, on the contrary, if he has gained the case before the prize court, and appeal is made by the captured, is not bound to feed the crew, unless the master of the ship gives full security for the expenses paid on this account.

§ 34. The magistrate of the place is to receive and deliver up to the nearest fort, such of the crew of a ship captured and condemned, as are subjects of the British crown, where they are considered as prisoners of war ; so far as they prove to be sub-

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jects of neutral or friendly powers, they are to be delivered up to their respective consuls.

§ 35. We do hereby forbid our magistrates, or other officers to whom we have intrusted the execution of these our orders, or who are employed in the proceedings or decision of prize cases, to partake in any expedition of privateering. Nor must any auctioneer, who is commissioned to sell any ship or cargo condemned, buy them on his own account.

§ 36. A copy of these regulations and instructions for privateers to be on board of every privateer. These are our will and orders, according to which every one is to conform. Given at our royal residence of Copenhagen, 10th March 1810. Under our royal hand and seal.

(L. S.)

KAAS,
COLD,
KNUDSEN,

BULOW,
MONRAD.

*ORDINANCES OF CONGRESS.

[*103]

Nov. 25th, 1775.

1. Resolved, that all such ships of war, frigates, sloops, cutters and armed vessels, as are, or shall be, employed in the present cruel and unjust war against the United Colonies, and shall fall into the hands of, or be taken by, the inhabitants thereof, be seized and forfeited to and for the purposes hereinafter mentioned.

2. Resolved, that all transport vessels in the same service, having on board any troops, arms, ammunition, clothing, provisions, or military or naval stores, of what kind soever, and all vessels to whomsoever belonging, that shall be employed in carrying provisions, or other necessaries, to the British army or armies, or navy, that now are, or shall hereafter be, within any of the united colonies, or any goods, wares or merchandize, for the use of such fleet or army, shall be liable to seizure, and, with their cargoes, shall be confiscated.

3. That no master or commander of any vessel shall be entitled to cruise for, or make prize of, any vessel or cargo, before he shall have obtained a commission from the congress, or from such person or persons as shall be for that purpose appointed in some one of the united colonies.

4. That it be, and is hereby recommended to the several legislatures in the united colonies, as soon as possible, to erect courts of justice, or give jurisdiction to the courts now in being, for the purpose of determining concerning the captures to be made as aforesaid, and to provide, that all trials, in such case, be had by a jury, under such qualifications as to the respective legislatures shall seem expedient.

5. That all prosecutions shall be commenced in the court of that colony in which the captures shall be made; but is no such court be at that time erected in the said colony, or if the capture be made on open sea, then the prosecution shall be in the court of such colony as the captor may find most convenient: *provided, that nothing contained in this resolution shall be construed so as to enable the captor to remove his prize from any colony competent to determine concerning the seizure, after he shall have carried the vessel so seized within any harbor of the same.

6. That in all cases, an appeal shall be allowed to the congress, or such person or persons as they shall appoint for the trial of appeals; provided, the appeal be demanded within five days after definitive sentence, and such appeal be lodged with the secretary of congress, within forty days afterwards; and provided, the party appealing shall give security to prosecute the said appeal to effect: and in case of the death of the secretary, during the recess of congress, then the said appeal to be lodged in congress, within twenty days after the meeting thereof

7. That when any vessel or vessels shall be fitted out at the expense of any private person or persons, then the captures made shall be to the use of the owner or owners

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of the said vessel or vessels; that where the vessels employed in the capture shall be fitted out at the expense of any of the united colonies, then one-third of the prize taken shall be to the use of the captors, and the remaining two-thirds to the use of the said colony; and where the vessels so employed shall be fitted out at the continental charge, then one-third shall go to the captors, and the remaining two-thirds to the use of the united colonies: provided, nevertheless, that if the capture be a vessel of war, then the captors shall be entitled to one-half of the value, and the remainder shall go to the colony or continent, as the case may be, the necessary charges of condemnation of all prizes being deducted before distribution made.

Dec. 5th, 1775.

Resolved, that in cases of re-captures, the re-captors have, and retain, in lieu of salvage, one-eighth part of the true value of the vessel and cargo, or either of them, if the same hath, or have, been in possession of the enemy twenty-four hours; one-fifth ^{*105]} *part, if more than twenty-four and less than forty-eight hours; one-third part, if more than forty-eight and less than ninety-six hours; and one-half, if more than ninety-six hours, unless the vessel shall, after the capture, have been legally condemned as a prize by some court of admiralty, in which case, the re-captors to have the whole; in all which cases, the share detained, or prize, to be divided between the owners of the ship making the re-capture, the colony or the continent, as the case may be, and the captors, agreeably to a former resolution.

January 6th, 1776.

The committee to whom it was referred to consider how the share of prizes allotted to the captors, ought to be divided between the officers and men, brought in their report, which, being taken into consideration, was agreed to as follows:

Resolved, that the commander-in-chief have one-twentieth part of the said allotted prize-money, taken by any ship or ships, armed vessel or vessels, under his orders and command. That the captain of any single ship, or armed vessel, have two-twentieth parts for his share, but if more ships or armed vessels be in company when a prize is taken, then the two-twentieth parts to be divided amongst all the captains. That the captains of marines, lieutenants of the ships or armed vessels, and masters thereof, share together, and have three-twentieth parts divided among them, equally, of all prizes taken when they are in company. That the lieutenants of marines, surgeons, chaplains, pursers, boatswains, gunners, carpenters, the master's mates, and the secretary of the fleet, share together, and have two-twentieth parts and one-half of a twentieth part, divided among them, equally, of all prizes, when they are in company. That the following petty-warrant and petty officers, viz. (allowing for each ship, six midshipmen; for each brig, four midshipmen; for each sloop, two midshipmen, one captain's clerk, one surgeon's mate, one steward, one sailmaker, one *cooper, one armorer, two boatswain's mates, two gunner's mates, two carpenter's mates, one cook, one coxswain, two sergeants of marines, and one sergeant for each brig and sloop), have three-twentieth parts divided among them, equally; and when a prize is taken by any ship or vessel, on board, or in company of which the commander-in-chief is, then the commander-in-chief's cook or coxswain to be added to this allotment, and have their shares with those last mentioned. That the remaining eight-twentieth parts, and one half of the twentieth part, be divided among the rest of the ship or ships' companies, as it may happen, share and share alike. That no officer or man have any share, but such as are actually on board their several vessels, when any prizes are taken, excepting only such as may have been ordered on board any other prizes before taken, or sent away by his or their commanding officers.

March 23d, 1776.

Resolved, that the inhabitants of these colonies be permitted to fit out armed vessels to cruise on the enemies of these united colonies.

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April 2d, 1776.

The committee appointed to prepare the form of a commission and instructions to commanders of private ships of war, brought in the same, which were read. The commission, being agreed to, is as follows:

The delegates of the United Colonies of New Hampshire, &c., to all whom these presents shall come, greeting: Know ye, that we have granted, and by these presents do grant, license and authority to —, mariner, commander of the —, called the —, of the burden of — tons, or thereabouts, belonging to —, of —, in the colony of —, mounting — carriage guns, and navigated by — men, to fit out and set forth the said —, in a warlike manner, and by and with the said — *and crew thereof, by force to attack, seize and take the ships and other vessels, [*107 belonging to the inhabitants of Great Britain, or any of them, with their tackle, apparel, furniture and lading, on the high seas, or between high and low-water marks, and to bring the same to some convenient ports in the said colonies, in order that the courts, which are or shall be there appointed to hear and determine causes civil and maritime, may proceed in due form to condemn the said captures, if they be adjudged lawful prize; the said — having given bond, with sufficient sureties, that nothing be done by the said —, or any of the officers, mariners or company thereof, contrary to, or inconsistent with, the usages and custom of nations, and the instructions, a copy of which is herewith delivered to him. And we will and require all our officers whatsoever, to give succor and assistance to the said — in the premises. This commission shall continue in force, until the congress shall issue orders to the contrary.

By order of Congress.

Attest, —.

—, President.

April 3d, 1776.

Resolved, that blank commissions, for private ships of war, and letters of marque and reprisal, signed by the president, be sent to the general assemblies, conventions and councils or committees of safety of the united colonies, to be by them filled and delivered up to the persons intending to fit out such private ships of war, for making captures of British vessels and cargoes, who shall apply for the same, and execute the bonds which shall be sent with the said commission, which bonds shall be returned to the congress.

Resolved, that every person intending to set forth and fit out a private ship or vessel of war, and applying for a commission or letter of marque and reprisal for that purpose, shall produce a writing subscribed by him, containing the name and tonnage, or burden of the ship or vessel, the number of her guns, with their weight of metal, the name and place of residence of *the owner or owners, the name of the commander and other officers, the number of the crew, and the quantity of provisions and warlike stores; which writing shall be delivered to the secretary of congress, or to the clerk of the house of representatives, convention or council, or committee of safety, of the colony in which the ship or vessel shall be, to be transmitted to the said secretary, and shall be registered by him, and that the commander of the ship or vessel, before the commission or letters of marque and reprisal shall be granted, shall, together with sureties, seal and deliver a bond, in the penalty of five thousand dollars, if the vessel be of one hundred tons or under, or ten thousand dollars, if of greater burden, payable to the president of the congress, in trust for the use of the united colonies, with conditions of the words following, to wit:

"The condition of this obligation is such; that if the above-bounden —, who is commander of the — called —, belonging to —, of —, in the colony of —, mounting — carriage guns, and navigated by — men, and who have applied for a commission, and letters of marque and reprisal, to arm, equip and set forth the said —, as a private ship of war, and to make captures of British vessels and cargoes, shall not exceed or transgress the powers and authorities which shall be contained in

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the said commission, but shall, in all things, observe and conduct himself, and govern his crew, by and according to the same, and certain instructions therewith to be delivered, and such other instructions as may hereafter be given to him; and shall make reparation for all damages sustained by any misconduct or unwarrantable proceedings of himself, or the officers or crew of the said —, then this obligation shall be void, or else remain in force:” which bond shall be lodged with the said secretary of congress.

November 15th, 1776.

Congress took into consideration the report of the committee relative to the navy: whereupon,

*109] *Resolved, that a bounty of twenty dollars be paid to the commanders, officers and men, of such continental ships or vessels of war as shall make prize of any British ships or vessels of war, for every cannon mounted on board each prize, at the time of such capture, and eight dollars per head for every man then on board, and belonging to such prize.

Tuesday, May 2d, 1780.

The board of admiralty having reported the form of a commission for private vessels of war, and of the bond to be given by the master and commander of the said private armed vessels, and instructions, to the said masters; the same were taken into consideration and agreed to, as follows:

The form of a Commission.

[L. S.] The Congress of the United States of America, to all to whom these presents shall come, send greeting :

KNOW YE, That we have granted, and by these presents do grant, license and authority to —, mariner, commander of the —, called the —, of the burden of — tons, or thereabouts, belonging to —, mounting — carriage guns, and navigated by — men, to fit out and set forth the said — in a warlike manner, and by and with the said —, and the officers and crew thereof, by force of arms, to attack subdue seize and take all ships and other vessels, goods, wares and merchandises, belonging to the crown of Great Britain, or any of the subjects thereof, except the ships or vessels, together with their cargoes, belonging to any inhabitant or inhabitants of Bermuda, and such other ships or vessels bringing persons with intent to settle within any of the said United States, which ships or vessels shall be suffered to pass unmolested, the masters thereof permitting a peaceable search, and giving satisfactory information of their lading and their destination ; or any other ships or vessels, goods, wares or merchandises, to whomsoever belonging, which are or shall be declared to be *110] subjects of capture *by any resolutions of congress, or which are so deemed by the law of nations : and the said ships and vessels, goods, wares and merchandises, so apprehended as aforesaid, and as prize taken, to bring into port, in order that proceedings may be had concerning such capture, in due form of law, and as to right and justice appertaineth: and we request all kings, princes, states and potentates, being in friendship or alliance with the said United States, and others to whom it shall appertain, to give the said — all aid, assistance and succor, in their ports, with his said vessel, company and prizes, we, in the name and on behalf of the good people of the said United States, engaging to do the like to all the subjects of such kings, princes, states and potentates, who shall come into any ports within the said United States. And we will and require all our officers whatsoever, to give to the said — all necessary aid, succor, and assistance in the premises. This commission shall continue in force during the pleasure of the congress, and no longer.

In testimony whereof, we have caused the seal of the Admiralty of the United States to be affixed hereunto. Witness, his Excellency —, Esquire, President of the Congress of the United States of America, at —, this — day of —, in the year

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of our Lord, one thousand seven hundred and —, and in the — year of our independence.

Passed the Admiralty Office.

Attest, —, Secretary of the Board of Admiralty.

The Form of the Bond.

Know all Men by these presents, that we, —, are held and firmly bound to A. B., Esquire, treasurer of the United States of America, in the penalty of twenty thousand Spanish milled dollars, or other money equivalent thereto, to be paid to the said A. B., treasurer as aforesaid, or to his successors in that office: To which payment, well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the — day of —, in the year of *our Lord —, and in the — year of the [*111] Independence of the United States. The condition of this obligation is such, that whereas, the above-bounden —, master and commander of the —, called the —, belonging to —, mounting — carriage guns, and navigated by — men, and who hath applied for and received a commission, bearing date with these presents, licensing and authorizing him to fit out and set forth the said — in a warlike manner; and by and with the said —, and the officers and crew thereof, by force of arms, to attack, subdue, seize and take all ships and other vessels, goods, wares and merchandise, belonging to the crown of Great Britain, or any of the subjects thereof (excepting the ships or vessels, together with their cargoes, belonging to any inhabitant or inhabitants of Bermuda, and such other ships or vessels bringing persons with intent to settle within the said United States); and any other ships or vessels, goods, wares and merchandise, to whomsoever belonging, which are or shall be declared to be subjects of capture by any resolutions of congress, or which are so deemed by the law of nations. If, therefore, the said — shall not exceed or transgress the powers and authorities given and granted to him in and by the said commission, or which are or shall be given and granted to him by any resolutions, acts or instructions of congress, but shall, in all things, govern and conduct himself, as master and commander of the said —, and the officers and crew belonging to the same, by and according to the said commission, resolutions, acts and instructions, and any treaties subsisting, or which may subsist, between the United States of America and any prince, power or potentate whatever: and shall not violate the law of nations, or the rights of neutral powers, or of any of their subjects, and shall make reparation for all damages sustained by any misconduct or unwarrantable proceedings of himself or the officers or crew or the said —, then this obligation to be void, otherwise, to remain in full force.

Signed, sealed, and delivered, }
in the presence of us, }

*Instructions to the Captains and Commanders of private armed [*112] vessels, which shall have Commissions or Letters of Marque and Reprisal.

1. You may, by force of arms, attack, subdue and take all ships and other vessels belonging to the crown of Great Britain, or any of the subjects thereof, on the high seas, or between high-water and low-water marks (except the ships or vessels, together with their cargoes, belonging to any inhabitant or inhabitants of Bermuda, and such other ships and vessels bringing persons with intent to settle and reside within the United States, which you shall suffer to pass unmolested, the commanders thereof permitting a peaceable search and giving satisfactory information of the contents of the lading, and destination of the voyages). And you may also annoy the enemy by all the means in your power, by land as well as by water, taking care not to infringe or violate the laws of nations or the laws of neutrality.

2. You are to pay a sacred regard to the rights of neutral powers, and the usage and custom of civilized nations, and on no pretence whatever, presume to take or seize any ships or vessels belonging to the subjects of princes or powers in alliance with

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these United States, except they are employed in carrying contraband goods or soldiers to our enemies; and in such case, you are to conform to the stipulations contained in the treaties subsisting between such princes or powers and these states; and you are not to capture, seize or plunder any ships or vessels of our enemies, being under the protection of neutral coasts, nations or princes, under the pains and penalties expressed in a proclamation issued by congress the 9th day of May, Anno Domini 1778.

3. You shall bring such ships and vessels as you shall take, with their guns, rigging, tackle, apparel, furniture and lading, to some convenient port or ports, that proceedings may thereupon be had, in due form of law, concerning such captures.

4. You shall send the master or pilot, and one or more principal *person or ^{*113]} persons of the company of every ship or vessel by you taken in such ship or vessel, as soon after the capture as may be, to be by the judge or judges of such court as aforesaid examined upon oath, and make answer to such interrogatories as may be propounded touching the interest or property of the ship or vessel, and her lading; and at the same time, you shall deliver, or cause to be delivered, to the judge or judges, all passes, sea-briefs, charter-parties, bills of lading, cockets, letters and other documents and writings found on board, proving the said papers, by the affidavit of yourself, or of some other person present at the capture, to be produced as they were received, without fraud, addition, subduction or embezzlement.

5. You shall keep and preserve every ship or vessel, and cargo, by you taken, until they shall, by sentence of a court properly authorized, be adjudged lawful prize, or acquitted, not selling, spoiling, wasting or diminishing the same, or breaking the bulk thereof, nor suffering any such thing to be done.

6. If you, or any of your officers or crew, shall, in cold blood, kill or maim, or by torture or otherwise, cruelly, inhumanly and contrary to common usage, and the practice of civilized nations in war, treat any person or persons surprised in the ship or vessel you shall take, the offender shall be severely punished.

7. You shall, by all convenient opportunities, send to the board of admiralty, written accounts of the captures you shall make, with the number and names of the captives, and intelligence of what may occur, or be discovered concerning the designs of the enemy, and the destinations, motions and operations of their fleets and armies.

8. One-third, at least, of your whole company, shall be landsmen.

9. You shall not ransom or discharge any prisoners or captives, but you are to take the utmost care to bring them into port; and if, from any necessity, you shall be obliged to dismiss any prisoners at sea, you shall, on your return from your cruise, make report thereof, on oath, to the judge of the admiralty of the state to which you belong, or in which you arrive, within ^{*114]} twenty days after your arrival, with your reasons for such dismissal. And you are to deliver, at your expense, or the expense of your owners, the prisoners you shall bring into port, to a commissary of prisoners, nearest the place of their landing, or into the nearest county jail.

10. You shall observe all such further instructions as congress shall hereafter give in the premises, when you shall have notice thereof,

11. If you shall do anything contrary to these instructions, or to others hereafter to be given, or willingly suffer such thing to be done, you shall not only forfeit your commission, and be liable to an action for breach of the condition of your bond, but be responsible to the party grieved for damages sustained by such malversation.

Resolved, that the board of admiralty be empowered, and directed, to cause to be printed, so many copies of said forms as they shall judge necessary.

Resolved, that the president transmit to the governors or presidents of the respective States, so many copies of the said forms as the board of admiralty shall advise, and at the same time inform them, that it is the intention of congress, that all commissions and instructions now in force, be cancelled as soon as possible, and commissions, bonds and instructions of the new form, be substituted in place thereof.

The motion of Mr. Madison was again taken into consideration, and thereupon the following ordinance was passed:

An Ordinance relative to the Capture and Condemnation of Prizes.

The United States in Congress assembled, taking into consideration the implacable war waged against them by the king of Great Britain, and judging it inconsistent with their dignity, as a free and independent nation, any longer to continue indulgencies and exemptions to any of the subjects of their enemy, who is obstinately bent upon their destruction or subjugation, have thought it proper to ordain and order, and it is hereby ordained and ordered, that henceforward, general reprisals be *granted against the ships, goods, and subjects of the king of Great Britain; so that, as well the fleets and ships of these United States, as also all other ships and vessels commissioned by letters of marque or general reprisals, or otherwise, by the authority of the United States in congress assembled, shall, and may lawfully seize all ships, vessels, and goods, belonging to the king or crown of Great Britain, or to his subjects, or others inhabiting within any of the territories or possessions of the aforesaid king of Great Britain, and bring them to judgment in any of the courts of admiralty that now are, or hereafter may be, established in any of these United States, by the authority of the United States in congress assembled; and the said courts of admiralty are hereby authorised and required, to take cognisance of, and judicially to proceed upon, all and all manner of captures, seizures, prizes and reprisals of all ships and goods that are, or shall be taken, and to hear and determine the same, and, according to the course of admiralty, and the laws of nations, to adjudge and condemn all such ships, vessels, and goods, as shall belong to the king of Great Britain, or to his subjects, or to any others inhabiting within any of the countries, territories or dominions or possessions, of the aforesaid king of Great Britain. And that the board of admiralty, or secretary of marine, forthwith prepare, and lay before the United States in congress assembled, a draught of instructions, for such ships or vessels as shall be commissionated for the purposes above-mentioned.

And it is hereby further ordained, that the destruction of papers, or the possession of double papers, by any captured vessel, shall be deemed and taken as just cause for the condemnation of such captured vessel; and that, when any prize, having been taken and possessed by the enemy twenty-four hours, shall be retaken from them, the whole of such re-captured prize shall be condemned for the use of the re-captors; but in cases where the prize shall have continued in the possession of the enemy less than twenty-four hours, it shall be restored to the original owner or owners, except one-third part of the *true value thereof, which shall be allowed as salvage to the re-captors.

And it is hereby further ordained, that the citizens and inhabitants of these United States be, and they hereby are, strictly enjoined and required to abstain from all intercourse, correspondence or dealings whatsoever, with the subjects of the said king of Great Britain, while at open war with these United States, as they will answer the same at their peril; and the executives of the several states are hereby called upon to take the most vigilant and effectual measures for detecting and suppressing such intercourse, correspondence or dealings, and bringing the authors thereof, or those concerned therein, to condign punishment.

And in order the more effectually to remove every colorable pretence for continuing such intercourse, it is hereby ordained, that from and after the first day of November next, no benefit shall be claimed from, nor countenance or regard paid to, any letters of passport or safe-conduct, heretofore granted by the congress of the United States, to any of the citizens or inhabitants thereof, or to any person or persons whatever, for the removal of their property or effects from places within the dominions or possessions of the said king of Great Britain:

Provided, always, that this ordinance shall not extend to authorise the capture or condemnation of any vessel belonging to any inhabitant of Bermudas, which being loaded with salt only, may arrive in any of these United States, on or before the first day of May next.

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And it is hereby ordained, that all former acts or resolutions of congress, contrary to the tenor, true intent, and meaning of this ordinance, be and they are hereby repealed.

Saturday, April 7th, 1781.

On a report of a committee, consisting of Mr. Varnum, Mr. Bee and Mr. Van Dyke, *117] to whom was referred the draught of *instructions to the captains of private armed vessels, reported by the board of admiralty: (a)

Be it ordained, and it is hereby ordained, by the United States in Congress assembled, that the following instructions be observed by the captains or commanders of private armed vessels, commissioned by letters of marque or general reprisals or otherwise, by the authority of the United States in congress assembled.

1. You may, by force of arms, attack, subdue and seize all ships, vessels and goods, belonging to the king or crown of Great Britain, or to his subjects, or others inhabiting within any of the territories or possessions of the aforesaid king of Great Britain, on the high seas, or between high-water and low-water marks. And you may also annoy the enemy by all means in your power, by land as well as by water, taking care not to infringe or violate the laws of nations, or laws of neutrality.

2. You are to pay a sacred regard to the rights of neutral powers, and the usage and customs of civilized nations; and on no pretence whatever, presume to take or seize any ships or vessels belonging to the subjects of princes or powers in alliance with these United States; except they are employed in carrying contraband goods or soldiers to our enemies; and in such case, you are to conform to the stipulations contained in the treaties subsisting between such princes or powers and these states; and you are not to capture, seize or plunder any ships or vessels of our enemies, being under the protection of neutral coasts, nations or princes, under the pains and penalties expressed in a proclamation issued by the congress of the United States, the ninth day of May, in the year of our Lord 1778.

*118] 3. You shall permit all neutral vessels freely to navigate *on the high seas, or coasts of America, except such as are employed in carrying contraband goods or soldiers to the enemies of these United States.

4. You shall not seize or capture any effects belonging to the subjects of the belligerent powers, on board neutral vessels, excepting contraband goods; and you are carefully to observe, that the term contraband, is confined to those articles which are expressly declared to be such in the treaty of amity and commerce, of the sixth day of February, 1778, between these United States and his most Christian Majesty, namely, arms, great guns, bombs, with their fuses, and other things belonging to them, cannon balls, gun-powder, matches, pikes, swords, lances, spears, halberds, mortars, petards, grenades, salt-petre, muskets, musket balls, bucklers, helmets, breast-plates, coats of mail, and the like kind of arms proper for arming soldiers, musket-rests, belts, horses with their furniture, and all other warlike instruments whatever.

5. You shall bring all such ships and vessels as you shall seize or capture, with their guns, rigging, tackle, apparel and furniture, and ladings, to judgment, in any of the courts of admiralty that now are, or hereafter may be, established in any of these United States, in any court authorised by his most Christian Majesty, or any other power in alliance with these United States, to take cognisance of captures and seizures made by the private armed vessels of these states, and to judicially hear and determine thereon.

6. You shall send the master or pilot, and one or more principal persons of the company, of every ship or vessel by you taken, in such ship or vessel, as soon after the capture as may be, to be by the judge or judges of such court as aforesaid, examined

(a) This ordinance was passed by congress in consequence of the temporary recognition, by the United States and France, of the principles of the armed neutrality, as laid down in the de-

claration of her Majesty, the Empress of Russia, of February 26th, 1780. 2 Dall. 18. See also Darby v. The Brig Erstern, Id. 34.

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upon oath, and make answer to such interrogatories as may be pronounced, touching the interest or property of the ship or vessel and her lading; and at the same time, you shall deliver, or cause to be delivered, to the judge or judges, all passes, sea-briefs, charter-parties, bills of lading, cockets, letters, and other documents and writings found on board, proving *the said papers, by the affidavit of yourself, or of some other person present at the capture, to be produced as they were received, without fraud, addition, subdiction or embezzlement. [*119]

7. You shall keep and preserve every ship or vessel, and cargo, by you taken, until they shall, by sentence of a court properly authorized, be adjudged lawful prize, or acquitted; not selling, spoiling, wasting or diminishing the same, or breaking the bulk thereof, nor suffering any such thing to be done.

8. If any of your officers or crew shall, in cold blood, kill or maim, or by torture, or otherwise, cruelly, inhumanly, and contrary to common usage, and the practice of civilized nations in war, treat any person or persons surprised in the ship or vessel you shall take, the offender shall be severely punished.

9. You shall, by all convenient opportunities, send to the board of admiralty, or secretary of marine, written accounts of the captures you shall make, with the numbers and names of the captives, and intelligence of what may occur, or be discovered, concerning the designs of the enemy, and the destinations, motions and operations of their fleets and armies.

10. One-third, at least, of your whole company shall be landsmen.

11. You shall not ransom or discharge any prisoners or captives, but you are to take the utmost care to bring them into port; and if, from necessity, you shall be obliged to dismiss any prisoners at sea, you shall, on your return from your cruise, make report thereof, on oath, to the judge of the admiralty of the state to which you belong, or in which you arrive, within twenty days after your arrival, with your reasons for such dismissal; and you are to deliver, at your expense, or at the expense of your owners, the prisoners you shall bring into port, to a commissary of prisoners nearest the place of their landing, or into the nearest county jail.

12. You shall observe all such further instructions as *shall hereafter be given by the United States in congress assembled, when you shall have notice [*120] thereof.

13. If you shall do anything contrary to these instructions, or to others hereafter to be given, or willingly suffer such thing to be done, you shall not only forfeit your commission, and be liable to an action for breach of the condition of your bond, but be responsible to the party grieved, for damages sustained by such malversation.

Ordered, that the board of admiralty report, as soon as may be, proper regulations for the conducting and governing the vessels of war of the United States, and other armed vessels.

An Ordinance, ascertaining what Captures on water shall be lawful.

In pursuance to the powers delegated by the Confederation in cases of capture on water: Be it ordained, by the United States in congress assembled, that from and after the first day of February next, all resolutions and ordinances of congress relating to captures or re-captures on water, and coming within the purview of this ordinance, except as is hereinafter excepted, shall be null and void; but questions of this nature arising before, or which shall be undetermined at that day, shall be determined at any time, during the war with Great Britain, according to them, in the same manner as if this ordinance had never been made.

It shall be lawful to capture, and to obtain condemnation of the property hereinafter enumerated, if found below high-water mark; that is to say, all ships and other vessels of whatsoever size or denomination, belonging to an enemy of the United States, with their rigging, tackle, apparel and furniture. All goods, wares and merchandises belonging to an enemy, and found on board of a ship or other vessel of such enemy. All contraband goods, wares and merchandises, to whatever nation

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belonging, although found in a neutral bottom, if destined for the use of an enemy; but the goods, wares and merchandises *belonging to an enemy, ^{*121]} contraband goods, and goods destined to a blockaded, invested or besieged port, being always excepted, found in a vessel belonging to a foreign nation, other than an enemy, shall, in no case, be subject to condemnation: Provided, nevertheless, that from and after the first day of March, in the year 1782, all goods, wares and merchandises, of the growth, produce or manufacture of Great Britain, or of any territory depending thereon, if found within three leagues of the coasts, and destined to any port or place of the United States, in any ship or vessel belonging to the citizens of the said States, or the subjects of any neutral power, shall be liable to capture and condemnation, unless the same shall have been previously captured from the enemy and condemned, or, in consequence of capture, may be proceeding to some port or place, not in the power of the said enemy, for trial and condemnation.

All ships or other vessels, goods, wares and merchandises, belonging to any power, or the subjects of any power against which letters of marque or reprisal shall have issued. All ships or other vessels, with their rigging, tackle, apparel and furniture, and with their cargoes, to whatsoever nation belonging, destined to any port or place, invested, besieged or blockaded, by a sufficient force belonging to, in the service of, or co-operating with the United States, so effectually as that one cannot attempt to enter into such port or place without evident danger. All ships or other vessels, with their rigging, tackle, apparel and furniture, and with their cargoes, found in the possession of pirates.

The goods, wares, and merchandises, to be adjudged contraband, are the following, that is to say: cannons, mortars, fire-arms, pistols, bombs, grenades, bullets, balls, fuses, flints, matches, powder, saltpetre, sulphur, carcasses, pikes, swords, belts, pouches, cartouch-boxes, saddles and bridles, in any quantity beyond what may be necessary for the ship's provision, and may properly appertain to, and be adjudged ^{*122]} necessary *for, every man of the ship's crew, or for each passenger. If it shall manifestly appear, that of any entire thing of which division cannot be made without injury to its value, a subject of the enemy, and a citizen or a subject of a foreign power, not being an enemy, are joint holders, the whole shall be condemned and sold for gold or silver, the proper proportion of the net proceeds of which shall be deposited in the treasury of the state in which the sale shall be, to be paid to the order of such citizen, or the subject of such foreign power. If such division can be accomplished, but neither the citizen, nor the subject of a foreign power, nor his agent, shall require specific restitution of his property, there shall be a sale in the same manner as if the property were indivisible. But if, in such case, a requisition be made to this effect, the due proportion shall be specifically restored.

Where property shall have been originally captured on land from a state, or a citizen of the United States, and shall be re-captured, below high-water mark, by another citizen thereof, restitution shall be made to the former owner, upon the payment of a reasonable salvage, not exceeding one-fourth part of the value; no regard being had to the time of possession by the enemy. In all cases of re-capture by an armed vessel, fitted out at the expense of the United States, of a vessel, or other effects belonging to a citizen, the court shall adjudge the proportion which would be due to the United States, to be remitted to such citizen, no regard being had to the time of possession by the enemy. On the re-capture by a citizen, of any negro, mulatto, Indian, or other person, from whom labor or service is lawfully claimed by a state, or a citizen of a state, specific restitution shall be adjudged to the claimant, whether the original capture shall have been made on land or water, and without regard to the time of possession by the enemy, a reasonable salvage being paid by the claimant to the re-captor, not exceeding one-fourth of the value of such labor or service, to be estimated *according to the laws of the state under which the claim ^{*123]} shall be made. But if the service of such negro, mulatto, Indian, or other person, captured below high-water mark, shall not be legally claimed within a year and a day from the sentence of the court, he shall be set at liberty. In all other cases of

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re-capture, restitution shall be made to the owner, upon payment of one-third part of the true value for salvage, if the property shall have been retaken in less than twenty-four hours after the capture. But if it shall not have been retaken, until the expiration of twenty-four hours after the capture, restitution shall not be made of any part.

Besides those who are duly authorized to make captures by special commission, captures of the property of an enemy shall be adjudged lawful when made: 1st. By a private vessel not having such commission, satisfactory proof being produced that they were made in pursuing the course of her voyage, and repelling a previous attack from an enemy. 2d. By any body or detachment of regular soldiers. 3d. By inhabitants of the country, if made within cannon-shot of the shore. 4th. By an armed vessel, sailing under a commission of his most Christian Majesty. 5th. By the crews of British vessels, while captures of this sort are licensed by the British. Recaptures shall be made by no other persons than those authorized to make captures, except the crews of vessels retaken.

The destruction of papers, or the possession of double paper by any captured vessel, shall be considered as evidence for condemnation, unless good cause be shown to the contrary.

From and after the first day of February, which shall be in the year of our Lord 1782, any letters of passport or safe-conduct, granted before the 27th of March last, under the authority of congress, to any *person whatsoever, for removal of property from a place beyond sea within the dominions or possessions of the British king, shall be void. [*124]

Upon the capture of a vessel commissioned as a man of war or privateer, by any of the vessels of war of the United States of America, the whole of the property condemned shall be adjudged to the captors, to be divided in the following manner (saving to all persons who shall lose a limb in any engagement, or shall be otherwise disabled in the service of the United States, every benefit accruing to them under the resolutions of congress of the 28th day of November, 1775,) that is to say: To the commander-in-chief of the navy of the United States, shall be allotted one-twentieth part of all prizes taken by an armed vessel or vessels, under his orders and command; when there shall be no such commander-in-chief, the one-twentieth part allotted to him shall be paid into the treasury of the United States. To the captain of any single armed vessel, two twentieth parts; but if more ships or vessels be in company when a prize is taken, then the two twentieth parts shall be divided equally among all the captains. To the captains of marines, lieutenants and masters, three twentieth parts of all prizes taken when they are in company, to be divided equally among them. To the lieutenants of marines, surgeons, chaplains, pursers, boatswains, gunners, carpenters, master's mates, and the secretary of the fleet, two twentieth parts, and one-half of one-twentieth part, to be divided equally among them. To the following petty warrant-officers, viz., midshipmen, (allowing for each ship six, for each brig four, and for each sloop two), captain's clerks, surgeon's mates, stewards, sail-makers, cooper's, armorers (allowing for each vessel one of each only), boatswain's mates, gunner's mates, carpenter's mates (allowing for each vessel two of each), cooks, coxswains (allowing for each vessel one of each), serjeants of marines (allowing two for each ship, and one for each brig and *sloop), three twentieth parts, to be divided equally among them: and [*125] when a prize is taken by any vessel, on board, or in company of which the commander-in-chief is, then the commander-in-chief's cook, or coxswain, shall be added to the petty-warrant officers, and share equally with them. The remaining eight twentieth parts, and half of the one-twentieth part, shall be divided among the rest of the vessels company or companies, as it may happen, share and share alike. No officer nor man shall have any share but such as are actually on board their several vessels, when any prize or prizes shall be taken, excepting only such as may have been ordered on board any other prizes, before taken, or sent away by his or their commanding officers.

Upon the capture of any vessel, if made by a vessel of war belonging to the United States, one-half of the property condemned shall be decreed to the United States, and

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the other half to the captors, to be divided as aforesaid; if by a private vessel, not having a commission, the whole shall be decreed to the captors; if by any body, or detachment of regular or other troops in the service of the United States, the whole shall be adjudged to the captors, to be divided in proportion to the pay in the line of the army; if by inhabitants of the country, being in arms, the whole shall be adjudged to the captors, to be divided equally among them: provided, that if any such inhabitant shall be wounded in making the capture, he shall be entitled to two shares, and if killed, his legal representatives shall be entitled to four shares; if the crews of British vessels, the whole shall be adjudged to the captors, to be divided at the discretion of the court.

On re-capture by an armed vessel belonging to the United States, of a vessel under the protection of a vessel belonging to the enemy, commissioned as a man of war or privateer; or where the vessel taken is equipped in a warlike manner, the proportion to withdrawn from the original owner shall be divided, as in the case of a capture of an enemy's vessel commissioned as a man of war or privateer. *On re-capture, [126] by an armed vessel belonging to the United States, of a vessel under the protection of a hostile vessel, not commissioned as a man of war or privateer; and where the vessel retaken is not equipped in a warlike manner, the proportion to be withdrawn from the original owner shall be divided, as in the case of a hostile vessel not commissioned as a man of war or privateer.

The rules of decision in the several courts shall be the resolutions and ordinances of the United States in congress assembled, public treaties, when declared to be so by an act of congress, and the law of nations, according to the general usages of Europe. Public treaties shall have the pre-eminence in all trials.

This ordinance shall commence in force on the first day of February, which will be in the year of our Lord 1782. Done by the United States in Congress assembled, &c.

Tuesday, January 8th, 1782.

The ordinance for amending the ordinance, ascertaining what captures on water shall be lawful, was read a third time and passed, as follows:

An Ordinance for amending the Ordinance, ascertaining what Captures on water shall be lawful.

Whereas, there hath been great variance in the decisions of several maritime courts within the United States, concerning the pretensions of vessels claiming a share of prizes, as being in sight at the time of capture: some having adjudged that the mere circumstance of being in sight was a sufficient foundation of title, while others have required proof of a more active influence: and whereas, this inconvenience hath arisen from the want of an uniform rule of determination in such cases:

Be it therefore ordained by the United States in Congress assembled, that no share of any prize shall be adjudged to a *vessel, being in sight at the time of capture, [127] unless the said vessel shall have been able, at the time when the captured vessel struck, to throw a shot as far as the space between herself and the captured vessel; and that every vessel coming in aid of the captors, which shall have been able, at the time when the captured vessel struck, to throw a shot as aforesaid, and shall have been duly authorized to make captures, shall be entitled to share according to the number of her men and the weight of her metal: provided, that nothing herein contained shall be construed to affect any agreement which shall have previously been made between vessels cruising in concert.

And be it further ordained by the authority aforesaid, that whosoever an armed vessel belonging to, and commissioned by the enemy, shall be captured by any armed vessel belonging to the United States, and duly authorized to make captures, the net proceeds of the sales of the captured vessel, and of her rigging, tackle, apparel and furniture, shall be adjudged to the captors; and where a cargo shall be on board of

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such captured vessel, one moiety of the net proceeds of such cargo shall be adjudged to the United States, and the other moiety to the captors.

And be it further ordained by the authority aforesaid, that upon the capture of any vessel belonging to the enemy, and laden with masts or spars, by an armed vessel belonging to the United States, and duly authorized to make captures, the net proceeds of the sales of such captured vessel, and her cargo, shall be adjudged to the captors. This ordinance shall take effect, and be in force, from and after the last day of February next. Done by the United States in congress assembled, &c.

Tuesday, February 26th, 1782.

The following ordinance being read a third time, was agreed to.

*An ordinance for further amending the Ordinance, ascertaining what [*128 Captures on water shall be lawful.

Whereas, divers ships or vessels belonging to the citizens of several of these United States, may have sailed on voyages to Europe, before the publication of the ordinance, entitled, "an ordinance ascertaining what captures on water shall be lawful," where they, as well as vessels belonging to the subjects of neutral powers, may have laden and taken on board, in promiscuous cargoes, goods, wares and merchandises, of the growth, product or manufacture of Great Britain, or of some of the dominions or territories thereon depending, without any knowledge of the said ordinance, and may not be able to arrive in any of the ports of these states, on or before the first day of March next, whereby the said goods may become liable to capture and condemnation.

For remedy whereof, it is hereby ordained by the United States in congress assembled, that no ship or other vessel, which shall have sailed from any port or place in Europe, not belonging to the king of Great Britain, on or before the tenth day of April next, for any port or place within the United States, not in possession of the enemy, shall be liable to capture or molestation, merely for having on board goods, wares or other merchandises, of the growth, product or manufacture of Great Britain, or of any territory depending thereon.

And it is hereby further ordained, that where vessels, their cargoes, or any part thereof, belonging to any citizen of these United States, sailing, or being within the body of a county, or within any river or arm of the sea, or within cannon shot of the shore of any of these states, and laden with the produce of the country, and destined for a port or place within these states, not in possession of the enemy, shall be captured by the enemy, and shall be re-captured, below high-water mark, by another citizen thereof, restitution shall be made to the former owner, upon the payment of a reasonable salvage, not exceeding one-fourth *part of the value, no regard being had [*129 to the time of possession of the enemy.

And be it further ordained, that so much of the aforesaid ordinance as comes within the purview of this, be, and hereby is repealed. Done by the United States in congress assembled, &c.

An Ordinance for the better distribution of Prizes in certain cases.

Be it ordained by the United States in congress assembled, that so much of the ordinance, entitled, "an ordinance ascertaining what captures on water shall be lawful," as ordains that upon the capture of a vessel commissioned as a man of war, or a privateer, by any of the vessels of war of the United States of America, the whole of the property condemned shall be adjudged to the captors, be and the same is hereby repealed; and that, in all such cases of capture, the whole of the property condemned shall be adjudged to the use of the captors, if the vessel taken shall be of equal or superior force to the vessel making the capture; if otherwise, one-half only shall be adjudged to the captors, and the other half to the use of the United States, and shall, after condemnation, be so appropriated, unless the United States in congress assembled,

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in reward of distinguished valor and exertion, shall otherwise specially direct. And be it further ordained, by the authority aforesaid, that the resolution of the 15th day of November 1776, giving to the commanders, officers and men of the ships or vessels of war, a bounty for every cannon, and for every man belonging to British ships or vessels of war captured by them, be, and the same is hereby repealed. Done by the United States in congress assembled, &c.

BRITISH STATUTES AND PRIZE INSTRUCTIONS.

With regard to the issuing of letters of marque, the lord high admiral of Great Britain, or the commissioners appointed *for executing that office, or any three ^{*130]} of such commissioners, or any person by them empowered or appointed, shall, at the request of any duly-qualified owner or owners of any ship or vessel duly registered, according to the directions of the acts passed in the 26th and 34th years of Geo. III. (a) (provided such owner or owners give the bail or security hereafter specified), cause to be issued, in the usual manner, one or more commissions, or letters of marque and reprisal, to any person or persons, nominated by such owner to be commander, or (in case of death, successively) commanders, of such ship or vessel ; for the attacking, surprising, seizing and taking, by and with such vessel, or with the crew thereof, any place or fortress upon the land, or any ship or vessel, arms, ammunition, stores of war, goods or merchandise, belonging to, or possessed by, any of his Majesty's enemies, in any sea, creek, haven or river. (b)

All persons applying for such commissions, or letters of marque, must make their application in writing, subscribed with their hands, to the high admiral, or other persons thus empowered, or to the lieutenant or judge of the high court of admiralty, or to his surrogate, and such application must set forth "a particular, true and exact description of the ship or vessel for which such commission, or letter of marque and reprisal, is requested, specifying the name and burden of such ship or vessel, what sort of built she is, and the number and nature or the guns, and what other warlike furniture and ammunition are on board the same, to what place the ship belongs, and the name or names of the principal owner or owners of such ship or vessel, and the number of men intended to be put on board the same (c) *(all of which particulars ^{*131]} must be inserted in every commission, or letters of marque), for what time they are victualled ;" and "also the names of the commanders and officers." (d)

Further, every commander of a private ship or vessel of war, for which such commission or letters of marque shall be granted, must produce the same to the collector, customer or searcher, for the time being, of his Majesty's customs, residing at, or belonging to the port, whence such ship shall be first fitted out, or to their lawful deputies. And such collector, customer, &c., shall, without fee or reward, and as early

(a) 26 Geo. III., c. 60; 34 Geo. III., c. 68.

(b) 18 Geo. II., c. 4, § 2; 33 Geo. III., c. 66, § 9; 43 Geo. III., c. 160, § 7.

(c) By the 18 Geo. II., c. 3, privateers (and also trading vessels) are allowed to man their ships with foreign seaman, provided they do not exceed three-fourths of the ship's company. This statute also confers all the privileges of British subjects, upon such seaman, after two years' service, during war, excepting that no one can be a member of the privy council, or of parliament, hold any office, or place of trust, or have any grant of lands tenements or hereditaments from the crown, either to himself, or any person or persons in trust for him. The duration of this act is unlimited ; though several

temporary statutes (28 Geo. II., c. 16; 19 Geo. III., c. 14; 33 Geo. III., c. 26) have subsequently allowed the same privileges during war. A late statute, however, requires three years' service.

(d) 33 Geo. III., c. 66, § 15; 43 Geo. III., c. 160, § 13. Instructions for letters of marque &c., against the goods of the French and Batavian republics, Art. 6. Previously to taking out letters of marque, the owners of all the vessels, for which such letters shall be granted, must nominate and register in the court a proctor, exercent in the court of appeal, in case any appeal should be instituted from the decisions of the court below. 41 Geo. III., c. 96, § 10.

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as may be, inspect and examine the said vessel, in order to ascertain her build and burden, the number of men, together with the number and nature of the guns on board. If, after examination, such vessel appear to be of such build and burden, and to be manned and armed according to the tenor of the description inserted in the commission or letter of marque; or if she be of greater force or burden than is therein specified; in such case, the collector, &c., or his or their deputies, shall, immediately, upon the request of the commander of such ship or vessel, give him, *gratis*, a certificate thereof in writing, under his or their hand or hands: and such certificate shall be deemed a necessary clearance, before the vessel or letter of marque, thus commissioned, shall be permitted to sail from that port. (a) The same statute likewise declares, that in case any commander proceed out of port upon a cruise, without such certificate, of clearance, or with a force inferior to that specified in the commission or letter of marque, the latter should be absolutely null and void; the commander thus offending shall be subject to the penalty of 1000*l.*, recoverable, with full costs of suit, by any person, and shall also be *imprisoned for such space of time as the court shall direct, [**132 not exceeding one year for any one offence. (b)

Previously, however, to obtaining letters of marque, bail must be given, with sureties, before the lieutenant and judge of the high court of admiralty, or his surrogate, in the sum of three thousand pounds sterling, if the ship carry more than one hundred and fifty men; and if she carry a less number, in the sum of fifteen hundred pounds sterling. (c) Further, such sureties must, prior to their being bound, severally make oath before the judge of the said court of admiralty of England, or judge of any other court of admiralty, in any other of his Majesty's dominions, or his or their surrogates, that they are respectively worth more than the sum for which they are to be bound, over and above all their just debts. And in order to prevent frauds, the marshal of the admiralty court is enjoined to make diligent inquiry into the sufficiency of such bail and security; and to make his report accordingly to the judge or his surrogate, before any commission or letter of marque can be granted. (d)

No judge of any vice-admiralty court, established in the West Indian or American colonies, can, either directly or indirectly, have any share or interest whatever, in any privateer or letter of marque. (e) Nor can any judge, advocate, marshal, proctor, or any other officer of any admiralty or vice-admiralty court, either in England, or in the colonies, possess any such interest, on pain of forfeiting his employment, and also the sum of five hundred pounds to the use of his Majesty; being convicted of every such offence in any court of record in Great Britain, or at any general session of the peace in any of the American colonies. And all advocates or proctors, thus offending, are for ever disqualified and incapacitated from practising their profession.

Letters of marque are revocable, either by violating the *revenue laws, or by the lord high admiral. In the former case, if the owner or owners, commander, [**133 master or other persons having the command of the letter of marque or privateer, be guilty of any offence, contrary to any acts now in force, or which may hereafter be enacted, for the protection of the customs or excise, or for the prevention of smuggling, such persons shall forfeit their commission, independently of the other penalties or forfeitures incurred by reason of such offence. (f)

Where, however, the lord high admiral, or any three or more of the commissioners for executing that office, may deem it expedient to revoke any letters of marque, by any order or orders in writing, under his or their hand or hands, the secretary of the admiralty is required to transmit, as early as possible after such revocation, a notice in writing to the owner or owners of the vessel named or described in such order, or to his or their agent or agents, surety or sureties, or some or one of them. In case the

(a) 33 Geo. III., c. 66, § 15; 43 Geo. III., c. 160, § 13.
 (b) 33 Geo. III., c. 66, § 15; 43 Geo. III., c. 160, § 13.
 (c) "Instructions for letters of marque," c. 160, § 16. &c., Art. 16.
 (d) 43 Geo. III., c. 160, § 12.
 (e) 41 Geo. III., c. 96, § 17.
 (f) 33 Geo. III., c. 66, § 19; 43 Geo. III., c. 160, § 16.

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ship be in the channel, the order of revocation shall be effectual to supersede and annul the commission or letter of marque, at the expiration of twenty days after such notice has been given, or sooner, if the notice be actually given in writing by the secretary of the admiralty to the captain or commander of such vessel. If she be in the North Seas, the commission becomes void, at the end of thirty days. Six weeks are allowed, before the order takes effect, in case the ship be to the south of Cape Finisterre, or in the Mediterranean; three months, if she be in North America or the West Indies; and if in the East Indies, six months, after such notice is given. Complaint of such revocation may be made to his Majesty in council, by any commander, owner, agent or surety, within thirty days after notice of revocation has been given by the secretary of the admiralty. His Majesty's determination in council, respecting such complaint, is final; but in case the order of revocation be superseded, the commission or letter of marque shall be deemed to have continued in force; and all prizes taken by virtue thereof shall belong to the owners and ^{*134]} captors, in the same manner as if no such order of revocation had been made. But no person is liable (before he shall have received personal notice of such order) to be punished for doing any lawful matter or thing, which he might have done under the authority of his commission or letter of marque, in case such order of revocation had not been made. (a)

If any person or persons counterfeit, erase, alter or falsify any commission for war or letter of marque, or any warrant for making out the same, or any certificate required by law to be obtained, or shall publish or make use of any such commission, warrant or certificate, knowing the same to be counterfeited, erased, altered or falsified, such person or persons incur a forfeiture of five hundred pounds, recoverable with full costs of suit, in any court of record in Great Britain. (b) And if any of these offences be committed out of this realm, they may be alleged to be committed, and may be laid, inquired of, tried and determined, in any county in England, in the same manner, to all intents and purposes, as if such offences had been done or committed within the body of such county. (c)

No commander of any ship or vessel, having letters of marque, is allowed, at his peril, to wear any jack, pennant or other ensign or colors, usually borne by king's ships; but, beside the colors in general hoisted by merchant's ships, he must wear a red jack, with the union jack described in the canton, at the upper corner thereof, near the staff. (d)

The commanders of privateers, or merchant ships, having letters of marque and reprisals, are authorized to set upon, by force of arms, subdue and take, the men of war, ships and vessels, goods, wares and merchandises, belonging to the enemy, or to any subjects of, or persons inhabiting within his territories; (e) but in such a manner, that no hostilities be committed, nor prize attacked, seized or taken, within the harbors ^{*135]} of princes and states in amity with us, or in their rivers or roads within shot of their cannon, unless by permission of such princes or states, or of their commanders or governors in chief in such places.

If any ship or vessel be taken as prize, none of the officers, mariners or other persons on board her, shall be stripped of their clothes, or in any sort pillaged, beaten or evil-intreated, on pain of the offender's being liable to such punishment as a court-martial shall think proper to inflict. (g)

No commanders of privateers, or letters of marque, are allowed to ransom, or agree to ransom, quit, or set at liberty, any ship or vessel, or their cargoes, which shall be seized and taken, on pain of forfeiting their commission, only in cases of extreme necessity, to be allowed by the court of admiralty, and incurring such penalties of fine and imprisonment, as the court shall adjudge. (h) Nor are they permitted, on any pre-

(a) 33 Geo. III., c. 66, § 20; 43 Geo. III., c. 160, § 17.

Art. 8.

(e) "Instructions," &c., Art. 1.

(b) Ibid. § 48; 43 Geo. III., c. 160, § 48.

(g) 22 Geo. II., c. 33, stat. 2, § 9, otherwise called the ninth article of war.

(c) Ibid. § 49; 43 Geo. III., c. 160, § 49.

(h) "Instructions," Art. 9.

(d) "Instructions for letters of marque," &c.

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tence whatever, to ransom any prisoners; but they must transmit an account of, and deliver over, such prisoners as they may take on board of any prizes, to the commissioners appointed for exchanging prisoners of war, or to the persons appointed in seaport towns to take charge of prisoners; and such prisoners are subject only to the orders, regulations, and directions of the said commissioners.(a) Further, it is unlawful for any of his Majesty's subjects to ransom, or to enter into any contract for ransoming, any ship belonging to British subjects, or any goods on board the same, which shall be captured by the subjects of any state at war with his Majesty, or by any persons committing hostilities against his subjects.(b) And if any contracts be entered into, or any bills, notes or other securities be given for that purpose, they are absolutely null and void; beside which, the party thus offending incurs a forfeiture of 500*l.* which may be sued for by any person.(c)

*If any ship or vessel, or any goods or merchandises, be taken or retaken and restored, by any privateer, through consent, or clandestinely, or by collusion or connivance, without being brought to adjudication, such ship or vessel, together with the goods and merchandises, and also the ship's tackle, apparel, furniture, arms and ammunition, shall, on proof thereof, to be made in any court of admiralty, be declared and adjudged a good prize to his Majesty. One moiety of the prize is to go to his Majesty's use, and the other moiety to the person who may sue for the same; beside which, the bond given by the captain of such privateer is forfeited to his Majesty. Further, if such collusive capture, or re-capture and restoration, be made by any captain or commander of any king's ships, the vessel thus taken, or retaken and restored, is not only to be condemned as a prize to his Majesty, but also the offenders are disqualified and incapacitated from serving him for seven years, and incur a forfeiture of 1000*l.*, recoverable by any person who may sue for the same; and who is entitled to one-half of the penalty, while the other moiety goes to the use of his Majesty.(d)

All prizes must be conducted either into an English port, or into some other port of the British dominions, as may be most convenient, in order that they may be legally adjudged in the high court of admiralty, in England, or before the judges of any other admiralty court in the British dominions.(e) All the effects found on board, of whatever description, must be preserved, without any part of them being taken out, spoiled, wasted, embezzled or diminished, and without breaking bulk (unless it shall be necessary for the better securing thereof, or for the necessary use and service of any of his Majesty's ships of war), until judgment has been given in the high court of admiralty, or in some other lawfully authorized court of admiralty, that the ship, goods and merchandises are lawful prize.(g) Persons offending in these respects not only forfeit *the whole of their respective shares of the captures to the use of the Royal Hospital, at Greenwich, but also incur a fine treble the value of the article or articles so embezzled, one-third part of which goes to the same noble institution, and the remainder to any person that may sue for the same ;(h) and if the offender be on board one of his Majesty's ships of war, he is liable to suffer such further punishment as a court-martial or the court of admiralty shall impose.(i)

In order to prevent any of these abuses, the commissioners for taking examinations in prize causes are, by their regulations, required first to make an entry of the time of the captured vessel's arrival in port; after which they must give directions to the collector of the customs, or naval officer, at such port, or any other proper person, to see

(a) *Ibid.* Art. 10; 33 Geo. III., c. 66, § 36; 43 Geo. III., c. 160, § 35.

(b) 22 Geo. III., c. 25, § 1; 33 Geo. III., c. 66, § 37; 43 Geo. III., c. 166, § 36.

(c) 21 & 22 Geo. III., c. 54 (for Ireland); 22 Geo. III., c. 25, §§ 2, 3; 33 Geo. III., c. 69, §§ 38, 39; 43 Geo. III., c. 160, §§ 37, 38.

(d) 13 Geo. II., c. 4, § 19; 43 Geo. III., c.

160, § 42.

(e) *Instruction*, Art. 2.

(g) *Instructions*, Art. 3; 22 Geo. II., c. 33, stat. 2, § 8, otherwise called the 8th article of war.

(h) 13 Geo. II., c. 4, § 9; 33 Geo. III., c. 66, § 46; 43 Geo. III., c. 160, § 45.

(i) 22 Geo. II., c. 33, stat. 2, § 8.

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that the prize be duly and safely moored, in sufficient depth of water, or on soft ground, so that the ship may receive no damage. The person attending to this business, receives the sum of one guinea from the captor, who must also pay all lights and port-charges incurred on account of the prize. (a) Two of these commissioners accompanied by the collector of the customs, or naval officer, of the port, then proceed on board the ship, to examine whether bulk has been broken, in which case they are enjoined to certify the same to the judge of the high court of admiralty: next, they seal the hatches and chests of merchandise, which are on no account so be opened or unloaded, by any person whomsoever, unless by special order under seal of the court, excepting only in cases of fire and tempest, and of absolute necessity. (b)

*138] After the captor has conducted his prize into port, he, or one of the chief officers, or some other person present at the capture, must bring or send as early as possible, three or four of the principal of the company (of whom the master and mate or supercargo, must always be two) of every such prize, before the judge of the high court of admiralty, or his surrogate, or before the judge of any other lawfully authorized admiralty court within the British dominions, or such persons as shall be legally commissioned in that behalf, in order that they may be sworn and examined upon such interrogatories (c) as shall tend to the discovery of the truth, concerning the interest or property of such ship or ships, vessel or vessels, and of the goods, merchandises or other effects found therein. Further, the captor is obliged, at the time he produces the company to be examined, (d) and before any monition shall be issued, to bring and deliver into the hands of the said judge of the high court of admiralty of England, his surrogates, or the judge of such other admiralty court, lawfully authorized within the British dominions, *or other persons for that purpose commissioned,

*139] all such papers, passes, sea-briefs, charter-parties, bills of lading, cockets, letters, and other documents and writings, as shall be delivered up or found on board any ship. The captor, chief officer, or some other person who was present at the taking of the prize, and saw such papers and writings delivered up, or found on board at the time of capture, must also make oath that they are brought and delivered in, as they were

(a) "Regulations for the Observance of Prize Commissioners," in Sir James Marriott's "*Formulare Instrumentorum*," p. 380, &c., Art. 1 and 2.

(b) "Regulations," &c., Art. 3. By an order of the court of admiralty, dated January 6th, 1782, only two commissioners are allowed to be employed for taking the examinations for one ship, with one actuary, and so on by rotation. And with regard to interpreters, in cases of neutral vessels, if the master of the captured neutral ship object that the interpreter does not understand the language, in such case, the proper persons are directed to be sent up to London, in order that they may be examined by the officer in Doctors' Commons, at the request of the master. Marriott's "*Formulare*," pp. 15, 16.

(c) In the examination of witnesses, only two commissioners and one actuary are (as observed in the preceding note) allowed to attend; and the examination of every witness is required to be commenced, continued, and finished on the same day, and not at different times. "Regulations," &c., Art. 8, p. 386, of Sir J. Marriott's "*Formulare*." For the same purpose, the commissioners are permitted

to use only the standing interrogatories, unless the court direct special interrogatories to be proposed, though they may explain any of them to a witness, where it is necessary. If, however, witnesses answer, that "they cannot say," it is the duty of the commissioners to admonish them; that, as they have sworn to speak the truth, the whole truth, and nothing but the truth, they must answer to the best of their knowledge; or, where they do not know absolutely, that they must in such case answer to the best of their belief, concerning any fact or matter. "*Formulare*," p. 358.

(d) If the prize master neglect to produce witnesses before the commissioners within forty-eight hours after the arrival of the prize, they must admonish him to bring them forward; and if he refuse or delay, or if the witnesses refuse to be examined, being also admonished of the consequence of their contumacy (viz., imprisonment of their persons for contempt, and confiscation of the ship and cargo), in such case, the commissioners are, at the expiration of forty-eight hours, to certify the same to the judge of the high court of admiralty. "Regulations," &c., Art. 1.

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received and taken, without any fraud, addition, subdiction, (a) or embezzlement, or otherwise to account for the same, upon oath, to the satisfaction of the court. (b)

On receipt of such books, papers and writings, the commissioners must transmit the same, without delay, and under seal (together with copies of the examinations), to the office of the registry of the court of admiralty, wherein such ship may be proceeded against, in order to condemnation; but only such books, papers and writings shall be made use of and translated, as shall be agreed or insisted upon by the proctors of the several parties, captors or claimants, or (in case no claim be presented by the captor, or his proctor, agent or register) as shall be necessary for ascertaining the property of such ship or vessel and her cargo. (c)

If any ship, vessel or boat, or any goods therein, which may have been taken as prize, shall appear and be proved, in any court of admiralty, to have belonged to any of his Majesty's subjects of Great Britain or Ireland, or of any other of his Majesty's dominions; and which ships, vessels or boats were before taken or surprised by any of his Majesty's enemies, and afterwards again surprised and retaken by any ship of war, *privateer, or other ship, vessel or boat, under his Majesty's protection or obedience; in such case, the re-captured ships or boats, and goods, and every part thereof, formerly belonging to his Majesty's subjects, shall, by a decree of the said court of admiralty, be restored to the former owners or proprietors, who shall pay the following rates in lieu of salvage, viz: If the re-capture be effected by any of his Majesty's ships, one-eighth part of the ships, vessels, boats and goods, respectively, to be restored, shall be paid to the flag-officers, captains, officers, seamen, marines and soldiers on board such ships of war; and such salvage is to be divided among them in the manner and proportion for that purpose directed. But if such re-capture be made by any privateer, or other ship, vessel or boat, one-sixth part of the true value of the said ships, vessels, boats and goods, shall, without any deduction, be paid to, and divided among, the owner or owners, officers and seamen, in such manner and proportions, as they shall have mutually agreed upon. (d)

Where, however, a re-capture has been made by the joint operation of one or more of his Majesty's ships, and one or more privateer or privateers, the judge of the admiralty court shall order the owner or owners of such re-captured vessel or goods to pay such a salvage, as under the circumstances of the case shall to him appear reasonable, to the agent of the re-captors, and in such proportion as the court shall adjudge. (e) But if the ship or vessel, thus retaken, shall have been fitted out by the enemy for war, she shall not be restored to the former owners or proprietors; but whether re-captured by a ship belonging to his Majesty, or by a privateer, shall be adjudged a lawful prize for the benefit of the captors. (g)

If a ship be retaken before she has been carried into an enemy's port, it shall be lawful for her, with the re-captor's consent, to prosecute her voyage; nor is it necessary that they should proceed to adjudication, till six months, or till the return of the ship to the port whence she sailed. Further, by the *re-captors' consent, the cargo may be unladen and disposed of, before adjudication; and if such vessel does not return directly to the port whence she sailed, or if the re-captors have had no opportunity of proceeding regularly to adjudication, within six months, on account of the absence of the vessel, the court of admiralty shall, at the instance of the re-captors, decree restitution to the former owners, paying salvage, upon such evidence

(a) If, however, any commanders of his Majesty's ships of war, taking a prize, neglect to preserve, or to transmit the "very originals," entirely and without fraud, to the court of admiralty, or some court of commissioners, the offender forfeits his share of the capture, and is liable to such further punishment, as the nature of his offence may deserve, and a court-martial impose. 22 Geo. II., c. 33, stat. 2, § 7, or the seventh article of war.

(b) "Instructions," Art. 3.

(c) 33 Geo. III., c. 66, § 26; 43 Geo. III., c. 160, § 26; "Regulations," &c., Art. 5, in "Formulare Instrumentorum," p. 384.

(d) 13 Geo. II., c. 4, § 18; 33 Geo. III., c. 66, § 42; 43 Geo. III., c. 160, § 41.

(e) 33 Geo. III., c. 66, § 42; 43 Geo. III., c. 160, § 41.

(g) *Ibid.*

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as shall appear reasonable; the expense of such proceeding not to exceed the sum of fourteen pounds.(a)

The captors of small armed ships and vessels belonging to the enemy, may include in one adjudication, any number of such ships having a commission or letter of marque from the enemy provided they do not exceed six, and are under fifty tons burden, having been taken within three months before the application to the admiralty for such adjudication.(b)

For the more speedy condemnation of prizes, the judge of the high court of admiralty of England or of any other court of admiralty thereto authorized, or such persons as shall by them be commissioned for that purpose, shall, within five days after request made, finish the usual preparatory examination of the persons commonly examined in such cases, in order to inquire and prove whether the capture is a lawful prize or not. The proper monition, usual in such cases, shall be issued by the proper officer, and be duly executed by the proper persons, within three days after request made for that purpose; and in case no claim of such captured ship, vessel or goods be entered and made in the usual form, twenty *142] days' notice being *given, after such monition; or if such claim be put in, and the claimant or claimants shall not, within five days after, give bond in the sum of sixty pounds sterling, to pay costs to the captor or captors, in case the ship, vessel or goods shall be adjudged lawful prize; the judge of such admiralty court shall, then, on production of the examinations, together with all papers and writings found on board the prize, or upon oath that no such papers or writings were found, proceed to discharge or acquit such capture, or to condemn the same, as shall appear expedient to him, on perusal of the said preparatory examinations, papers and writings. If, however, such claim be duly entered, and proper security be given, and no other examination appear to be requisite, the judge shall, in such case, proceed, within ten days, if possible, to give sentence respecting such capture. But where, on entering such claim, and the attestation thereupon, or producing the said papers and writings regarding the captured ship, vessel or goods, and upon the said preparatory examinations, it shall appear doubtful to the judge, whether such capture be lawful prize or not, and he shall deem it necessary, for determining such doubt, to have an examination of witnesses, on pleadings given in by the parties, and admitted by the judge, the judge shall, in such case, cause the capture to be forthwith appraised by skilful persons, nominated by the parties, and approved and appointed by the court, and who shall be sworn duly to appraise the same, according to the best of their skill and knowledge. And for this purpose, the judge shall cause the goods found on board to be unladen, and (an inventory, if necessary, being previously taken by the marshal or deputy-marshal of the admiralty) order them to be deposited in proper warehouses, with separate locks, of the collector and comptroller of the customs, or (if there be no comptroller or collector) of the naval officer, and of the agents of both captors and claimants, at the charge of the party requesting the same. After such appraisement, and within fourteen days after claim made, the judge shall take good and sufficient security from the claimants to pay the captors the full value thereof, *143] according to such appraisement, in *case the same shall be adjudged a lawful prize.(c) He is also enjoined to take sufficient security from the captors, to pay such costs as the court shall think proper, in case the ship, vessel or goods, shall not

(a) 33 Geo. III., c. 66, § 44; 43 Geo. III., c. 160, § 43.

(b) 33 Geo. III., c. 66, § 11; 43 Geo. III., c. 160, § 9; Order of the Court of Admiralty, April 11th, 1780, in Marriott's "Formulare," p. 4, 5. It is necessary here to remark, that the owners of all privateers are obliged to nominate and register a proctor in the court, whence they obtain their commission or letter of marque; that service on him is binding on the commander, owners and sureties (41 Geo. III., c. 96, §

10), and that such owners and sureties are liable to decrees, immediately after sentence. (Id. § 12.) In case any privateer proceed to adjudication, in any other court than that whence the letters of marque have issued, they must pursue the same conduct, before the usual monition is granted, and in case of appeal, the service of the process of the court of appeal on him will, in like manner, be effectual.

(c) No claimants are allowed to take cargo on bail, previously to hearing, without the consent of

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be condemned as lawful prize; and after such securities have been duly given, he shall make an interlocutory order for releasing or delivering the same to such claimant or claimants, or to his or their agents.(a)

In case, however, any claimant or claimants refuse to give the security required, the judge, on sufficient security being given by the captors, that they will pay the full value to the claimants, according to the appraisement thereof, if the capture should not be condemned, shall proceed to make an interlocutory order for releasing and delivering the same to such captor or captors, or to their agents.(b) But as great injury is often *sustained by the sale of captured property, in remote parts of [*144] the British dominions, the colonial vice-admiralty courts are empowered, where further proof is ordered, and the claimants of the property decline to take, it on bail, to direct such property to be sent to England (with the captor's and claimant's consent), there to be sold by consignees nominated by both parties, and the proceeds of sale to be forthwith deposited in the Bank of England, in the name of such consignees, subject to the final adjudication, expenses of freight, insurance and other charges attending the sale and transportation of the property. If, however, it shall appear to the court, that the captors unreasonably withhold their consent, they shall (in case of restitution) pay the difference in value of the property, at the time of such restitution, and of the produce thereof, in case such property had been sent for sale to England; the said difference to be ascertained in such manner as shall appear satisfactory to the court for that purpose.

Thus far the regulations relate equally to ships of war and to privateers; but in all proceedings had upon captures made by any privateer in the vice-admiralty courts in the West Indies or America, the owners are to be deemed and considered as parties to every part of such proceedings; and such owners, as well as the sureties, are jointly and severally liable to all orders and decrees made therein, immediately after final sentence, without any further personal service on the commander, or putting him in contempt by process of contumacy.

In case, however, any captors or claimants shall not rest satisfied with the sentence, or interlocutory decree having the force of a definitive sentence, pronounced in the high court of admiralty of England, or in any colonial vice-admiralty court, the parties aggrieved may appeal to the commissioners appointed for determining appeals in prize causes in like manner as such appeals have usually been interposed ;(c) provided, the appellants give

all the parties. 3 Rob. 178. But where all the parties interested are liable to sustain loss or damage from the captured cargoes, either being perishing, or of a perishable nature, the court of admiralty has ordered, that in all cases, by consent of captor and claimant, or upon attestation exhibited on the part of the claimant only, without the captor's consent, the cargo, or the perishing or perishable part thereof, shall be delivered to him on his specifying the quantity and quality of the cargo, and giving bail to answer the value thereof, if condemned, and also that he will abide the event of the suit. Such bail must be approved by the captor; or otherwise, the persons giving the security must swear that they are truly and severally worth the sum for which they give security; but if the parties cannot agree respecting the value of the cargo, a decree of appraisement may issue from the court, in order to ascertain the real value. Where, however, no claim is made, the captor may, on exhibiting an affidavit, specifying the quantity and quality of the perishable cargo, have a decree of ap-

praisement and sale of such cargo, and bring the proceeds into court in view of any claim, eventually to abide any future orders. Order of the Court of Admiralty, April 11th, 1780, in Sir J. Marriott's "Formulare," p 5, 6. Where a commission of appraisement and sale is granted by the judge of the vice-admiralty court, before final sentence, the proceeds of such sale shall not remain in the hands of the captors or their agents, but shall be deposited in the registry of the court, till final sentence be pronounced. 41 Geo. III, c. 96, § 7.

(a) 13 Geo. II, c. 4, § 33; 3 Geo. III. c. 66, § 23; 43 Geo. III, c. 160, § 29. Where a ship and cargo, or either of them, are condemned, with a general reservation of the question to whom, no copy of the interlocutory order is allowed to be delivered to either party, until a final condemnation takes place. Order of the Court of Admiralty, dated August 1st, 1793, in "Formulare," p. 23, 24.

(b) 33 Geo. III, c. 66, § 24; 43 Geo. III, c. 160, § 21.

(c) The 33 Geo. III, c. 66, § 28, specifies

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sufficient security that they will effectually prosecute *such appeal, answer the condemnation and pay all costs, if the sentence of the respective courts be affirmed. But the execution of such sentence is not to be suspended by the appeal (excepting in the cases hereafter mentioned), if, the parties appellate give sufficient security, to be approved of by the court where such sentence was given, that they will restore the property in litigation, or the value thereof, to the appellants, in case the sentence or the interlocutory decree appealed from, shall be the reversed. (a) And in cases of appeal from a colonial vice-admiralty court, the property in litigation may, at the appellant's request, be sent by the court to England for sale, and the proceeds be deposited in the bank, in the manner already specified; (b) or if the property shall have been converted by sale, the proceeds thence arising shall be consigned to England and deposited in a similar manner. Should any question or difficulty arise respecting any property or proceeds thus sent to England, either before or after any such appeal, at any time after their arrival in England, or respecting the sale or proceeds thereof, the captors or claimants may, on giving notice to the adverse parties, apply by their proctors to the high court of admiralty (if before the prosecution of the appeal), or (afterwards) lords commissioners of appeal, for their directions concerning the sale or management of such property or proceed. (c)

If any person, not being a party in the first instance, appeal from a definitive sentence, or interlocutory decree having the force of such sentence, such person, or his or her agent or agents, must at the same time enter his, her or their claim or claims, as their appeal will otherwise be null and void. (d)

In all prize causes, whether tried in the English admiralty, or in a colonial vice-admiralty court, all persons interested, whether they be or be not parties in the first instance, may take out an inhibition, and prosecute an appeal, within twelve calendar *146] *months, to be computed from the day of the date of the sentence or decree appealed from. But if no inhibition be taken out, before the twelve months elapse, no appeal will be allowed to be prosecuted, nor will any inhibition be granted, but the said sentence, or interlocutory decree, is to stand confirmed as to such person. (e)

In certain special prize causes, however, to be mentioned in his Majesty's order or orders in council, his Majesty may authorize the persons interested (whether parties or not in the first instance, and in whatever court the decree or sentence appealed from may have been pronounced) to take out inhibitions for prosecuting appeals, after the expiration of twelve months; and the lords commissioners of appeals may, if distribution has not taken place, permit an appeal to be prosecuted, after that period has elapsed, where, on special cause shown, they shall deem it reasonable to grant such permission; (g) but if it shall appear to the satisfaction of the lords commissioners of appeals in prize causes, that distribution has been made of the proceeds of the prizes, at or after the time or times when the right of appealing would have been barred, if no such order had been made, and before notice of such order duly given to the captors, the said captors are not liable to make compensation to the claimants, provided they duly comply with the following regulation, (h) viz: Where his Majesty shall authorize such appeals, the captors shall, within a reasonable time, at the requisition of the claimants, deliver a true copy of the account of sales, and of all proceedings had under the authority of the sentence or decree, pronounced in the court below, to his Majesty's procurator-general, who is authorized and required to defend all such appeals, and in such manner as his Majesty's advocate-general shall direct. But if the captors shall neglect to comply

fourteen days after pronunciation of the decree, which is the time allowed by the present practice of the admiralty court.

(a) 33 Geo. III., c. 66, § 28; 43 Geo. III., c. 160, § 27.

(b) *Supra*, p. 144.

(c) 41 Geo. III., c. 96, § 9.

(d) 33 Geo. III., c. 66, § 29; 43 Geo. III., c. 160, § 28.

(e) 38 Geo. III., c. 38, § 2; 43 Geo. III., c. 160, § 29.

(g) 38 Geo. III., c. 38, § 34; 3 Geo. III., c. 160, § 29.

(h) 38 Geo. III., c. 38, § 3.

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with these regulations, or to obey such further orders as the lords commissioners may deem necessary, they forfeit all claim to any benefit or discharge under the act above detailed, *and are liable to be proceeded against in the same manner as if the [*147 appeal had been duly entered within the period of twelve months, allowed for appeals from the decisions of the courts below.(a)

In case of appeal, interposed in the manner already specified, the judge of the court of admiralty may, at the request and expense either of the captors or claimants (or of the claimant only, where the privilege is reserved in favor of the claimant by any treaty or treaties subsisting between his Majesty and foreign powers), order such capture to be appraised (unless the parties shall otherwise agree on the value thereof), and direct an inventory to be made. Next, the judge is required to take security for the full value thereof, and he may order the capture to be delivered to the party giving such security, notwithstanding such appeal; but if any difficulty shall arise, or there be any sufficient objection to the giving or taking of security, the judge shall, at the request of either of the parties, order the captured goods and effects to be entered, landed and sold by auction, under the care of the proper officers of the customs, and under the inspection of persons to be appointed by the claimants and captors. The money, arising by such sale, shall be brought into court, and by the register, or his deputy or deputies, be deposited in the Bank of England; or if the captors and claimants agree, such money may be vested in some public securities at interest, in the names of the register, and of such trustees as the captors and claimants shall appoint, and the court shall approve. And if such security be given by the claimants, the judge shall give the captured vessel a pass, under his seal, to prevent her from being again taken by his Majesty's subjects in her destined voyage.(b)

Where the sentence, or interlocutory decree having the force of a definitive sentence, shall be finally reversed, after the sale of any ship or goods, the net proceeds of such sale (after payment of all expenses attending the same) shall be *deemed to be [*148 the full value of such ship and goods; nor shall the parties appellate, nor their securities, be answerable for the value, beyond the amount of such net proceeds, unless such sale appear to have been made fraudulently, or without due care.(c)

With regard to the practice of the court of appeals, as many inconveniences formerly arose from delays in serving the processes of that court, it is now provided, that in all cases of captures by his Majesty's ships, a service upon his Majesty's proctor shall be deemed an effectual service upon the commander of the ship making such capture. Further, on taking out letters of marque, the owners of all the ships or vessels, for which such letters shall be granted, must nominate a register in the court granting such letters of marque, a proctor, exercent in the court of appeal in prize causes, with power of revocation and substitution; and service of process on such proctor shall be deemed effectual service upon the commander, owners and sureties of privateers, in all cases where an appeal has been declared in the court below, within fourteen days after sentence. But neither his Majesty's proctor, nor any nominated proctor, is answerable for any damages arising to their parents respectively, from non-appearance in their behalf in the court of appeal, unless such proctor shall have accepted the said nomination, by a writing under his hand; and also, unless the said parties shall have sufficiently instructed him to appear and defend the appeal.(d) Where, however, no appeal has been entered in the manner, and within the time above specified, it shall be deemed sufficient service upon the parties, if the process be served either upon the commander of the king's ship, or upon his registered agent in this kingdom, or upon his Majesty's law-officer in the court below; or in case of captures by privateers, if such process be served upon the commander of the privateer, or upon any or either of the sureties to the letters of marque.(e)

(a) 38 Geo. III., c. 28, § 4.

c. 160, § 31.

(b) 33 Geo. III., c. 66, § 31; 43 Geo. III., c. 160, § 30.

(d) 41 Geo. III., c. 96, § 10.

(c) 33 Geo. III., c. 66, § 32; 43 Geo. III.,

(e) Ibid. § 11.

*NOTE IV.

The act of the 3d of March 1819, commented on in the cases of the United States v. Smith, in the text, and in the other cases of piracy before the court at the present term, was continued in force, amended, and enlarged, by the following act, passed at the last session of Congress.

An Act to continue in force "an act to protect the commerce of the United States, and punish the crime of piracy," and also to make futher provision for punishing the crime of piracy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the first, second, third and fourth sections of an act, entitled, "an act to protect the commerce of the United States, and punish the crime of piracy," passed on the third day of March, 1819, be and the same are hereby continued in force, from the passing of this act, for the term of two years, and from thence to the end of the next session of congress, and no longer.

§ 2. And be it further enacted, that the fifth section of the said act be and the same is hereby continued in force, as to all crimes made punishable by the same, and heretofore committed, in all respects, as fully as if the duration of the said section had been without limitation.

§ 3. And be it further enacted, that if any person shall, upon the high seas, or in any open roadstead, or in any haven, basin or bay, or in any river, where the sea ebbs and flows, commit the crime of robbery, in or upon any ship or vessel, or upon any of the ship's company of any ship or vessel, or the lading thereof, such person shall be adjudged to be a pirate; and being thereof convicted, before the circuit court of the United States for the district into which he shall be brought, or in which he shall be found, shall suffer death. And if any person engaged in any piratical cruise or enterprise, or being *of the crew or ship's company, of any piractical ship or vessel, shall land from such ship or vessel, and on shore, shall commit robbery, such person shall be adjudged a pirate, and on conviction thereof, before the circuit court of the United States for the district into which he shall be brought, or in which he shall be found, shall suffer death: provided, that nothing in this section contained shall be construed to deprive any particular state of its jurisdiction over such offences, when committed within the body of a county, or authorize the courts of the United States to try any such offenders, after conviction or acquittance, for the same offence in a state court.

§ 4. And be it further enacted, that if any citizen of the United States, being of the crew or ship's company of any foreign ship or vessel engaged in the slave-trade, or any person whatever, being of the crew or ship's company of any ship or vessel, owned in whole or in part, or navigated for, or in behalf of, any citizen or citizens of the United States, shall land from any such ship or vessel, and on any foreign shore, seize any negro or mulatto, not held to service or labor by the laws of either of the states or territories of the United States, with intent to make such negro or mulatto a slave, or shall decoy, or forcibly bring or carry, or shall receive, such a negro or mulatto on board any such ship or vessel, with intent, as aforesaid, such citizen or person shall be adjudged a pirate, and on conviction thereof, before the circuit court of the United States for the district wherein he may be brought or found, shall suffer death.

§ 5. And be it further enacted, that if any citizen of the United States, being of the crew or ship's company of any foreign ship or vessel engaged in the slave-trade, or any person whatever, being of the crew or ship's company of any ship or vessel, owned wholly or in part, or navigated for, or in behalf of, any citizen or citizens of the United States, shall forcibly confine or detain, or aid and abet in forcibly confining or detaining, on board such ship or vessel, any negro or mulatto, not held to service by the laws of either of the states or territories of the United States, with intent to make

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such negro or *mulatto a slave, or shall, on board any such ship or vessel, offer or attempt to sell, as a slave, any negro or mulatto, not held to service as aforesaid, or shall, on the high seas, or any where on tide-water, transfer, or deliver over, to any other ship or vessel, any negro or mulatto, not held to service as aforesaid, with intent to make such negro or mulatto a slave, or shall land, or deliver on shore, from on board any such ship or vessel, any such negro or mulatto, with intent to make sale of, or having previously sold, such negro or mulatto, as a slave, such citizen or person shall be adjudged a pirate, and on conviction thereof before the circuit court of the United States for the district wherein he shall be brought or found, shall suffer death.

H. CLAY

Speaker of the House of Representatives.

JOHN GAILLARD,

President of the Senate *pro tempore*.

Washington, May 15, 1820. Approved:

JAMES MONROE.

NOTE V.

Additional Documents on the subject of the Neutrality of the United States, in the present war between Spain and her Colonies. See 4 Wheat. Appendix, Note II.

[Translation.]

General Don Francisco Doinisio Vives to the Secretary of State.

SIR: In conformity with the orders of my government, which were communicated to Mr. Forsyth, on the 16th of December ^{*last}, by his excellency the Duke of San Fernando and Quiroga, and with the earnest desire of the king, my master, to see a speedy adjustment of the existing difficulties which obstruct the establishment on a permanent basis, of the good understanding so obviously required by the interests of both powers, I have the honor to address you, and frankly to state to you, that my august sovereign, after a mature and deliberate examination, in full council, of the treaty of 22d February, of the last year, saw, with great regret, that, in its tenor, it was very far from embracing all the measures indispensably requisite to that degree of stability which, from his sense of justice, he was anxious to see established in the settlement of the existing differences between the two nations.

The system of hostility which appears to be pursued in so many parts of the Union, against the Spanish dominions, as well as against the property of all their inhabitants, is so public and notorious, that, to enter into detail, would only serve to increase the causes of dissatisfaction; I may be allowed, however, to remark, that they have been justly denounced to the public of the United States, even by some of their own fellow-citizens. Such a state of things, therefore, in which individuals may be considered as being at war, while their governments are at peace with each other, is diametrically opposed to the mutual and sincere friendship, and to the good understanding which it was the object of the treaty (though the attempt has failed) to establish, and of the immense sacrifices consented to by his Majesty to promote. These alone were motives of sufficient weight imperiously to dictate the propriety of suspending the ratification of the treaty, even although the American envoy had not at first announced, in the name of his government, and subsequently required, of that of Spain, a declaration which tended directly to annul one of its most clear, precise and conclusive articles, even after the signature and ratification of the treaty.

The king, my master, influenced by considerations so powerful as to carry with

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them the fullest evidence, has, therefore, *judged it necessary and indispensable, in the exercise of his duties as a sovereign, to request certain explanations of your government; and he has, in consequence, given me his commands to propose to it the following points; in the discussion and final arrangement of which, it seems proper that the relative state of the two nations should be taken into full consideration.

That the United States, taking into due consideration the scandalous system of piracy established in, and carried on from, several of their ports, will adopt measures satisfactory and effectual, to repress the barbarous excesses, and unexampled depredations, daily committed upon Spain, her possessions and properties; so as to satisfy what is due to international rights, and is equally claimed by the honor of the American people. That, in order to put a total stop to any future armaments, and to prevent all aid whatsoever being afforded from any part of the Union, which may be intended to be directed against, and employed in the invasion of, his Catholic Majesty's possessions in North America, the United States will agree to offer a pledge (*a dar una seguiradad*) that their integrity shall be respected. And finally, that they will form no relations with the pretended governments of the revolted provinces of Spain, situate beyond sea, and will conform to the course of proceeding adopted, in this respect, by other powers in amity with Spain.

Extract of a Letter from General Vives to the Secretary of State, dated April 24th, 1820.

It is evident, that the scandalous proceedings of a number of American citizens, the decisions of several of the courts of the Union, and the criminal expedition set on foot within it for the invasion of his Majesty's possessions in North America, at the very period when the ratification was still pending, were diametrically opposite to the most sacred principles of amity, and to the nature and essence of the treaty itself. These ^{*154]} hostile proceedings were, notwithstanding, tolerated by the *federal government, and thus the evil was daily aggravated; so that they believe generally prevailed throughout Europe, that the ratification of the treaty by Spain, and the acknowledgment of the independence of the rebellious trans-atlantic colonies by the United States, would be simultaneous acts.

Extract of a Letter from the Secretary of State to General Vives, dated May 3d, 1820.

I am now instructed to repeat the assurance which has already been given you, that the representations which appear to have been made to your government of a system of hostility, in various parts of the Union, against the Spanish dominions, and the property of Spanish subjects; of decisions marked with such hostility by *any* of the courts of the United States, and of the toleration in any case of it by this government, are unfounded. In the existing unfortunate civil war between Spain and the South American provinces, the United States have constantly avowed, and faithfully maintained, an impartial neutrality. No violation of that neutrality, by any citizen of the United States, has ever received sanction or countenance from this government. Whenever the laws, previously enacted for the preservation of neutrality, have been found, by experience, in any manner defective, they have been strengthened by new provisions and severe penalties. Spanish property, illegally captured, has been constantly restored by the decisions of the tribunals of the United States, nor has the life itself been spared of individuals guilty of piracy, committed upon Spanish property on the high seas.

Should the treaty be ratified by Spain, and the ratification be accepted by and with the advice and consent of the senate, the boundary line recognised by it, will be respected by the United States, and due care will be taken to prevent any transgression of it. No new law or engagement will be necessary for that purpose. The

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existing laws are adequate to the suppression of such disorders, and they will be, as they have been, faithfully carried into effect. The miserable disorderly movement *of a number, not exceeding seventy, lawless individual stragglers, who never assembled within the jurisdiction of the United States, into a territory to which his Catholic Majesty has no acknowledged right, other than the yet unratified treaty, was so far from receiving countenance or support from the government of the United States, that every measure necessary for its suppression was promptly taken under their authority; and from the misrepresentations which have been made of this very insignificant transaction to the Spanish government, there is reason to believe, that the pretended expedition itself, as well as the gross exaggerations which have been used to swell its importance, proceed from the same sources, equally unfriendly to the United States and to Spain.

As a necessary consequence of the neutrality between Spain and the South American provinces, the United States can contract no engagement not to form any relations with those provinces. This has explicitly and repeatedly been avowed and made known to your government, both at Madrid and at this place. The demand was resisted, both in conference and written correspondence, between Mr. Erving and Mr. Pizarro.

Mr. Onis had long and constantly been informed, that a persistence in it would put an end to the possible conclusion of any treaty whatever. Your sovereign will perceive, that as such an engagement cannot be contracted by the United States, consistently with their obligations of neutrality, it cannot justly be required of them, nor have any of the European nations ever bound themselves to Spain by such an engagement.

Extract of a Letter from General Vives to the Secretary of State, dated
May 5th, 1820.

[Translation.]

SIR: In answer to your note of the 3d instant, and in pursuance of what I expressed to you in both our late conferences, I have to state to you, that I am satisfied upon the first point of the proposals contained in my note of the 14th ultimo, and am *persuaded, that if the existing laws enacted for the suppression of piracy should prove inadequate, more effectual measures will be adopted by your government for the attainment of that important object.

I also admit as satisfactory, the answer given to the second point; but I cannot assent to your assertion, that the laws of this country have always been competent to the prevention of the excesses complained of; it being quite notorious, that the expedition alluded to, has not been the only one set on foot for the invasion of his Majesty's dominions; and it is, therefore, not surprising, that the king, my lord, should give credit to the information received in relation to that expedition, or that he should now require of your government a pledge, that the integrity of the Spanish possessions in South America shall be respected.

I mentioned to you in conference, and I now repeat it, that the answer to the third point was not such as I could, agreeable to the nature of my instructions, accept, as being satisfactory; and that, although his Majesty might not have required of any of the European governments, the declaration which he has required of yours, yet that ought not to be considered as unreasonable, it being well known to the king, my master, that those governments, so far from being disposed to wish to recognise the insurgent governments of the Spanish colonies, had declined the invitation, intimated to them some time past, by yours, to acknowledge the pretended republic of Buenos Ayres.

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Extract of a Letter from the Secretary of State to General Vives, dated May 8th, 1820.

The assurances which you had given me in the first personal conference between us, of your own entire satisfaction with the explanations given you upon *all* the points on which you had been instructed to ask them, would naturally have led to the expectation, that the promise which you was authorized to give would at least not be withheld. From your letter of the 5th *instant, however, it appears that no discretion has been left to you, to pledge even his Majesty's promise of ratification, in the event of your being yourself satisfied with the explanations upon *all* the points desired; that the only promise you can give is conditional, and the condition a point upon which your government, when they prescribed it, could not but know it was impossible that the United States should comply; a condition incompatible with their independence, their neutrality, their justice and their honor.

It was also a condition which his Catholic Majesty had not the shadow of a right to prescribe. The treaty had been signed by Mr. Onis, with a full knowledge that no such engagement as that contemplated by it, would ever be acceded to by the American government, and after long and unwearied efforts to obtain it. The differences between the United States had no connection with the war between Spain and South America. The object of the treaty was to settle the boundaries, and adjust and provide for the claims between your nation and ours; and Spain, at no time, could have a right to require that any stipulation concerning the contest between her and her colonies should be connected with it. As his Catholic Majesty could not justly require it, during the negotiation of that treaty, still less could it afford a justification for withholding his promised ratification, after it was concluded.

The proposal which, at a prior period, had been made by the government of the United States, to some of the principal powers of Europe, for a recognition, in concert, of the independence of Buenos Ayres, was founded, as I have observed to you, upon an opinion then and still entertained, that this recognition must, and would, at no very remote period, be made by Spain herself; that the joint acknowledgment by several of the principal powers of the world, at the same time, might probably induce Spain in the sooner to accede to that necessity, in which she must ultimately acquiesce, and would thereby hasten an event, propitious to her own interests, by terminating a struggle in which she is wasting her strength and resources, without a possibility of success; an event ardently to be desired by every *friend of humanity, afflicted by the continual horrors of a war, cruel and sanguinary almost beyond example; an event not only desirable to the unhappy people who are suffering the complicated distresses and calamities of this war, but to all the nations having relations of amity and commerce with them. This proposal, founded upon such motives, far from giving to Spain the right to claim of the United States an engagement not to recognise the South American governments, ought to have been considered by Spain as a proof at once of the moderation and discretion of the United States; as evidence of their disposition to discard all selfish or exclusive views in the adoption of a measure which they deemed wise and just in itself, but most likely to prove efficacious, by a common adoption of it, in a spirit entirely pacific, in concert with other nations, rather than by a precipitate resort to it, on the part of the United States alone.