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Remonstrance by the minister plenipotentiary of of the United States to the British government.
[Accompanying the Message of the President.]

GREAT CUMBERLAND PLACE,
No. 12. *September* 23, 1805.

MY LORD,

I Flattered myself, from what passed in our last interview, that I should have been honored, before this, with an answer from your lordship, to my letters, respecting the late seizure of American vessels. I understood it to be agreed, that the discussion which then took place, should be considered as inofficial, as explanatory only of the ideas which we might respectively entertain on the subject, and that your lordship would afterwards give me such a reply to my letters, respecting that measure, as his majesty's government might desire to have communicated to the government of the United States. In consequence, I have since waited with anxiety such a communication, in the daily expectation of receiving it. It is far from being my desire to give your lordship any trouble in this business, which I can avoid, as the time which has since elapsed sufficiently shews. But the great importance of the subject, which has indeed become more so, by the continuance of the same policy, and the frequency of seizures which are still made of American vessels, place me in a situation of peculiar responsibility. My government will expect of me correct information on this point, in all its views, and I am very desirous of complying with its just expectation. I must, therefore, again request that your lordship will be so good as to enable me to make such a representation to my government, of that measure, as his majesty's government may think proper to give.

I am sorry to add, that the longer I have reflected on the subject, the more confirmed I have been in the objections to the measure. If we examine it in reference to the law of nations, it appears to me to be repugnant to every principle of that law; if by the understanding, or as it may be more properly called, the agreement of our governments, respecting the commerce in question, I consider it equally repugnant to the principles of that agreement. In both these views your lordship will permit me to make some additional remarks on the subject.

By the law of nations, as settled by the most approved writers, no other restraint is acknowledged on the trade of neutral nations, whith those at war, than that it be impartial between the latter; that it shall not extend to articles which are deemed contraband of war; nor to the transportation of persons in military service; nor to places actually blockaded or besieged. Every other commerce of a neutral with a belligerent, is considered a lawful commerce; and every other restraint on it to either of the belligerents by the other, an unlawful restraint.

The list of contraband is well defined, as are also the circumstances which constitute a blockade. The best authorities have united in confining the first to such articles as are used in war, and are applicable to military purposes; and requiring, to constitute the latter, the disposition of such a force, consisting of stationary ships, so near the port, by the power which attacks it, as to make it dangerous for the vessel of a neutral power to enter it. The late treaty between Great Britain and Russia, designates these circumstances as necessary to constitute a blockade, and it is believed that it was never viewed before in a light more favorable to the invading power.

The vessels condemned were engaged in a commerce between the United States and some port in Europe, or between those states and the West India Islands, belonging to an enemy of Great Britain. In the European voyage the cargo consisted of the productions of the colonies; in the voyage to the West Indies, it consisted of the goods of the power to which the colony belonged, and to which the ship was destined. The ship and cargo in every case, were the property of American citizens, and the cargo had been landed and the duty on it paid in the United States. It was decided that these voyages were continuous, and the vessels and cargoes were condemned on the principle that the commerce was illegal. I beg to refer more especially in this statement to the case of the Essex, an appeal from the judgment of the vice admiralty court, at New Providence, in which the lords commissioners of appeals in confirming that judgment, established this doctrine.

It requires but a slight view of the subject to be satisfied that these condemnations are incompatible with the law of nations as above stated. None of the cases have involved a question of contraband, of blockade, or of any other kind that was ever contested till of late, in favor of a belligerent against a neutral power. It is not on any principle that it is applicable to any such case, that the measure can be defended. On what principle then is it supported by Great Britain? What is the nature and extent of her doctrine? What are the circumstances which recommend the arguments which support it? For information on these points we cannot refer to the well known writers on the law of nations; no illustration can be obtained from them of a doctrine which they never heard of. We must look for it to an authority more modern; to one which, however respectable for the learning and professional abilities of the judge who presides, is, nevertheless, one which, from many considerations, is not obligatory on other powers. In a report of the decisions of the court of admiralty of this kingdom, we find a notice of a series of orders issued by the government, of different dates and imports, which have regulated this business. The first of these bears date on the 6th of November, 1793; the second on the 8th of January, 1794; the third on the 25th January, 1798. Other orders have been issued since the commencement of the present war. It is these orders which have authorised the seizures that were made, at different times, in the course of the last war, and were lately made by British cruizers of the vessels of the United States. They too form the law which has governed the courts in the decisions on the several cases which have arisen under those seizures. The first of these orders prohibits altogether every species of commerce between neutral countries and enemies colonies, and between neutral and other countries, in the productions of those colonies; the second and subsequent orders modify it in various forms. The doctrine, however, in every decision, is the same; it is contended in each, that the character and just extent of the principle is to be found in the first order, and that every departure from it since, has been a relaxation of the principle, not claimed of right by neutral powers, but conceded in their favor gratuitously by Great Britain.

In support of these orders it is urged, that as the colonial trade is a system of monopoly to the parent country in time of peace, neutral powers have no right to participate in it in time of war, although they be permitted so to do by the parent country: that a belligerent has a right to interdict them from such a commerce. It is on this system of internal restraint, this regulation of colonial trade, by the powers having colonies, that a new principle of the law of nations is attempted to be founded: one which seeks to discriminate in respect to the commerce of neutral powers, with a belligerent, between different parts of the territory of the same power, and likewise subverts many other principles of great importance, which have heretofore been held sacred among nations. It is believed that so important a superstructure was never raised on so slight a foundation. Permit me to ask, does it follow, because the parent country monopolises in peace the whole commerce of its colonies, that in war it should have no right to regulate it at all? That on the contrary it should be construed to transfer, in equal extent, a right to its enemy, to the prejudice of the parent country, of the colonies, and of neutral powers? If this doctrine was sound, it would certainly institute a new and singular mode of acquiring and losing rights; one which would be highly advantageous to one party, while it was equally injurious to the other. To the colonies, more especially, it would prove peculiarly onerous and oppressive. It is known that they are essentially dependent for their existence, on supplies from other countries, especially the U. States of America, who being in their neighborhood, have the means of furnishing them with greatest certainty, and on the best terms. Is it not sufficient that they be subjected to that restraint in peace, when the evils attending it, by the occasional interference of the parent country, may be, and are frequently repaired? Is it consistent with justice or humanity, that it should be converted into a principle, in favor of an enemy, inexorable of course, but otherwise without the means of listening to their complaints, not for their distress or oppression only, but for their extermination? But there are other insuperable objections to this doctrine. Are not the colonies of every country a part of its domain, and do they not continue to be so until they are severed from it by conquest? Is not the power to regulate commerce incident to the sovereignty, and is it not co-extensive over the whole territory which any government possesses? Can one belligerent acquire any right to the territory of another, but by conquest? And can any rights which appertain thereto, be otherwise defeated or curtailed in war? In whatever light, therefore, the subject is viewed, it appears to me evident that this doctrine cannot be supported. No distinction, founded in reason, can be taken between the different parts of the territory of the same power to justify it. The separation of one portion from another by the sea, gives lawfully to the belligerent which is superior on that element, a vast ascendency in all the concerns on which the success of the war, or the relative prosperity of their respective dominions, may in any degree depend. It opens to such power ample means for its own aggrandisement, and for the harrassment and distress of its adversary. With these it should be satisfied. But neither can that circumstance, nor can any of internal arrangement, which any power may adopt for the government of its dominions, be construed to give to its enemy any other advantage over it. They certainly do not justify the doctrine in question, which asserts, that the law of nations varies in its application to different portions of the territory of the same power: that it operates in one mode, in respect to one, and in another, or even not at all, in respect to another; that the rights of humanity, of neutral powers, and all other rights, are to sink before it.

It is further urged that neutral powers ought not to complain of this restraint, because they stand under it, on the same ground, with respect to that commerce, which they held in time of peace. But this fact, if true, gives no support to the pretension. The claim involves a question of right, not of interest. If the neutral powers have a right in war to such commerce with the colonies of the enemies of Great Britain, as the parent states respectively allowed, they ought not to be deprived of it by her, nor can its just claims be satisfied by any compromise of the kind alluded to. For this argument to have the weight which it is intended to give it, the commerce of the neutral powers with those colonies should be placed and preserved through the war, in the same state, as if it had not occurred. Great Britain should in respect to them take the place of the parent country, and do every thing which the latter would have done, had there been no war. To discharge that duty, it would be necessary for her to establish such a police over the colony, as to be able to examine the circumstances attending it annually, to ascertain whether the crops were abundant, supplies from other quarters had failed, and eventually to decide whether under such circumstances the parent country would have opened the ports to neutral powers. But these offices cannot be performed by any power which is not in possession of the colony; that can only be obtained by conquest, in which case, the victor would of course have a right to regulate its trade as it thought fit.

It is also said, that neutral powers have no right to profit of the advantages which are gained in war, by the arms of Great Britain. This argument has even less weight than the others. It does not, in truth, apply at all to the question. Neutral powers do not claim a right, as already observed, to any commerce with the colonies which Great Britain may have conquered of her enemies, otherwise than on the conditions which she imposes. The point in question turns on the commerce which they are entitled to with the colonies which she has not conquered, but still remain subject to the dominion of the parent country. With such it is contended, for reasons that have been already given, that neutral powers have a right to enjoy all the advantages in trade which the parent country allows them: a right of which the mere circumstance of war cannot deprive them. If Great Britain had a right to prohibit that commerce, it existed before the war began, and of course before she had gained any advantage over her enemies. If it did not then exist, it certainly does not at the present time. Rights of the kind in question, cannot depend on the fortune of war, or other contingencies. The law which regulates them is invariable, until it be changed by the competent authority. It forms a rule equally between belligerent powers, and between neutral and belligerent, which is dictated by reason and sanctioned by the usage and consent of nations.

The foregoing considerations have, it is presumed, proved that the claim of Great Britain to prohibit the commerce of neutral powers in the manner proposed, is repugnant to the law of nations. If, however, any doubt remained on that point other considerations which may be urged cannot fail to remove it. The number of orders of different imports which have been issued by government, to regulate the seizure of neutral vessels is a proof that there is no established law for the purpose. And the strictness with which the courts have followed those orders, through their various modifications, is equally a proof that there is no other authority for the government of their decisions. If the order of the 6th of November, 1793, contained the true doctrine of the law of nations, there would have been no occasion for those which followed; nor is it probable that they would have been issued: indeed if that order had been in conformity with that law, there would have been no occasion for it. As in the cases of blockade and contraband, the law would have been well known without an order, especially one so very descriptive; the interest of the cruisers, which is always sufficiently active would have prompted them to make the seizures, and the opinions of eminent writers, which in that case would not have been wanting, would have furnished the courts the best authority for their decisions.

I shall now proceed to shew that the decisions complained of are contrary to the understanding, or what, perhaps, may more properly be called an agreement of the two governments, on the subject. By the order of the 6th Nov. 1793, some hundreds of American vessels were seized, carried into port and condemned. Those seizures and condemnations, became the subject of an immediate negociation between the two nations, which terminated in a treaty, by which it was agreed to submit the whole subject to commissioners, who should be invested with full power, to settle the controversy which had thus arisen. That stipulation was carried into complete effect; commissioners were appointed, who examined laboriously and fully, all the cases of seizure and condemnation which had taken place, and finally decided on the same, in which decisions they condemned the principle of the order and awarded compensation to those who had suffered under it. Those awards have been since fairly and honorably discharged by G. B. It merits particular attention that a part of the 12th article of that treaty, referred expressly to the point in question, and that it was on the solemn deliberation of each government, by their mutual consent, expunged from it. It seems therefore to be impossible to consider that transaction, under all the circumstances attending it, in any other light than as a fair and amicable adjustment of the question between the parties; one which authorised the just expectation, that it would never have become again a cause of complaint between them. The sense of both was expressed on it in a manner too marked and explicit, to admit of a different conclusion. The subject too was of a nature that when once settled ought to be considered as settled forever. It is not like questions of commerce between two powers, which affect their internal concerns, and depend, of course, on the internal regulations of each. When these latter are arranged by treaty, the rights which accrue to each party under it, in the interior of the other, cease when the treaty expires. Each has a right afterwards to decide for itself in what manner that concern shall be regulated in future, and in that decision to consult solely its interest. But the present topic is of a very different character. It involves no question of commerce or other internal concern between the two nations. It respects the commerce only, which either may have with the enemies of the other, in time of war. It involves, therefore, only a question of right, under the law of nations, which in its nature cannot fluctuate. It is proper to add, that the conclusion above mentioned, was further supported, by the important fact, that until the late decree, in the case of the Essex, not one American vessel, engaged in this commerce, had been condemned on this doctrine; that several which were met in the channel, by the British cruisers, were permitted, after an examination of their papers, to pursue their voyage. This circumstance justified the opinion, that that commerce was deemed a lawful one by G. B.

There is another ground, on which the late seizures and condemnations are considered as highly objectionable, and to furnish just cause of complaint to the U. S. Until the final report of the commissioners under the 7th article of the treaty of 1794, which was not made until last year, it is admitted that their arbitrament was not obligatory on the parties, in the sense in which it is now contended to be. Every intermediate declaration, however, by G. B. of her sense on the subject, must be considered as binding on her, as it laid the foundation of commercial enterprizes, which were thought to be secure while within that limit. Your lordship will permit me to refer you to several examples of this kind, which were equally formal and official, in which the sense of his majesty's government was declared very differently from what it has been in the late condemnations. In Robinson's reports, vol. 2, page 368, (case the Polly, Lasky, master) it seems to have been clearly established by the learned judge of the court of admiralty, that an American has a right to import the produce of an enemy's colony into the U. S. and to send it on afterwards to the general commerce of Europe; and that the landing the goods, and paying the duties in the U. S. should preclude all further question relative to the voyage. The terms "for his own use," which are to be found in the report, are obviously intended to assert the claim only that the property shall be American, and not that of an enemy; by admitting the right to send on the produce afterwards to the general commerce of Europe, it is not possible that these terms should convey any other idea. A *bona fide* importation is also held by the judge to be satisfied by the landing the goods and paying the duties. This therefore is, I think, the true import of that decision. The doctrine is again laid down in still more explicit terms by the government itself, in a correspondence between lord Hawkesbury and my predecessor, Mr. King. The case was precisely similar to those which have been lately before the court. Mr. King complained in a letter of March 18, 1801, that the cargo of an American vessel going from the U. S. to a Spanish colony had been condemned by the vice-admiralty court of Nassau, on the ground that it was of the growth of Spain, which decision he contended was contrary to the law of nations, and requested that suitable instructions might be dispatched to the proper officers in the West Indies, to prevent like abuses in future. Lord Hawkesbury in a reply of April 11th, communicated the report of the king's advocate general, in which it is expressly stated that the produce of an enemy may be imported by a neutral into his own country and re-exported thence to the mother country; and in like manner in that circuitous mode, that the produce and manufactures of the mother country might find their way to its colonies; that the landing the goods and paying the duties in the neutral country, broke the continuity of the voyage, and legalized the trade, altho' the goods were re-shipped in the same vessel, on account of the same neutral proprietors, and forwarded for sale to the mother country of the colony. It merits attention in this report, (so clearly and positively is the doctrine laid down, that the landing the goods and paying the duties in the neutral country broke the continuity of the voyage) that it is stated as a doubtful point whether the mere touching in the neutral country to obtain fresh clearances will be considered in the light of the direct trade; that no positive inhibition is insisted on any but the direct trade between the mother country and the colonies. This doctrine in the light herein stated, is also to be found in the treaty between Great Britain and Russia, June 17, 1801. By the 2d section of the 3d article, the commerce of neutrals in the productions or manufactures of the enemies of Great Britain, which have become the property of the neutral, is declared to be free; that section was afterwards explained by a declaratory article of October 20 of the same year, by which it is agreed that it shall not be understood to authorize neutrals to carry the produce or merchandize of an enemy either directly from the colonies to the parent country, or from the parent country to the colonies. In other respects the commerce was left on the footing on which it was placed by that section, perfectly free, except in the direct trade between the colony and the parent country. It is worthy of remark that, as by the reference made in the explanatory article of the treaty with Russia, to the U. S. of America, it was supposed that those states and Russia, Denmark and Sweden, had a common interest in neutral questions, so it was obviously intended, from the similarity of sentiment which is observable between that treaty as amended, and the report of the advocate general above mentioned, to place all the parties on the same footing. After these acts of the British government, which being official were made public, it was not to be expected that any greater restraint would have been contemplated by it, on that commerce, than they impose, that an inquiry would ever have been made, not whether the property with which an American vessel was charged belonged to a citizen of the U. S. or an enemy, but whether it belonged to this or that American: an inquiry which imposes a condition which it is believed that no independent nation, having a just sense of what it owes to its rights or its honor, can ever comply with. Much less was it to be expected that such a restraint would have been thought of after the report of the commissioners above adverted to, which seemed to have placed the rights of the U. S. incontestibly on a much more liberal, and, as is contended, just footing.

It is proper to add, that the decree of the lords commissioners of appeals in the case of the Essex, produced the same effect as an order from the government would have done. Prior to that decree, from the commencement of the war, the commerce in question was pursued by the citizens of the U S. as has been already observed, without molestation. It is presumable that till then his majesty's cruizers were induced to forbear a seizure, by the same considerations which induced the American citizens to engage in the commerce, a belief that it was a lawful one. The facts above mentioned were equally before the parties, and it is not surprising that they should have drawn the same conclusion from them. That decree, however, opened a new scene. It certainly gave a signal to the cruisers to commence the seizures which they have not failed to do, as has been sufficiently felt by the citizens of the U. S. who have suffered under it. According to the information which has been given me, about 50 vessels have been brought into the ports of Great Britain in consequence of it, and there is reason to believe that the same system is pursued in the West Indies and elsewhere. The measure is the more to be complained of, because Great Britain had, in permitting the commerce for 2 years, given a sanction to it by her conduct, and nothing had occurred to create a suspicion that her sentiments varied from her conduct. Had that been the case, or had she been disposed to change her conduct in that respect towards the U. S. it might reasonably have been expected that some intima-