of American vessels on the high seas, it might at least be required that the proof of their allegiance should lie on the British side. This obvious and just rule is however reversed, and every seaman on board, though going from an American port and sailing under the American flag, and some times even speaking an idiom proving him not to be a British subject, is presumed to be such, unless shewn to be an American citizen. It may safely be affirmed that this is an outrage & an indignity which has no precedent, and which Great Britain would be among the last nations in the world to suffer if offered to her own subjects, and her own flag. Nor is it always against the right presumption alone, which is in favor of the citizenship corresponding with the flag, that the violence is committed. Not unfrequently it takes place in defiance of the most positive proof, certified in due form by an American officer. Let it not be said that in granting to American seamen this protection for their rights as such, the point is yielded that the proof lies on the American side, & that the want of it in the prescribed form justifies the inference that the seaman is not of American allegiance. It is distinctly to be understood, that the certificate usually called a protection to American seamen, is not meant to protect them under their own, or even any other neutral flag on the high seas. We can never admit, that in such a situation, any other protection is required for them than the neutral flag itself on the high seas. The document is given to prove their real character, in situations to which neither the law of nations nor the law of their own country are applicable. In other words to protect them within the jurisdiction of the British laws, and to secure to them, within every other jurisdiction, the rights and immunities due to them. If in the course of their navigation even on the high seas, the document should have the effect of repelling wrongs of any sort, it is an incidental advantage only of which they avail themselves, and is by no means to be misconstrued into a right to exact such a proof, or to make any disadvantageous inference from the want of it.

Were it even admitted that certificates for protection might be justly required in time of war, from American seamen, they could only be required in cases, where the lapse of time from its commencement had given an opportunity for the American seamen to provide themselves with such a document. Yet it is certain, that in a variety of instance, seamen have been impressed from American vessels, on the plea that they had not this proof of citizenship, when the dates and places of the impressment, demonstrated the impossibility of their knowing, in time to provide the proof, that a state of war had rendered it necessary.

Whether, therefore, we consult the law of nations, the tenor of treaties or the dictates of reason and justice, no warrant, no pretext can be found for the British practice of making impressment from American vessels on the high seas.

Great Britain has the less to say in excuse for this practice, as it is in direct contradiction to the principles on which she proceeds in other cases. Whilst she claims and seizes on the high seas, her own subject voluntarily serving in American vessels, she has constantly given, when she could give as a reason for not discharging from her service American citizens that they had voluntarily engaged in it. Nay more, whilst she impresses her own subjects from the American service, although they may have been settled and married and even naturalized in the United States, she constantly refuses to release from hers, American citizens impressed into it whenever she can give for a reason that they were either settled or married within her dominions. Thus, when the voluntary consent of the individual favors her pretensions, she pleads the validity of that consent.— When the voluntary consent of the individual stands in the way of her pretensions, it goes for nothing! When marriage or residence can be pleaded in her favor, she avails herself of the plea. When marriage and residence and even naturalization are against her, no respect whatever is paid to either! She takes by force her own subjects voluntarily serving in our vessels. She keeps by force American citizens involuntarily serving in hers. More flagrant inconsistencies cannot be imagined.

Notwithstanding the powerful motives which ought to be felt by the British government to relinquish a practice which exposes it to so many reproaches, it is foreseen that objections of different sorts will be pressed on you. You will be told first of the great number of British seamen in the American trade, and of the necessity for their services in time of war and danger. Secondly, of the right and the prejudice of the British nation with respect to what are called the British or narrow seas, where its domain would be abandoned by the general stipulation required. Thirdly, of the use which would be made of such a sanctuary as that of American vessels for desertions & traitorous communications to her enemies, especially across the channel to France.

1st. With respect to the British seamen serving in our trade, it may be remarked first, that the number, though considerable, is probably less than may be supposed. Secondly, that what is wrong in itself cannot be made right by considerations of expediency or advantage. Thirdly, that it is proved by the fact, that the number of real British subjects gained by the practice in question, is of inconsiderable importance, even in the scale of advantage. The annexed report to Congress on the subject of impressments, with the addition of such cases as may be in the hands of Mr. Erving, will verify the remark in its application to the present war. The statement made by his predecessor during the last war, and which is also annexed, is in the same view still more conclusive. The statement comprehends not only all the applications made by him in the first instance, for the liberation of impressed seamen, between the month of June, 1797, and September, 1801, but many also which had been made previous to this agency by Mr. Pinckney and Mr. King, and which it was necessary for him to renew. These applications therefore may fairly be considered as embracing the greater part of the period of the war; and as applications are known to be pretty indiscriminately made, they may further be considered as embracing, if not the whole, the far greater part of the impressments, those of British subjects as well as others. Yet the result exhibits 2,059 cases only, and of this number, 102 seamen only detained as being British subjects, which is less than 1-20 of the number impressed, and 1142 discharged or ordered to be so, as not being British subjects, which is more than half of the whole number, leaving 805 for further proof, with the strongest presumption that the greater part, if not the whole, were Americans or other aliens, whose proof of citizenship had been lost or destroyed, or whose situation would account for the difficulties and delays in producing it. So that it is certain, that for all the British seamen gained by this violent proceeding, more than an equal number who were not so, were the victims. It is highly probable that for every British seaman so gained, a number of others not less than ten for one must have been the victims, and it is even possible that this number may have exceeded the proportion of twenty to one.

It cannot therefore be doubted, that the acquisition of British seamen by these impressments, whatever may be its advantage, is lost in the wrong done to Americans, ignorantly or wilfully mistaken for British subjects; in the jealousy and ill will excited among all maritime nations by an adherence to such a practice; and in the particular provocation to measures of redress on the part of the U. States, not less disagreeable to them than embarrassing to Great Britain, and which may threaten the good understanding which ought to be faithfully cultivated by both. The copy of a bill brought into Congress under the influence of violations committed on our flag, gives force to this latter consideration. Whether it will pass into a law, and at the present session, is more than yet can be said. As there is every reason to believe that it has been proposed with reluctance, it will probably not be pursued into effect, if any hope can be supported, of a remedy by an amicable arrangement between the two nations. But such is the feeling through this country, produced by the reiterated and atrocious cases of impressments and other insults on our flag, that a remedy of some kind will ere long be called for in a tone not to be disregarded. A copy of the bill referred to is herewith inclosed.

There is a further consideration which ought to have weight in this question. Although the British seamen employed in carrying on American commerce, be in some respects lost to their own nation, yet such is the intimate and extensive connexion of this commerce, direct and circuitous, with the commerce, the manufactures, the revenue and the general resources of the British nation, that in other respects, its mariners on board American vessels may truly be said to be rendering it the most valuable services. It would not be extravagant to make it a question, whether G. Britain would not suffer more by withdrawing her seamen from the merchant vessels of the U. States, than her enemies would suffer from the addition of them to the crews of her ships of war and cruizers.

Should any difficulty be started concerning seamen born within the British dominions, and naturalized by the U. States since the treaty of 1783, you may remove it by observing, first, that very few if any such naturalizations can take place, the law here requiring a preparatory residence of five years, with notice of the intention to become a citizen entered of record two years before the last necessary formality, besides a regular proof of good moral character, conditions little likely to be complied with by ordinary seafaring persons. Secondly, that a discontinuance of impressments on the high seas will preclude an actual collision between the interfering claims. Within the jurisdiction of each nation, and in their respective vessels on the high seas, each will enforce the allegiance which it claims. In other situations, the individuals doubly claimed will be within a jurisdiction independent of both nations.

2d. The British pretensions to domain over the narrow seas are so obsolete, and so indefensible, that they never would have occurred as a probable objection in this case, if they had not actually frustrated an arrangement settled by Mr. King with the British ministry, on the subject of impressments from American vessels on the high seas. At the moment when the articles were expected to be signed, an exception of the "narrow seas" was urged and insisted on by lord St. Vincent, and being utterly inadmissible on our part, the negociation was abandoned. Mr. King seems to be of opinion, however, that with more time than was left him for the experiment, the objection might have been overcome. This is not improbable, if the objection was not merely an expedient for evading a relinquishment of a favorite practice.

The objection in itself has certainly not the slightest foundation. The time has been indeed, when England not only claimed but exercised pretensions scarcely inferior to full sovereignty over the seas surrounding the British isles, and even as far as Cape Finistere to the south, and Vanstaten in Norway, to the north. It was a time however, when reason had little share in determining the law and the intercourse of nations; when power alone decided questions of right; and when the ignorance and want of concert among other maritime countries facilitated such an usurpation. The progress of civilization and information has produced a change in all those respects, and no principle in the code of public law, is at present better established, than the common freedom of the seas, beyond a very limited distance from the territories washed by them. This distance is not indeed fixed with absolute precision. It is varied in a small degree by written authorities; and perhaps it may be reasonably varied, in some degree, by local peculiarities. But the greatest distance which would now be listened to any where, would make a small proportion of the narrowest part of the narrowest seas in question.

What are in fact the prerogatives claimed and exercised by G. Britain over these seas? If they were really a part of her domain, her authority would be the same there as within her other domains. Foreign vessels would be subject to all the laws and regulations framed for them, as much as if they were within the harbors or rivers of the country. Nothing of this sort is pretended. Nothing of this sort would be tolerated. The only instances in which these seas are distinguished from other seas, or in which Great Britain enjoys within them any distinction over other nations, are first, the compliment paid by other flags to hers; secondly, the extension of her territorial jurisdiction in certain cases to the distance of four leagues from the coast. The first is a relic of ancient usurpation, which has thus long escaped the correction, which modern and more enlightened times have applied to other usurpations. The prerogative has been often contested however, even at the expence of bloody wars, and is still borne with ill will and impatience by her neighbors. At the last treaty of peace at Amiens, the abolition of it was repeatedly and strongly pressed by France, and it is not improbable that at no remote day it will follow the fate of the title of 'King of France' so long worn by the British monarchs, and at length so properly sacrificed to the lessons of a magnanimous wisdom. As far as this homage to the British flag has any foundation at present, it rests merely on long usage and long acquiescence, which are construed, as in a few other cases of maritime claims, into the effect of a general though tacit convention. The second instance is the extension of the territorial jurisdiction to four leagues from the shore. This too, as far as the distance may exceed that which is generally allowed, rests on a like foundation, strengthened perhaps by the local facility of smuggling, and the peculiar interest which G. Britain has in preventing a practice affecting so deeply her whole system of revenue, commerce and manufactures, whilst the limitation itself to four leagues necessarily implies that, beyond that distance no territorial jurisdiction is assumed.

But whatever may be the origin or the value of these prerogatives over foreign flags in one case, and within a limited portion of these seas in another, it is obvious that neither of them will be violated by the exemption of American vessels from impressments, which are no wise connected with either, having never been made on the pretext either of withholding the wonted homage to the British flag, or of smuggling in defiance of British laws.

This extension of the British law to four leagues from the shore is inferred from an act of parliament passed in the year 1736, (9 G. 2 C. 35) the terms of which comprehend all vessels, foreign as well as British. It is possible, however, that the former are constructively excepted. Should your inquiries ascertain this to be the case, you will find yourself on better ground than the concession here made.

With respect to the compliment paid to the British flag, it is also possible that more is here conceded than you may find to be necessary. After the peace of 1783, this compliment was peremptorily withheld by France, in spite of the remonstrances of G. Britain; and it remains for your inquiry, whether it did not continue to be refused, notwithstanding the failure at Amiens to obtain from Great-Britain a formal renunciation of the claim.

From every view of the subject it is reasonable to expect, that the exception of the narrow seas, from the stipulation against impressments, will not be inflexibly maintained. Should it be so, your negociation will be at an end. The truth is, that so great a proportion of our trade direct and circuitous passes through those channels, and such is its peculiar exposure in them to the wrong practiced, that with such an exception, any remedy would be very partial. And we can never consent to purchase a partial remedy by confirming a general evil, and by subjecting ourselves to our own reproaches, as well as to those of other nations.

3d. It appears as well by a letter from Mr. Thornton, in answer to one from me, of both which copies are inclosed, as from conversations with Mr. Merry, that the facility which would be given, particularly in the British channel, by the immunity claimed for American vessels, to the escape of traitors, and the desertion of others whose services in time of war may be particularly important to an enemy, forms one of the pleas for the British practice of examining American crews, and will be one of the objections to a formal relinquishment of it.

This plea, like all others, admits a solid and satisfactory reply. In the first place, if it could prevail at all against the neutral claim, it would authorise the seizure of the persons described only, and in vessels bound to a hostile country only; whereas the practice of impressing is applied to persons few if any of whom are alledged to be of either description, and to vessels withersoever bound, even to Great Britain herself. In the next place, it is not only a preference of a smaller object on one side to a greater object on the other; but a sacrifice of right on one side, to expediency on the other side.

Considering, nevertheless, the possible adherence of the British government to this last objection, and the extreme importance to our sea-faring citizens and commerce, of a stipulation suppressing a practice flagrant in its nature, and still more so in the abuses inseparable from it, you are left at liberty to concur, if necessary, in the modification as it stands in the second column. You will observe that this guards, in all cases, the crews of our vessels from being meddled with; and in referring for an exception to the immunity on board our vessels to the law of nations, yields no principle maintained by the U. States; inasmuch as the reference will be satisfied by the acknowledged exception of enemies in military service. Should persons therefore, other than such, be taken under pretext of the law of nations, the United States will be free to contest the proceeding, and there is the less difficulty in leaving the stipulation on this footing, as the case may never happen, and will be pretty sure to happen but rarely. You will observe also, that in the passage from one port to another of the respective countries, the vessels of the neutral parties are to protect all persons without exception. Independently of the general principle asserted by the U. States, this respect is due to the peculiar character of the coasting trade, and the utter improbability that it will at any time be a vehicle to persons of any obnoxious description.

On Article II. The reasonableness of this article is manifest. Citizens or subjects of one country residing in another, though bound by their temporary allegiance to many common duties, can never be rightfully forced into military service, particularly external service, nor be restrained from leaving their residence when they please. The law of nations protects them against both, and the violation of this law by the avowed impressment of American citizens residing in Great Britain, may be pressed with the greater force on the British government, as it is in direct inconsistency with her impressment of her own subjects bound by much stronger ties to the United States, as above explained, as well as with the spirit of her commercial laws and policy, by which foreigners are invited to a residence. The liberation of the persons comprehended by this article, therefore, cannot be justly or honorably refused, and the provision for their recompence and their return home, is equally due to the service rendered by, and the wrong done to them.

On Article III. This regulation is conformable to the law of nations, and to the tenor of all treaties which define the belligerent claim of visiting and searching neutral vessels. No treaty can be cited in which the practice of compelling the neutral vessel to send its boat, its officers, its people or its papers, to the belligerent vessel, is authorized. British treaties, as well as those to which she is not a party, in every instance where a regulation of the claim is undertaken, coincide with the article here proposed. The article is in fact almost a transcript of the article of the treaty of 1786 between Great Britain and France.

The regulation is founded in the best reasons. 1st, It is sufficient for the neutral that he acquiesces in the interruption of his voyage, and the trouble of the examination, imposed by the belligerent commander. To require a positive and active co-operation on his part in behalf of the latter, is more than can be justified on any principle. 2d. The belligerent party can always send more conveniently to the neutral vessel, than this can send to the belligerent vessel, having neither such fit boats for the purpose, especially in a rough sea, nor being so abundantly manned. 3d. This last consideration is enforced by the numerous and cruel abuses committed in the practice of requiring the neutral vessel to send to the belligerent. As an example you will find in the documents now transmitted, a case where neither the smallness and leakiness of the boat, nor the boisterous state of the weather, nor the pathetic remonstrances of the neutral commander, had any effect on the imperious injunctions of the belligerent, and where the task was performed at the manifest peril of the boat, the papers, and the lives of the people. The limitation of the number to be sent on board the neutral vessel is a reasonable and usual precaution against the danger of insults and pillage.

On Article IV. This enumeration of contraband articles is copied from the treaty of 1781 between Great Britain and Russia. It is sufficiently limited, and that treaty is an authority more likely than any other to be respected by the British government. The sequel of the article, which protects the productions of a hostile colony converted into neutral property, is taken from the same model, with the addition of the terms "in any case or on any pretext." This addition is meant to embrace more explicitly, our right to trade freely with the colonies at war with Great Britain, and between them and all parts of the world, in colonial productions, being at the time not enemy's, but neutral property; a trade equally legitimate in itself with that between neutral countries directly, and in their respective vessels and such colonies, which her regulations do not contest.

In support of this right, in opposition to the British doctrine, that a trade not allowed by a nation in time of peace, cannot be opened to neutrals in time of war, it may be urged, that all nations are in the practice of varying more or less in time of war, their commercial laws, from the state of these laws in time of peace; a practice agreeable to reason as well as favorable to neutral nations; that the change may be made in time of war, on considerations not incident to a state of war, but on such as are known to have the same effect in time of peace; that Great Britain herself is in the regular practice of changing her navigation and commercial laws, in times of war, particularly in relation to a neutral intercourse with her colonies; that at this time she admits a trade between neutral countries and the colonies of her enemies, when carried on directly between them, or between the former and herself, interrupting only a direct trade between such colonies and their parent state, and between them and countries in Europe, other than those to which the neutral trade may respectively belong; that as she does not contest the right of neutrals to trade with hostile colonies, within these limitations, the trade can be, and actually is carried on indirectly between such colonies and all countries, even those to which the colonies belong: and, consequently, that the effect of her doctrine and her practice, is not to deprive her enemy of their colonial trade, but merely to lessen the value of it in proportion to the charges incident to the circuitous course into which it is forced, an advantage to her which if just in itself, would not be sufficient to balance the impolitic vexations accruing to neutral and friendly nations.