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The Works of George Lord Lyttleton

Lyttelton, George <Lord>

London, 1774

Observations on the present State of our Affairs, at Home and Abroad; in a Letter to a Member of Parliament, from a Friend in the Country.

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CONSIDERATIONS

UPON THE PRESENT

STATE OF OUR AFFAIRS,

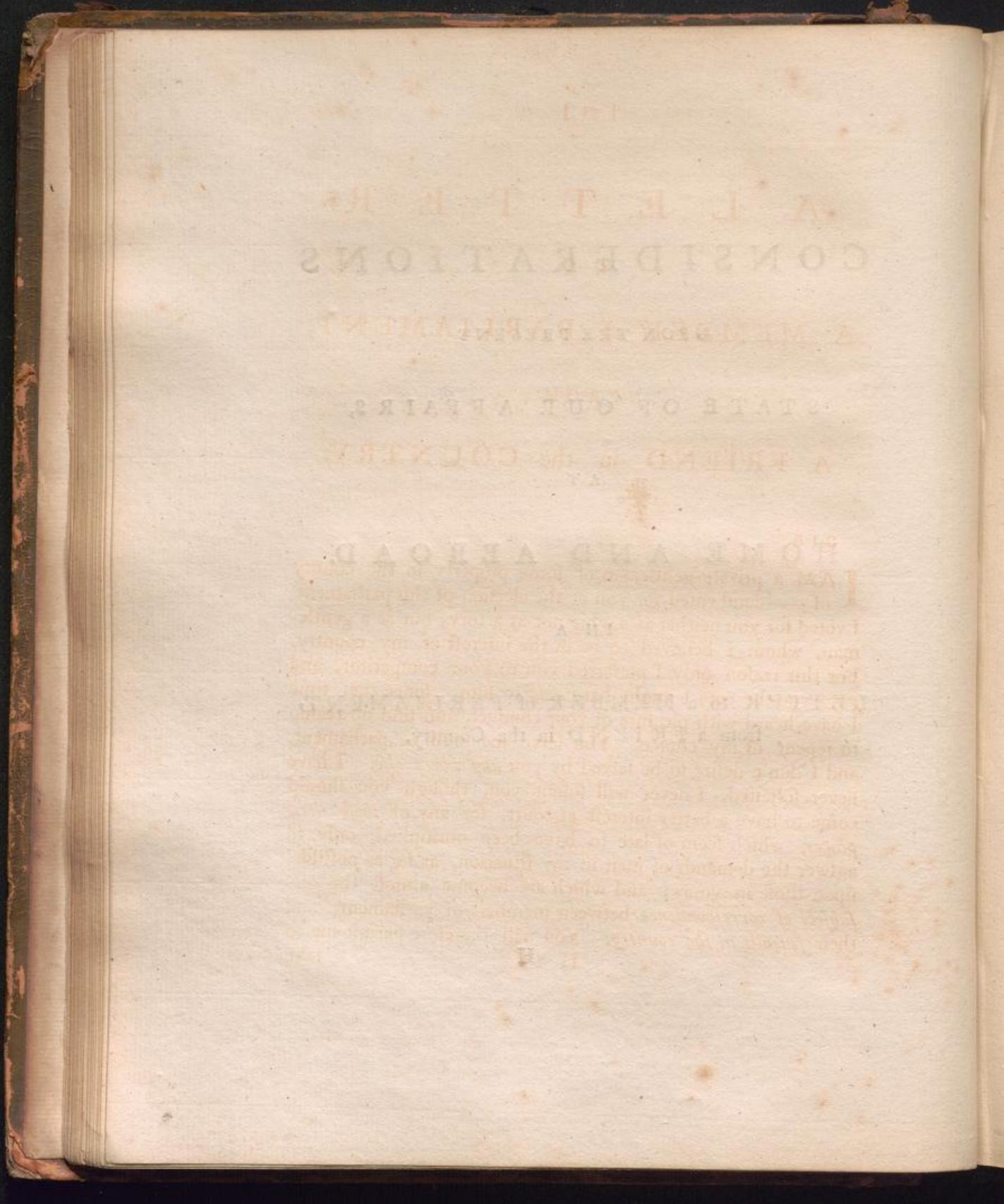
AT

HOME AND ABROAD.

IN A

LETTER to a MEMBER of PARLIAMENT,
from a FRIEND in the Country.

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A L E T T E R

T O

A MEMBER of PARLIAMENT,

F R O M

A FRIEND in the COUNTRY.

S I R,

I AM a private gentleman of some property in the county of — and voted for you at the election of this parliament. I voted for you neither as a whig nor as a tory; but as a gentleman, whom I believed to be in the interest of my country. For this reason only I preferred you to your competitor, and *gave* you the vote I might have *sold* to him. Since that time I have heard with pleasure of your conduct, and find no reason to repent of my choice. You serve me well in parliament, and I don't desire to be served by you *any where else*. I have never solicited, I never will solicit you, though you should come to have a better interest at court, for any of *those little places*, which seem of late to have been multiplied, only to answer the demands of men in my situation, as far as possible, upon *those in yours*; and which are become almost the *only subject of correspondence* between members of parliament, and *their friends in the country*. You will therefore permit me to

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take

take the liberty now of corresponding with you on another foot, and after four years silence to remind you a little of what I have a right to expect from you as my representative. The importance of the conjuncture will excuse my presumption. It is not difficult for us now to speak upon these matters: they are brought so home to our minds, they are made so plain to our senses, that we cannot be doubtful what opinion to form. It is hardly necessary to *reason*; it is enough to *feel*. There is a time, when wrong and mischievous measures may be disguised; but there is a time too when they will discover themselves. While the evil seeds are sowing, those alone are alarmed, who have penetration enough to see things in their causes; but when they are grown up, and the fruits appear, the grofs of mankind have capacity to judge, and spirit to complain. This, Sir, is the circumstance of the people of England. They suffer too much to be amused: and if they continue to suffer, it will not be from error, or insensibility, but from such causes as I do not care to suppose. There is reason to hope that their complaints will be redressed; and in that hope I write this letter to you. I shall propose to your consideration some particular points which, we in the country think, should make the busines of this session; and if you agree to my reasonings, I dare promise myself, you will not afterwards *differ from them in your conduct*.

Sir, we are a trading nation; and whatever affects our trade is our nearest concern, and ought to be our principal care.

Of all the branches of our commerce that to our own colonies is the most valuable upon many accounts. If I am rightly informed, it is by *that alone* we are enabled now to carry on the rest. And as it is the most useful to us, so for many reasons it naturally ought to be *the most secure*. Foreign markets may be lost or spoilt by various accidents: other nations may get in, and carry commodities, that may be preferred to ours; or, by working cheaper, may be able perhaps to undersell us *there*.

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And by these means I am afraid we have found our trade decline considerably in many parts of the world. But in our own plantations nothing of this can happen. The trade we have there is engrossed by ourselves; all other nations are excluded from it, and we carry it on under such regulations as are most for our advantage. In consequence of which, it is the nursery of our seamen, the support of our navigation, and the life of our manufacturers.

But of late years our merchants passing to and from our colonies have been stopt, examined, plundered, and abused by the Spaniards, our ships confiscated, and our seamen enslaved, so that the navigation thither is become so dangerous, that, if an effectual stop be not soon put to these practices, this most beneficial commerce will be utterly lost. The original source of them is a right of sovereignty which the Spaniards arrogate to themselves in the American seas; a claim that has always been treated with derision and scorn by every power in Europe, and particularly by us who were really masters of those seas, from the glorious reign of Queen Elizabeth, down to the weak one of King Charles the Second. And this claim of Spain is still so far from being owned by us, that though it *be a secret motive*, they have not *yet* had the insolence to avow it openly as the *cause* of their proceedings. But they treat every British ship, which they are able to master, as if the sailing only in those seas was a sufficient cause of confiscation. They have seized and condemned outward-bound ships, above a hundred leagues from any shore, without any pretence at all; and where they are graciously pleased to assign pretences for their depredations, *those pretences are worse than the depredations themselves*. They pretend that every ship, which has *logwood, cocoa-nuts, or pieces of eight* aboard, is lawful prize. Now two of these grow in our own colonies; and the South-sea company, by the *Affiento* contract, furnish the Spaniards with *Negroes*, which they pay for in *pieces of eight*;

A LETTER TO

eight; and as the principal market for these Negroes is Jamaica, this occasions the circulating a great deal of that specie there: so that we might with full as good reason stop the ships of Spain in their passage by Jamaica, or our other plantations, and confiscate them formally, if we find aboard of them either *logwood, cocoa-nuts, or pieces of eight*; for this will just as well prove that *they* have been trading with *our colonies*, as our having such goods aboard can prove that *we* have been trading with *theirs*. And their manner of trial is a mockery of justice, which would be highly *ridiculous*, if the effects of it were not so *terrible*. The cause is tried in their own courts in America, a Spanish advocate is to plead for our merchants, and the judges themselves almost always share in the prize. The consequence of this is, that every ship which is taken by them must be confiscated.

But supposing, for argument's sake, that all those species of goods upon which sentence is past by this most righteous judicature, were undeniable proofs of an *illicit trade*, on what ground of the law of nations, or by what article of any treaty, have the Spaniards a right to *stop or search our ships at all?* Where a general trade is allowed, one species of goods may be prohibited; as, for instance, wool, or fuller's earth; and the exporting it may be highly penal: but did this country ever pretend, when her naval power was at the height, to stop ships *out at sea*, in order to search whether such commodities were aboard? would the little republick of Genoa endure our doing it? could any thing less than a conquest bring her to submit to it? But the doing it in America is much less defensible. For where no general trade is allowed, no one particular species of goods can be more *prohibited* than another, and *the searching there* has no object at all, and no foundation in reason. All the rules therefore laid down in the treaty of 1667, between England and Spain, concerning the method of searching for prohibited goods, are plainly confined to Europe, where a general

general trade is allowed; and have no relation to America, where all trade is forbid. For in the one case they may be necessary, but in the other they must be useless. And it is much to be wished, that this most manifest distinction *had been better understood by our ministers* in their treating with Spain; and that, by insisting on articles which are not to our purpose, they had not weakened those by which our rights are secured. The ground on which those rights stand is the law of nations, which establishes a freedom of navigation to all, and considers the sea as an universal benefit, not a particular property or dominion of one: there is no nation *so powerful*, none *so proud* in the world, as directly to deny this maxim; there is none *so weak*, none *so abject*, as to give it up. We have been so far from departing from it by treaty, that in all those we have made concerning America it is expressly stipulated, and indubitably confirmed, particularly in that of 1670; which declares that *the freedom of navigation ought by no manner of means to be interrupted*, and makes no other exception to this general rule, than a reciprocal prohibition to both nations in America, to come *into* the ports and havens of the other *to trade there*; for in cases of distress, or necessity, the same treaty allows, that *they may come into them*, and ought to be kindly received. As to our sailing *near their coasts*, it is not only permitted, but it is of absolute necessity in the course of our voyage to and from our own plantations in America: *how near* we shall go to them, it is impossible to fix, because it depends upon circumstances we cannot command, as winds, and tides; but *very near* we must go frequently; and they reciprocally must go near to ours. No treaty therefore has ever settled any bounds, except the ports and havens of either crown in America, within which it shall not be lawful to sail; nor can they be settled, so as not to be liable to *infinite difficulties, and endless chicane*.

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It remains then certain, that in reason, and justice, by the law of nations, and by all our treaties, the way to and from our own dominions in America is as free as the passage between London and Bristol; and that Spain has no more right to stop and search our ships in the seas of America, than in the *British* channel.

Indeed this practice of *searching* is so very inexcusable, that it cannot be supported upon any notion of right. Nothing can warrant it but superior force, and the famous argument of Brennus, *Vae Vielis!* All sorts of mischiefs must arise from admitting it, or from merely suffering it, as we have sadly experienced, and no one inconvenience can attend its being denied. Were our ships found trading in the *Spanish* ports and havens themselves, even in that case, though they ought to be *confiscated*, it is a great absurdity to suppose they should be *searched*. For as the ship and cargo, be it what it will, is forfeited by our being there without distress, or necessity, to what intent or purpose is a *search* to be made after any particular species we may have aboard? but upon this pretence to stop our ships on the high seas, is to *insult our understanding, and despise our power*, as well as to infringe our rights, and to destroy our trade.

Thus for some years things have gone on from bad to worse, England complaining and remonstrating, Spain chicaning and insulting; satisfaction sometimes refused, sometimes promised, never given: our negotiations, and our losses always continuing, and *encreasing almost in the same proportion*: at last our merchants weary of these useless methods applied a *third time* to parliament, and petitioned there for redress. In the course of their examination it appeared too plain, that we had been treated by Spain with the utmost injustice, the utmost barbarity, and the utmost contempt: and that no one effectual step had been taken to procure reparation of our losses, satisfaction to our honour, or security for our trade. It appeared indeed,

A MEMBER OF PARLIAMENT

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indeed, that as far as writing would go, our ministry had tried to put a stop to these insults. They had spared no pains, they had spared *no paper*. Memorials, representations to the court of Spain had been as frequent, and as little minded, as the orders and cedulas sent from thence, in behalf of our merchants, to the Spanish tribunals, and governors in America. Neither produced any effect, but to encrease the depredations, augment our sufferings, and amuse the sufferers. Nay, though in consequence of a treaty with Spain, in which we served her *more perhaps than we could justify*, commissioners were appointed to adjust these differences, and obtain restitution for our losses, as a return for *favours received*, though they continued negotiating for some years in Spain, though much was promised from this commission, yet it does not appear, that any body got by it, *but the commissioners themselves*.

Upon the proof of all this it was the sense of parliament, that more effectual measures ought to be pursued. And to enable his majesty to take them, great supplies were voted, great armaments made; the whole nation expected, and desired a war, if such a peace could not be gained, as would retrieve our honour, and secure our trade. Soon after the parliament rose, the war appeared inevitable: strong fleets were fitted out, and sent to Spain, and the Indies: this could not be done without a vast expence, great obstruction to our trade, and hardships on our sailors. Yet such was the spirit of the people, such their resentment at the indignities put upon the king and nation, that they came into it cheerfully; and not a murmur was heard unless against the Spaniards. I believe it will be difficult to find a period in history, when this nation was so universally and so eagerly bent upon a war, as at that time. They had a just abhorrence, and a just *disdain* of the Spaniards; nor did *those*, who are known to judge the best of foreign affairs, apprehend any danger, *at that crisis*, from any *other more formidable* power; so that all con-

cluded we should act *with vigour*, when it was more than probable we might act *with success*: and the effort we had made, the force we had raised, was very sufficient to give us a superiority in so just a quarrel; a quarrel in which all nations trading to America had an equal interest, and a *common cause* with England: it was now believed, our administration would shew, that their former remissness did not proceed from fear, or negligence; but that they curbed their spirit till *the point of time*, when they might be sure to exert it with *decisive advantages*. This their friends gave out, and candid men were willing to think; especially as it was said, that *one great person* had declared, he thought it for the interest of a minister to have war rather than peace. But in the height and warmth of these expectations, while all Europe was intent on the motions and operations of our fleets, we heard of a convention being signed, and that we might expect a speedy accommodation of our differences by a peace.

Of the terms of this convention you will, no doubt, be apprised at the meeting of the parliament; and then you will judge, whether it is proportionate to the charge we have been at, the opportunity we have neglected, the wrongs we have sustained, the satisfaction and security we have a right to expect.

I only beg leave to mark out to you *two principal points*, upon which I think you cannot mistake in forming your judgement. If we make a peace, it ought to be such, as *will remove*, in the most effectual manner, both the *cause*, and *pretence*, of the injuries done us by the Spanish nation.

Now *the pretence* for them has been solely this, that they claim a right of stopping and searching our ships, on the high seas, or near their own coasts; which claim of theirs is unsupported by treaty, and directly repugnant to

to the law of nations, to the rights of our crown, and the freedom of our navigation. If therefore we clearly assert, that *they have no such right*; that where we have *no trade* with them there can be *no prohibited goods*; that we have a liberty to sail *as nigh* to their coasts as the course of our voyage, the convenience of winds and tides, and other circumstances of navigation, may require; that, in pursuing that course, our ships *are not to be searched* or *slopt* on any account; that, *in cases of necessity*, they may even *enter their ports*, and that only in *case of trading* there they are to be seized; if we expressly assert *all this* in our treaty of peace, it may be a secure and lasting one, and deserves well the sanction of parliament.

But if we leave this *loose*, or if we admit of *any limits*, within which *a search may be made on any pretence*, we have yielded every thing, we have no security, all will be subject to dispute and chicane; we shall have the same weary round to run, of applications to Madrid, references from thence to the West-Indies, and from the West-Indies to Madrid again; and, after the solemn hearing of our wrongs in parliament, after laying open all our wounds to the view of the world, after declarations of right, and lofty threats of resentment, after millions spent, we shall be in a worse condition, than we ever have been yet by any former treaty, or than we should have been, if we had taken no notice of the complaints of our merchants, and not moved in them at all.

As to the other point, *the cause* of all these injuries, I take it to have been the contempt this nation is fallen into, from what unhappily may have seemed to our enemies a despicable tameness and pusillanimity in our conduct. How far this has gone, I am ashamed to say. Those, who to insult us could not presume on their own strength, by long

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observing, or supposing they observed, a weakness in our councils, have come to suppose it in the nation itself: and on this presumption they became as arrogant, as they imagined England to be timid, and weak. They have certainly acted as if they thought we were *the meanest of nations*, or that *the meanest of ministers* had conducted our affairs. This prejudice therefore must be removed, or we shall continue to suffer, as much as we have done, and still more: for, where impunity is certain, insolence knows no bounds. If the peace we make does not retrieve our reputation, it is impossible it can last, for *it may be broke without fear*. Spain can have no reason to keep it, unless it is made on such terms, as to convince her that the temper, and spirit of our court is changed; and that we will bear no longer what we have borne so long. Should any article of it be *dishonourable or mean*, though all the rest were advantageous, that alone would be fatal, because it would leave us exposed to endless insults and affronts, the certain consequence of a stain imprinted on our national character. Reputation is to a people, just what credit is to a merchant. The first depends on an opinion of strength, as the latter does on an opinion of opulence. But that opinion of opulence is a real advantage, that opinion of strength is a real security. When a contrary notion prevails in the case of the merchant, when his credit is hurt, there comes a run upon him suddenly, and, by being thought insufficient, he becomes so in reality. The same thing may happen to a nation from the loss of character. An opinion of its weakness may encourage enemies, may unite them against it in a sudden attack, may dishearten its friends, and leave it destitute of succour. All which might have been prevented, had due care been taken to support the opinion of its strength by a spirited conduct. I hope attention will be had to this in our peace with Spain, and that we shall on no account

account yield to any thing *scandalous*, but seek reparation to our honour, as well as to our merchants. And I dare answer for *them*, that, great as their losses are, they had rather endure them without any compensation, than have it made in a way, that may be disgraceful to their country. Sure I am it would be better for *them* to lose their money, or for *us* to pay it out of our own pockets, than, for the sake of retribution to them, to admit of a treaty, in which the security of our commerce is not firmly established, beyond a possibility of all future cavils, by express declarations of our right *not to be searched*. For to admit of such a treaty, would be no less an absurdity than *to be bribed with our own money to our own un-doing*.

In these plain lights, Sir, I hope you will consider this convention, when it shall be laid before you in the course of the session. You will not, I dare say, suffer yourself to be amused with nice distinctions, and refinements of policy. You will remember how useless, nay, how fatal, all these subtleties have hitherto proved, and what they are like to produce. You will desire to see a treaty, which shall not be *the beginning*, but *the end of negotiation*; which shall speak so plain, that every English country-gentleman, and every Spanish governor in the Indies, shall understand the sense of it, as well as the *Walpoles*, and *La Quadras*.

You will not be satisfied with a present compliance, and temporary expedients, which are only patch work, nor refer that to commissaries, which requires instant dispatch; nor suffer that to be argued which is incontestable; but demand a solid and a durable peace, founded on real security, and express acknowledgment of all those rights that have been questioned by Spain, either with regard to our commerce, or *to our possessions*. For nothing less than this *will satisfy the nation*.

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And when this is done, you will consider of the methods, how to turn this peace to the best advantage, and secure it effectually for the time to come. The only way of doing that, Sir, is, to put the nation *in a condition to be feared*; and this can only be done, by reducing its debt, and gradually lessening its taxes.

It is a melancholy thought that so much time should have been lost from this necessary work, since it has been in our power. I believe it could be proved almost to a demonstration, that ever since the peace of Utrecht, we might have attended to it constantly, without the least interruption from our neighbours abroad, who had no desire to disturb us, till within these few years past, when, notwithstanding *great compliances* on our side, the hostilities of Spain have loudly called for our resentment. In all our quarrels during the late reign, though it can no more be doubted that *the interest of England* was the only point considered, than that Bremen and Verden were *never thought of in them*, yet how far *that interest* was rightly understood by us, is not quite so clear. To some it appears we had no grounds for quarrelling, no more than we had upon other occasions for negotiating; and that we might better have been quiet, if such active abilities, as some of our ministers were endowed with, could have been content to repose. But the entering lightly into wars, and alliances, in which we had no concern, or a very distant one at most, if it was the fault, was not the only fault of our government.

Those who cannot see into the depth of our policy, and the inscrutable wisdom of our councils, may be apt to think, that we have been no less faulty in our way of *managing peace*, in our neglect of using the advantages attending it, and in finding the secret by an unaccountable conduct, to make it *as expensive*, and *as ruinous* as war: that we have *purchased dishonour* at *as dear a rate*, as we did glory in some former reigns: that this has continued,

this has fixed upon us the difficulties, which, with tolerable management, ought to have been conquered long ago: and that to this it is owing, not to King William, or Queen Anne, if we are a distrest and a declining nation. Had it not been for this, say they, we have had leisure enough to pay off great part of our debt, and to encrease the sinking fund to such an annual sum, as would enable the government to maintain our dignity, without wasting our substance. Had *that* been done, we had been now *a mighty* people, easy at home, and formidable abroad. And though we had no disputes with Spain, yet, on other accounts, it would be highly desirable for us to be *in those circumstances*, rather than in a state of indigence, which must be a state of fear. For though by reason of some lucky circumstances at this juncture we have no cause to apprehend any instant danger from France, those, who look forwards at all, have very dreadful apprehensions. The Empire is already open to her by Al-
face, and Loraine, and there has been a terrible alarm, that it may soon be so by Luxembourgh. The weakness of the Low Countries is apparent to every body; and God knows how soon they may be made a sacrifice either to *the friendship*, or the arms of France. If the power of that crown in former times had equalled its ambition, Europe had been lost; if its ambition now shall equal its power, it will probably accomplish what it then designed. And bad is our condition, when our fate is to depend on a spirit of conquest not prevailing in that court.

They have wisely been doing what we ought to have done. They have, by oeconomy, by attention to trade, by easing their people, and husbanding well the money they raise, laid such foundations for their future greatness, that if an enterprising minister should succeed to *this*, he will find advantages, which his greatest predecessors, Richlieu, Mazarin, Colbert, Louvois, never

never had, and will have reason to expect a much more glorious success. What may then be the circumstances of that kingdom, and *this*? On one side mortgaged revenues, credit sunk at home and abroad, an exhausted, dispirited, discontented people: on the other, a rich and popular government, strong in alliances, in reputation, in the confidence and affection of its subjects. Will the contest be equal between *these two powers*? and what an aggravation is it to the pain of this thought, to reflect how easily we might have been in a condition, to save ourselves and Europe from this danger and fear; if, for these twelve years past, (to go no higher) our debt had decreased, in proportion to the means that have been in our hands, and no greater expence had been incurred by the ^{*} government, than the real necessity of affairs required! We might then have spoke to France with as much authority, as becomes this nation in the common cause, especially if we had taken any care at the same time to set ourselves at the head of the Protestant interest, which is our natural post; and has on former occasions given great advantages as well as lustre to the crown of England. Had we pursued these measures, we should now have nothing to dread; by pursuing them steadily we may yet be safe, we may yet be considerable, we may yet hold the balance of Europe. But till a wiser administration shall restore our affairs, little dignity, or vigour, is to be expected in our councils. Some *appearance of vigour* may perhaps be maintained; but it will impose on nobody; no, *not on ourselves*. To think that keeping up, at a vast expence, great fleets and armies, with a resolution not to employ them, can secure our reputation, is as gross a mistake, as if, in private life, a gentleman known to be in debt, and not disposed to clear himself, should think to cheat his creditors, and support his credit, by encreasing his

* *N. B.* Had the sinking fund been duly applied since the year 1727 to the payment of the national debt, at least twelve millions might have been paid off: the sinking fund would then produce at 4 per cent. R. (less than two millions, and (were interest reduced to 3 per cent.) considerably more. Upon such a bottom as this, we might well maintain a new French war.

equipage, making sumptuous entertainments, and beggaring his family with new debts and mortgages.

It is scarce to be computed what it has cost this nation *in well-equip'd fleets, and well-dress'd troops, for some years past;* and I should be glad to be told (bating the fineness of the show) what use they have been of to us either at home or abroad. They give, to be sure, an air of magnificence; but then it is well known, that we owe almost fifty millions, and have been forced to apply the sinking fund, not to discharge that debt, but to furnish out these shows.

In most parts of England gentlemens rents are so ill paid, and the weight of taxes lyes so heavy upon them, that those who have nothing from the court can scarce support their families; and those in place are hardly savers on the account, if what they give be balanced against what they receive. There are indeed some rich people who have money in the funds; and out of tenderness to *them* I suppose it was, that when interest was naturally, and apparently fallen to three *per cent.* the national debt was still continued at four, by which the publick has lost millions, and such an opportunity, as it may not again be in our power to retrieve.

Yet if peace should be settled on a durable foot, I hope the *worthy* gentleman, who, two years ago, proposed the reduction of interest, will renew his motion; and that it will not be *mended* so as to be made *less eligible*, and then objected to, and *thrown out by the amenders.* I hope too care will be taken, that, when the scheme shall have its effect, reduction of interest and taxes shall go hand in hand; and that the sinking fund so increased shall not be left at the disposition of a minister, but applied in part to take off some of the duties, which are such a load on industry, and so dangerous to freedom.

All these particulars, Sir, deserve your serious attention. We expect to find we have *a peace*, not by his majesty's speech

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alone, and the congratulatory compliments of both houses of parliament (which during all our late sufferings, and the hostilities of Spain, have been annually made with great encomiums on his measures) but by *the fruits of peace*, a considerable lessening of our expences, and relief to the people at whose charge it was gained.

We may yet recover, low as we are, with good management. To make *a great state little*, is not so difficult indeed, as to make *a little one great*; yet it is not to be done immediately; and with all the skill *some* have shewn in endeavouring it here, it will require still more time to sink us so, as that, *with the help of friends*, we may not rise again. The natural strength of this nation is great, its resources great, and in one respect greater than ever, because, the funds *having been tried*, and found *sufficient*, the borrowing on them again, when our debt is reduced, would be secure and easy. To reduce it therefore ought to be the principal object of all who meddle with our public affairs. We shall judge of all your other virtues now by your frugality. The best economist for the public will be the best member of parliament, the best counsellor of state, and the best minister. I do not know how it has happened, but for some time past, an ignorant country-gentleman might be almost provoked to say, that *our flegm* has shewn itself only in *bearing affronts*, and *our spirit* only in *squandering away the public money*. I suppose we shall now have no occasion to shew our fire, but we shall have great occasion for a reserved and cautious temper. Let this operate in the granting of money, in a constant refusing of new powers to the crown, and watching over the use of those already granted. Above all, beware of new additions to the civil list. It is a strange circumstance, and will not stand well to posterity, that while the publick loses in so many articles, so many gains have been of late made to the crown: that when every gentleman's estate is falling in value, the estate of the crown should be so much increased, that if we were

were to purchase it back with fifty thousand pounds *per ann.* *more than it was given for,* we should save by the bargain. I will just take notice how great profits have accrued to the civil list upon the gin-bill only. All that had been gained by the highest amount of the duties on spirits, that is, by the highest excels of the evil designed to be reformed, was made up to his majesty out of the aggregate fund, by way of compensation for the loss he should sustain *upon saving the lives of many thousands of his subjects.* At the same time all he might gain by the increase of the brewery, and by that of the wine licence duty, (which together cannot be *less*, and ought to be reckoned at *more* than an equal proportion to the decrease on the spirits*) is, by the bounty of this act, preserved to him entire, and without account. So that *the preventing a national mischief,* of so destructive a nature, that, rather than suffer it to continue, the legislature was forced to ruin many particulars, and grievously hurt our sugar colonies, has (*no doubt to the comfort of the sufferers*) been so happily managed, that it may prove an advantage to the civil list of seventy thousand pounds a year, and probably more. I would only observe, that if our other popular vices could be turned as much to account as the drinking of spirits has been, the estate of the king of England would be more a gainer *by the sins of the people,* than the exchequer of the pope.

But there is another article I must not pass over in silence, because it may probably come before the house this session; and that is, that his majesty has been, and still is, in possession of 50,000*l. per ann.* which most people think was designed by parliament for the prince of Wales, over and above the fifty which he now enjoys. It seems evident to me by all I have heard, and read upon this subject, that the parliament which gave the civil list could not intend, that his majesty should re-

* *N.B.* The share of the civil list upon foreign spirits is about $\frac{2}{3}$; upon home spirits about $\frac{1}{3}$; upon beer and ale about $\frac{1}{6}$.

tain for himself any part of this hundred thousand pounds a year; since supposing the prince to have *it all*, and allowing his majesty to spend one hundred thousand pounds a year extraordinary in *pensions, bounties, secret-service money, &c.* he will still have, for the support of his household, a revenue equal to that of the late king. The expence of his family has been *unhappily* lessened, since the consideration of this matter in parliament, by no less a saving than *the whole sum in dispute*; and as for the charge which remains, it will be abundantly supplied out of so large an income as six hundred thousand pounds a year, with the great additional profits arising from the gin bill, crown land, plantation rents, and other articles commonly known by the name of *licks, &c.* So that if the prince has not the fifty thousand pounds *per annum*, which I apprehend he has a right to from the intention of parliament out of the seven hundred and fifty thousand enjoyed by his majesty, (exclusive of the profits on the articles abovementioned, if, I say, this be not given to him, upon the birth of two children, and the hopes of a third, it certainly ought *to be returned to the public.*) If his royal highness has it, it will not indeed be *lost to the public*; it is like to circulate freely, and the poor will have their share of it; but as I am arguing now upon a principle of *saving*, I must needs say, *the nation wants it*, and the royal family *all together has enough.* Let the wealth of our princes always increase with that of their people: let them share the fruits of every public blessing, of every benefit derived to us from their government: but to have *them rich*, while *we are poor*, is, methinks, both an indecency, and a weakening of one strong motive to them for governing with a constant regard to the prosperity of their subjects.

Sir, from what I have said to recommend economy, I would not have you imagine any argument can be drawn, to defend a bad and dishonourable peace, should it appear that such a one has been made with Spain. To make all proper savings is the

duty of our ministers; but an acquiescence under wrongs and insults is not œconomy: an acquiescence that may cost us millions is not œconomy: an acquiescence that may ruin our trade, the only source of our riches, is not œconomy: it is not œconomy to neglect an opportunity of doing ourselves justice at a cheaper rate, than we can hope to obtain it for in any future conjuncture. It can never be admitted, that because peace is *cheaper* than war, and because it is good to save money, therefore *any terms* of peace are to be gladly received rather than to make war with *any advantages*: and I shall less admit it *here*, because we have already borne an expence, which, if rightly managed, might have been sufficient to have procured us victory, and the fruit of victory, peace.

Sir, there is another way of reasoning, similar to this, which I foresee, and which beforehand I beg leave to warn you against, That because we ought to have great apprehensions of the growing power of France, if we go on ourselves as we have done of late, and suffer *them* to go on to take advantage of our conduct, therefore we are to submit to all the injustice of Spain, and give up the rights we are most concerned to support, for fear that France should declare against us in the war.

I have said before, it seems highly improbable, *that court* should engage in such a measure, *at this time*, from the present state of their government, and the unsettled condition, which any change might put it into for some years to come. But supposing the worst that it is possible to suppose, supposing we knew that France would side against us with Spain, even in that case I think it is reasoning wrong, it is reasoning with regard to the present day alone, to make *that* an argument for accepting a peace upon disadvantageous and dishonourable terms. For if we are really fallen into such a state, that when any power in Europe shall think fit to insult and injure us, and we take up arms to defend ourselves, France will interpose, and without any regard to her alliance, and the justice of our cause, *infest*

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A LETTER TO

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on our giving up our rights, or else declare herself our enemy ; if this is our situation, it is an extremity, which we must fight ourselves out of as well, and as soon as we can. For what can we expect by delaying it longer, but to draw on farther insults, farther wrongs, farther contempt ; to be treated on all occasions as a province to France : to be daily weakened more and more by the incroachments of all our neighbours upon every branch of our trade ; and to be at last devoured without the means of resistance, when all our friends are ashamed of us, and when a long state of dependency shall have sunk our courage, and prepared our minds, to endure the infamy of a foreign yoke ? But we have the strongest grounds to think that our affairs are not so desperate. France is no party concerned in this dispute with Spain ; and the present genius of that court is, not to engage without necessity, in any quarrel that must cost her a war. She may perhaps desire to mediate, and to mediate partially ; but it is in the power of England to refuse that mediation : she may speak in an unfriendly, or perhaps an angry style ; but we have profited little by a great deal of experience, if we have not learnt, that there is a wide distance between talking angrily, and declaring war. It seems evident upon the whole, that what we ought to apprehend, is not an immediate, but a future danger from France ; and the care of the legislature should extend to that, not by approving a peace, which may deserve to be censured, but by attending to things, which, either in war or peace, are of extreme importance to the strength of the kingdom, and therefore demand particularly the inspection of parliament.

Such is the state of our manufactures, such is that of our colonies ; both should be enquired into, that the nation may know, whether the former can support themselves much longer under the various pressures that affect our manufacturers ; and how is it possible that the latter should decline, when if it had not been for a false report of his death, Sir O——o B——n might have

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governed

governed one of them; and so many gentlemen of no less fortune and character have been frequently sent to take care of the rest?

The state of *our garrisons* abroad too may deserve to be considered, and whether the absolute power, lodged in some of *our governors there*, has been *discreetly, moderately, and humanely* exercised, to the honour of his majesty's commission, and of the English name.

Sir, what I would farther submit to your attention is, whether some *new powers* have not been assumed by the crown, or old ones *stretcht* beyond their legal bounds, by the construction of ministers, and the acquiescence, or perhaps the authority of the judges themselves. This is most likely to happen with regard to criminal prosecutions, and many instances of it have been complained of formerly, and fallen under the notice and the censure of parliament.

No longer ago than last year there was a loud complaint of a power assumed and exercised by the secretaries of state against all law, and particularly against *that most sacred law* the *habeas corpus act*; I mean the demanding security for their good behaviour, from persons examined before them on suspicion of writing, printing, or publishing libels against the government.

This having been exercised for the most part upon low and inconsiderable people, who had neither spirit nor strength enough to support their right, it had passed unquestioned many years together, till Mr. Franklin was advised not to comply with that demand, but to insist on giving bail for his appearance only. Upon this the matter was brought by *habeas corpus* before my lord chief justice Raymond, who decided it *in his favour*, for he admitted him to bail without any security for his good behaviour. Notwithstanding which the same practice continued in the secretary's office, and passed *sub silentio*, till last year Mr. Amhurst brought it into publick discourse.

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A LETTER TO

Though the circumstances of this fact are pretty well known, yet as they are of a weighty and a grievous nature, I will remind you of them by a short recital of all such particulars as are come to my knowledge. Some time after Christmas 1737, Mr. Amhurst, hearing that a warrant from the Duke of Newcastle was out against him, surrendered himself to a messenger, and was carried before his grace to be examined. The crime imputed to him was, that *he was suspected* to be author of a paper *suspected* to be a libel. As no proofs were alledged against him, no witnesses produced, an examination of this kind could not last long. As soon as it was over, he was told, that the crime being bailable, he should be bailed upon finding sufficient sureties to answer for his appearance, and trial; and gave bail for his appearance, but the other terms imposed upon him he absolutely refused. Upon that refusal he was remanded back to custody, and the next day brought his habeas corpus, and was then set at liberty by consent, till the twelve judges should determine the question, whether he was obliged to give bail for his good behaviour, as well as for his appearance, before he was entitled to his liberty.

As this determination would have been the most important to the liberty of every man in England, that perhaps the judges ever gave, it was impatiently expected, and desired by the publick. Several days were fixed for hearing counsel on both sides; but they were never heard, and the question remains still undetermined.

A question of no less consequence, than whether ignominy and punishment (for *such* the being bound to good behaviour is by the law supposed to be) shall be inflicted on a freeman *before any trial, and without his being charged upon oath*, even of suspicion of guilt: a question of no less consequence, than whether any man in the kingdom, whom the court are pleased to suspect of writing a libel, shall by frequent, successive commitments upon

upon other suspicions, with no proof at all, be either constantly imprisoned, from not being able to find security for his good behaviour, so often as it is asked, which may be every week; or be exposed to forfeit many bails at once, to the value possibly of ten thousand pounds*, for a single breach of the peace, which in another circumstance, he could not be fined ten shillings for, by any court in England.

A question of no less consequence, than whether the *habeas corpus* act shall be the rule of proceedings in all cases bailable; or whether it shall be in the power of every justice of peace to add *new terms* to it, and make *new exceptions* to the advantages given by that act to the subject; that is, whether *they* should do what all the judges in England would deserve to be impeached for if they did, and what the parliament itself ought no more to do, than to repeal, or alter MAGNA CHARTA.

A question of no less consequence, than whether we should lose the entire benefit of the liberty of the press, which secures and strengthens all our other liberties: since upon suspicion only of a book or paper being libellous, any man suspected to be concerned in it, may be put under the load of finding security for his good behaviour, which is such a vexation, and such a distress, that it is commonly part, and a heavy part, of the sentence upon *convicted criminals*, in all but capital causes: since this is in the power of every justice of peace †; and since, by consequence, no man can be safe who publishes a book, how innocent soever it may be, without *as many licensers*, as there are *Middlesex justices*.

Why this question was not decided at that time, why it remains still undetermined, I cannot tell. If there is no intention to revive the practice which occasioned the dispute, I am

* *N. B.* While a man is bound to his good behaviour, if he should chance to commit any common act of natural frailty or passion, get drunk, for instance, or return a blow, he would be liable to forfeit his securities.

† The law knows of no power in a secretary of state, in this respect, which is not equally lodged in every justice of peace.

surprized and sorry, that the terror of it is suffered to hang over us still, and that the opinion of all mankind concerning it has not yet received the sanction of a judicial determination, or the declaration of parliament.

From my good opinion of the present judges, I hope and believe, that if *they* decide it, we have nothing to fear. They know the danger, and detest the iniquity, of adding restrictions of their own to laws declaratory of liberty. They know that parliaments have often resented such proceedings; that they have been productive of the greatest mischiefs, the greatest disorders, and convulsions in the state: that the arbitrary interpretation of our laws in Westminster-hall has been more than once the cause of civil war, the dissolution of our government, and the destruction of our kings. They will therefore decide, not as former judges have done, who held their places at the mercy of the crown, but as men, who *deserve* the places, which, without a crime, *they cannot lose*.

Yet if this decision should be longer delayed, it will be highly proper, that the sense of parliament be taken upon it, and that we should know to what we may trust. For so long as this is in doubt, so long the noblest privileges, that Englishmen enjoy beyond all other nations, are left in uncertainty, and may be thought in danger.

And if the consideration of this shall come before the legislature, they will be naturally led at the same time to consider, if there are not grievous inconveniences that attend the trial of criminal causes by *special juries*; and whether most of the provisions made by the act of 3 George II. should not be extended to *them*. By the several regulations in that act for the return and balloting of common juries in civil causes, the property tried in small actions is pretty strongly guarded: but it is very extraordinary, that no provision of that kind has been made, where the question to be tried is of the highest consequence. It is very well known, that even in civil causes, few above the value

value of an hundred pounds are tried without a special jury, to which this act does not extend.

Now I can see no reason for these regulations with regard to the property tried by common juries, which does not hold much stronger for extending the care of parliament to the regulating special juries also. The small value of the causes tried by the former makes it highly improbable, that either of the parties should attempt to influence the sheriff to make a partial return, since the gain would no way equal the hazard. The same reason too will prevent an interested juryman, supposing such a one was returned, from giving a verdict contrary to evidence, and perjuring himself in the sight of his country, for so inconsiderable an advantage to the party he favours. And that crimes will be more or less frequent in proportion to the temptation to commit them, must be allowed.

In criminal cases, this is still more dangerous; because the power of the crown may be exerted in the prosecution, and the question to be tried is the imprisonment and punishment of a freeman. If the master of the crown-office, or his deputy, should be ever under any influence, he may * name twelve of the defendant's friends to cover his purpose, and thirty six of those who are most prejudiced against him upon reasons of party, or other causes, if he can find so many in the county; and as the solicitor for the crown would strike off the former, the defendant must be tried from a jury among the latter. It is true that officer is *sworn*, but so is the sheriff in returning common juries, and it is just as likely that the one should *name* partially, as the other *return partially*.

But there seems to be less reason for allowing of special juries to be struck by the master of the crown-office, or by any other officer, upon informations, or indictments for crimes committed

* The rule of striking special juries is, that the sheriff of the county do attend the master of the crown-office with the freeholders books, out of which he is to name forty-eight in presence of each party, who by their attorneys or solicitors shall strike off twelve apiece.

in London or Westminster (which is the case of most of the crown prosecutions upon libels, &c. for very few arise in any other county) because the sheriffs of London and Middlesex, being annual and elective officers, are less liable to suspicion of influence, and by consequence, the most impartial officers between the crown and the subject.

The usual argument in support of special juries is, that it is sometimes necessary for a cause to be considered by persons of a higher rank and better education than common freeholders, and that they are never used in a capital case.

As to the first, admitting the reasoning to be right, why may not special juries be balloted for out of a number of freeholders, *possess of estates to such a value*, and the lists be made in the same manner as is directed by the jury-act with regard to common juries?

And as to the second part of the argument, that special juries are not used in capital cases, that, at best, is but to say, that the practice is *not a bad one*, because *it might be worse*; and that, because the life of the subject is safe, therefore his liberty is not worth consideration. Sir, I think it is evident, this practice is such as requires a new law, no less than the abuses and corruptions, recited in the preamble to the jury-act, required the regulations thereby made for special juries; nay, that without they are extended to common juries, that law is of less utility, than the parliament, which made it, hoped and designed. It was certainly *well-intended*, and I presume the present parliament, when they see the defects of it, will not have less zeal for the principle it goes upon, than their predecessors.

But when this method of trial shall be better regulated, I hope it will be also considered by the legislature, whether it be not advisable to *take another quite away*, I mean *informations* in the king's bench for *criminal causes*:

Because, by this method, the subject loses one great benefit, he is by law entitled to, that of a *grand jury*:

Because,

Because, though in cases between subject and subject, it is in the power of the court to refuse an information, if the defendant shew cause; yet in crown-prosecutions, of which the legislature ought to be most jealous, the attorney-general, by his own authority, files an information, which the court cannot refuse :

Because, though it comes out to be ever so groundless a charge, the crown pays no costs, and the defendant may be undone by the expence :

Because the act restraining subjects from this method of prosecution, *with regard to each other*, without leave of the court after hearing both sides, and some farther cautions, is a strong proof that the parliament thought it a dangerous and oppressive course, which they ought to discourage : but between subjects and the crown the danger surely is much greater, there being more room for oppression, and the penalties on conviction more severe.

Because there is reason to think, that when the star chamber was abolished, the parliament meant to condemn the methods of trial used in that court, and did not imagine they would rise again in the king's bench, upon pretence, that they had been *antiently*, though *very rarely* practised *there* ; and that all the powers the star chamber claimed from common law did, by the abolition of that court, devolve on the king's bench :

Because, in all cases *purely criminal*, the crown has another way of proceeding *equally easy to the king*, and much more safe to the subject, *viz.* the *method of indictment* : and because the retaining *that*, which may be made oppressive, when *there is no occasion for it*, is no honour to the crown, and no advantage *but against the innocent*.

In answer to all this it will, I know, be said, that this is an *antient power* vested by law in the crown ; that it is invading the prerogative to attempt to take it away ; and that we ought to preserve the constitution unchanged. To which I reply, that

that the antiquity of this power is no defence of it, if it be unfit to remain, since others as ancient have been taken away: that the prerogative of the king is no more sacred than the liberty of the subject: that *this* has been abridged in several instances of late, particularly the riot act, on a supposition, that the restraint was necessary for the publick good; and the same reasoning will hold with regard to a power in the crown, the exercise of which is supposed to be dangerous to the publick.

As to the expediency and duty of preserving the constitution *unchanged*, it is no doubt in general a right maxim. But does not every *new power* given to the crown *change* the constitution, as much as an old power *taken away*?

In the balance of our government is the scale of the crown to be always *filling*, and that of the people always *emptying*?

Is there no danger to the state, but from the *abuse of liberty*, which is daily the argument for coercive laws, enforced with heavy penalties, and unknown to our ancestors? May there not also be danger from the *abuse of prerogative*, especially in prosecutions carried on by the crown, where passion may mix itself, and where influence may prevail? And is it not as worthy of a parliament to provide a remedy against one of these dangers, as against the other?

We are told by a great man, by my lord Bacon, in his Life of Henry VII, that when that prince had drawn great sums of money by taxes, and other impositions from his people, he used to *remunerate them* by good and wholesome laws, beneficial to liberty, and of a popular nature, which, as his lordship observes, *were evermore his retribution for treasure*. And the best retribution it was that could be made, the most effectual for relief, and the most capable of stopping complaints and healing dissents. This honour indeed did not belong to him alone; part of it ought to be imputed to his parliaments; though parliaments in those days were not so independent as, I hope, they are now, but were a good deal influenced by the power of

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the crown and the will of the king in directing their proceedings. But they both together had this merit to the nation, that what they took in subsidies, they paid again in laws.

It is the misfortune, (I would not say the fault) of the present times, to have laid most heavy burdens, such as were even unknown to the days of Henry the Seventh, with unintermitting severity, on the people of these kingdoms. In this parliaments and kings have long concurred, not without great discontent on the side of those at whose expence it was done, and who have not always been so much convinced of *the necessity*. But as for retribution, except that retribution which consists in *salaries* and *pensions* paid by the crown, to the happy few, who are the objects of its favour, I am afraid little of this will be found to have been given, in the sense the word is used by my lord Bacon, to make the people amends for the hardships they sustain. New penal laws and new powers to the crown have for these twenty years past been almost the only presents made by the legislature to us and our posterity, in return for above one hundred millions raised upon the publick, in all the various shapes from the land tax down to turnpikes.

But it is full time to think of *other retributions*: the nation requires it from your hands, requires you to strengthen, to enlarge the basis upon which their rights are fixed, and if there are any rotten parts in that great fabrick, to take them away, lest they endanger the whole. Much of this was done at the renovation of our government by the late happy Revolution, but not all. Some defects were left through inattention or other causes, which it may be the glory of his majesty's reign and of this parliament by their united wisdom and goodness to remove. This will conciliate to both the affections of the people, and do more, much more, towards securing the government, than *an army could of an hundred thousand men*. We hear much of disaffection; this would crush it at once: it would unite the friends

friends of the establishment, and confound its enemies; it would shew the cause we support to be *the cause of liberty*.

Sir, I have now laid before you, with great plainness and sincerity, what I believe the nation asks of its representatives. I am one unpractised in writing, and that understand no rhetorick, but what owes its prevalence to the single force of truth: and least of all do I understand the method of arguing, which want of genius in writers, and meanness of spirit in their pay-masters, have made so common in political disputes, attacking *private characters*, and turning a national question into *personal altercations and abusive lies*. I am so much unknown, that I believe myself very secure from this sort of answer being made me on account of this letter. If any other suffers in my stead (as these hired *assassins* are apt to mistake their object in the dark) I shall recommend to him, what I would practise myself in that case, *silence and contempt*. As to the facts and reasonings laid down here, if they are controverted, I am ready to support them against any attack which comes from a better hand than ordinary, and has common sense in it. I am quite a stranger to the persons of our ministers, I know them only by the effects of their conduct, and neither *they* nor *their successors* can please or offend me, but as my country gains or suffers by their power. And I pity those, if there are any such, who think *the removing an ill minister* is a point of consequence, if with him *the maxims and the measures of his government*, how strongly soever established, are not also *expelled*.

I shall only add to what I have said, that, unless something be done by *this parliament*, to give new vigour to our liberties, stop the torrent of corruption, and revive the principles, and the spirit of our fathers, we have less to hope, than to apprehend from *those to come*. The time, I doubt, is not far off, when by the encrease of influence, there may be such difficulties

ties upon country gentlemen to oppose the court in elections, and such a despondency, such a dispiritedness on the minds of all, except the favourites of power, that no struggle could be expected, no opposition at all to the nomination of the crown. A kind of *congé d'elire* might be sent down into the country, and directed to *our trusty and wellbeloved officers of the customs, excise, and army*, in all the towns and boroughs of England, Scotland, Wales, and the dutchy of Cornwall. Suitable returns would be made: but, Sir, *this would not be a parliament.*

May that Providence, which has saved us so often, when we could not, or would not save ourselves, preserve us now! may his majesty's *gracious dispositions* operate in our favour, and remove the clouds that have been spread so thick about him, to prevent his seeing both our interest, and *his own!*

May an alteration of measures be the aim, the effect, and *the reward of opposition!* may the public good be the object, the bound, and the security of power! may *the royal family*, may all parties, may the nation unite in affection, and be divided no more! may all who obstruct this union for vile ends of their own, be *the victims of it*, and suffer what they deserve! may all who desire it, *understand, assist, and strengthen one another!*

I am, Sir, &c.

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For the proof of what is advanced in the first part of this Letter, it may not be improper to recite some articles of our treaties with Spain and France, that regard America.

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The Treaty of 1667 between ENGLAND and SPAIN.

A R T. VIII.

— And for what may concern both the Indies, and any other parts whatsoever, the King of Spain doth grant to the King of Great Britain and his subjects, all that is granted to the United States of the Low Countries and their subjects, in their treaty of Munster 1648, point for point, in as full and ample a manner as if the same were herein particularly inserted, the same rules being to be observed whereunto the subjects of the said United States are obliged, and mutual offices of friendship to be performed from one side to the other.

The articles referred to are,

A R T. V.

La navigation et trafique des Indes Orientales et Occidentales: fera maintenuë felon et en conformité des octrois sur ce donnés, ou a donner ci-après; pour seureté de quoy servira le présent traité et la ratification d'iceluy, qui de part et d'autre en fera procurée: et feront compris soûs le dit traité tous potents, nations et peuples, avec lesquels lesdits Seigneurs Estats, ou ceux de la société des Indes Orientales et Occidentales en leur nom,

nom, entre les limites de leursdits oëtroyz sont en amitié et alliance; et un chacun, scavoir les fusdits Seigneurs Roy et Estats respectivement demeureront en possession et jouïront de telles seigneurs, villes, chasteaux, forteresses, commerce et pays és Indes Orientales & Occidentales, comme aussi au Braxil et sur les costes d'Asie, Afrique, et Amerique respectivement, que lesdits Seigneurs Roy et Estats respectivement tiennent et possèdent, en ce compris spécialement les lieux et places que les Portugais depuis l'an mil fix cent quarante et un, ont pris et occupé sur lesdits Seigneurs Estats; compris aussi les lieux et places qu'iceux Seigneurs Estats cy-après, sans infraction du present traicté, viendront a conquerir et posseder; et les directeurs de la societé des Indes tant Orientales que Occidentales des Provinces-Unies, comme aussi les ministres, officiers hauts & bas, soldats et matelots, estans en service actuel de l'une ou de l'autre desdites compagnies, ou ayans esté en leur service, comme aussi ceux qui hors leur service respectivement, tant en ce pays, qu'au district desdites deux compagnies, continuent encore, ou pourront cy-après estre employés, feront et demeureront libres et sans estre molestez en tous les pays estans souz l'obeissance dudit Seigneur Roy en l'Europe, pourront voyager, trafiquer et frequenter, comme tous autres habitans des pays desdits Seigneurs Estats. En outre a esté conditionné et stipulé, que les Espagnols retiendront leur navigation en telle maniere, qu'ils la tiennent pour le present és Indes Orientales, sans se pouvoir estendre plus avant, comme aussi les habitans de ce Pays-Bas s'abstiendront de la frequentation des places que les Castillans ont és Indes Orientales.

ART. VI.

Et quant aux Indes Occidentales, les sujets et habitans des royaumes, provinces et terres desdits Seigneurs Roy et Estats respectivement s'abstiendront de naviger et trafiquer en tous les

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havres, lieux et places garnies de forts, loges, ou chasteaux, et toutes autres possédées par l'une ou l'autre partie; scavoir que les sujets dudit Seigneur Roy ne navigeront et trafiqueront en Celles tenuës par lesdits Seigneurs Estats, ny les sujets desdits Seigneurs Estats en celles tenuës par ledit Seigneur Roy, et entre les places tenuës par lesdits Seigneurs Estats seront comprises les places que les Portugais, depuis l'an mil six cent quarante et un ont occupé dans le Brasil sur lesdits Seigneurs Estats, comme aussi toutes autres places qu'ils possèdent à présent tandis qu'elles demeureront auxdits Portugais; sans que le précédent article puisse deroger au contenu du présent.

II do.

The Treaty of 1670 between ENGLAND and SPAIN, commonly called the American Treaty *.

A R T. III.

Item uti in futurum omnes inimicitiae, hostilitates et discordiae inter prædictos Dominos Reges, eorumque subditos, et incolas cessent, et aboleantur: et utraque pars ab omni direptione, deprædatione, læsione, injuriisque ac infestatione qualicunque tam terra quam mari, et aquis dulcibus ubivis gentium temperet proflus, et abstineat.

A R T. VII.

—Conventum præterea est quod serenissimus Magnæ Britanniae Rex, heredes et successores ejus cum plenario jure summi imperii, proprietatis et possessionis, terras omnes, regiones, in-

* This treaty confirms by its first article that of 1667, and both are particularly confirmed by the treaty of Utrecht.

fulas,

ſulas, et colonias ac dominia in Occidentalē India aut quavis parte Americæ ſita habebunt, tenebunt et poffidebunt in perepetuum, quæcunque dictus Magnæ Britanniæ Rex, et ſubditi ejus impræſentiārum tenent, ac poffident, ita ut eo nomine, aut quacunq; ſub prætentione nihil unquam amplius urgeri, nihilque controverſiarum in posterum moveri poffit, aut debeat.

A R T. VIII.

Subditi, et incolæ, mercatores, naupharchæ, naucleri, nautes, regnorum, provinciarum, terrarumque utriusque Regis r eſpective abstinebunt, cavebuntque ſibi à commerciis, et navigatione in portus, ac loca fortaſtiis, ſtabulis mercimoniorum, vel caſtelliſ inſtruēta, aliaque omnia quæ ab una, vel ab altera parte occupantur in Occidentalē India: nimirum Regis Magnæ Britanniæ ſubditi negotiationem non dirigent, navigationem non inſtituent, mercaturam non facient in portibus, locisvè, quæ rex catholicus in dicta India tenet; neque vicifim Regis Hispaniarum ſubditi in ea loca navigationes inſtituent, aut commercia exercebunt, quæ ibidem à Rege Magnæ Britanniæ poffidentur..

A R T. IX.

Si verò tractū temporis viſum fuerit alterutri Regum licentiam aliquam generalem, vel ſpecialem, aut privilegia concedere alterius ſubditiſ navigationem inſtituendi, et commercium habendi in quibusvis locis ſuæ ditionis, qui dietas licentias, et privilegia confeſſerit, dicta navigatio, et commercium exercebuntur et manu tenebuntur juxta et ſecundum formam, tenorem, et affectum permissionum, aut privilegiorum, quæ indulgeri poterint, quorum ſecuritati p ræfens traſtatus, ejusdemque ratihabitio inſerviet.

A R T.

ART. X.

Item concordatum est, quod si alterutrius confederatorum subditi, et incolæ cum navibus suis, sive bellicæ sint, et publicæ; sive onerariæ ac privatæ, procellis abrepti fuerint, vel persequentibus piratis inimicis ac hostibus, aut alio quovis incommodo cogantur se ad portum querendum in alterius fœderati flumina, sinus, æstuaria, ac stationes recipere, vel ad littora quæcunque in America appellere, benignè, omnique humanitate ibidem excipientur, amica gaudeant protectione & benevolentia tractentur. Nullo autem modo impediuntur, quò minus integrum omnino habeant reficere se, viætualia etiam & omne genus commeatum, sive vitæ sustinendæ, sive navibus reparandis, & itineri faciendo necessarium, æquo & consueto pretio comparare. Nulla quoque ratione prohibeantur ex portu, & statione vicissim solvere, ac egredi, quin ipsis licitum sit, pro libito migrare loco, libereque discedere quandocunque, & quocunque visum fuerit, absque ulla molestatione, aut impedimento.

ART. XI.

Pari ratione si naves alterutrius confederati, ejusdemque subditorum, ac incolarum ad oras, aut in ditionibus quibuscumque alterius impegerint, jaustum facerint, vel (quod Deus avertat) naufragium, aut damnum quocunque passæ fuerint, ejecatos, aut detimenta passos, in vincula, aut servitutem abducere nefas esto, quin periclitantibus, aut naufragis benevolè, ac amicissimè subveniatur, atque auxilium feratur, literæque illis salvi conductus exhibeantur, quibus inde tutò, & absque molestia exire, & ad suam quisque patriam redire valeat.

ART. XII.

Quando autem alterutrius naves (uti supradictum est) maris periculo, aliave cogente ratione compulsa, in alterius portus adigantur, si tres, quatuorve fuerint, justamque suspicionis occasionem præbere poterint adventus istiusmodi causa, gubernatori, vel primario loci magistratui, statim exponetur, nec diutius ibi mora trahetur, quam quæ illis à dicto gubernatore aut præfecto permisæ, & vieti comparando, navibusque tum refaciendis, tum instruendis commoda, atque æqua fuerit, cautum vero semper erit, ut onus non distrahant, neque mercium aut sarcinarum aliquid è navibus efferant, & venum exponant, nec etiam mercimonia ab altera parte it. Naves receperint, aut quicquam egerint contra hoc fœdus.

ART. XV.

Præfens tractatus nihil derogabit præminentia, juri ac domino cuicunque alterutrius confœderatorum in mariibus Americanis, fretis, atque aquis quibuscumque, sed habeant, retineantque sibi eadem pari amplitudine, quæ illis jure competit; intellectum autem semper esto libertatem navigandi nequitam interruppi debere, modo nihil adversus genuinum horum articulorum sensum committatur, vel peccetur.

III°

desseuoirs que la partie des deux nations ne soit celle nulle
ment empêchée pour cause d'ill, ou commerce avec les autres
que celle du bateau nul.

III^o.

The Treaty of 1686, between ENGLAND and FRANCE.

ART. V.

Et que pour cet effet les sujets et habitans, marchands, capitaines de vaisseaux, pilotes et matelots de royaumes, provinces et terres de chacun desdits Roys respectivement, ne feront aucun commerce ni pesche dans tous les lieux dont l'on est, ou l'on sera en possession de part et d'autre dans l'Amerique. C'est à scavoir, que les sujets de sa Majesté tres Chrétienne ne se mesleront d'aucun trafic, ne feront aucun commerce, et ne pescheront point dans les ports, rivieres, bayes, embouchures de rivieres, rades, costes, ou autres lieux qui sont ou seront ci-après possedez par sa Majesté Britannique en Amerique: et reciproquement les sujets de sa Majesté Britannique ne se mesleront d'aucun trafic, ne feront aucun commerce, et ne pescheront point dans les ports, rivieres, bayes, embouchures de rivieres, rades, costes ou autres lieux qui sont ou seront ci-après possedez par sa Majesté très Chrétienne en Amerique. Et au cas qu'aucun vaisseau, ou barque soit surpris faisant trafic, ou peschant, contre ce qui est porté par le present traité, ledit vaisseau, ou barque avec sa charge, sera confisqué, après que la preuve de la contravention aura esté legitimement faite. Il sera néanmoins permis à la partie qui se sentira gravée par la sentence de confiscation, de se pourvoir au conseil d'estat du roy, dont les gouverneurs ou juges auront rendu ladite sentence de confiscation, et d'y porter sa plainte, sans que pour cela l'execution de la sentence soit empêchée: bien entendu néanmoins

néanmoins que la liberté de la navigation ne doit estre nullement empeschée, pourveu qu'il ne commette rien contre le véritable sens du prefent traité.

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De plus, il à esté accordé, que si les sujets et habitans de l'un ou de l'autre desdits Roys, et leurs vaissieux, soit de guerre et publics, soit marchands et particuliers, sont emportez par les tempestes, ou estant poursuivis par les pirates ou par les ennemis, ou pressez par quelque autre nécessité, sont contraints pour se mettre en seureté, de se retirer dans les ports, rivieres, bayes, embouchures de rivieres, rades et costes quelconques appartenantes à l'autre Roy dans l'Amerique, ils y feront bien et amblement reçus, protegez et favorablement traitez: qu'ils pourront, sans qu'on les empêche en quelque maniere que ce soit, s'y rafraichir, et même acheter au prix ordinaire et raisonable, des vivres, et toutes sortes de provisions nécessaires, ou pour la vie, ou pour radouber les vaissieux, et pour continuér leur route: qu'on ne les empêchera non plus en aucune maniere de sortir des ports et rades, mais qu'il leur fera permis de partir, et s'en aller en toute liberté quand et où il leur plairra, sans être molestez ou empêchez: qu'on ne les obligera point à se defare de leur charge, ou à decharger et exposer en vente leurs marchandises, ou balots: qu'aussi de leur part ils ne recevront dans leurs vaissieux aucunes marchandises, et ne feront point de pesche, soûs peine de confiscation desdits vaissieux et marchandises, conformement à ce qui a esté convenu dans l'article precedent. De plus a esté accordé, que toutes et quantes fois que les sujets de l'un ou de l'autre desdits roys feront contraints, comme il a esté dit ci-dessus, d'entrer avec leurs vaissieux dans les ports de l'autre roy, ils feront obligez, en entrant, d'arborer la banniere, ou marque de leur nation, et d'avertir de leur arrivée par trois coups de mousquet:

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à faute

à faute de quoi faire, et d'en-voyer une chaloupe à terre, ils pourront être confisquez.

ART. VII.

Pareillement si les vaisseaux de l'un ou de l'autre desdits Roys, & de leurs sujets et habitans viennent à échouer, jeter en mer leurs marchandises, ou, ce qu'à Dieu ne plaise, faire naufrage, ou qu'il leur arrive quelqu'autre malheur que ce soit, on donnera aide et secours avec bonté et charité à ceux qui seront en danger, ou auront fait naufrage: il leur fera delivré des saufs conduits, ou passeports, pour pourvoir se retirer dans leur pays en seureté, et sans être molestez.

ART. VIII.

Qui si les vaisseaux de l'un ou de l'autre Roy, qui seront contraints par quelque avanture ou cause que ce soit, comme il a été dit, de se retirer dans les ports de l'autre Roy, se trouvent au nombre de trois ou de quatre, & peuvent donner quelque juste cause de soupçon, ils feront aussi-tôt connoître au gouverneur ou principal magistrat du lieu, la cause de leur arrivée; et ne demeureront qu'autant de tems, qu'ils en auront permission du dit gouverneur ou commandant, & ce qu'il sera juste et raisonnable, pour se pourvoir de vivres, et pour radouber et equiper leurs vaisseaux.

That it may appear what was the sense both Houses of Parliament had of these Treaties, I have here adjoined the Resolutions, and Addresses of the Lords, and Commons, upon the petition of the merchants last year, and his Majesty's most gracious Answers.

Jovis, 30 die Martii, 1738.

Resolved,

That it is the opinion of this committee, that it is the natural and undoubted right of the British subjects to sail with their ships on any part of the seas of America, to and from any part of his Majesty's dominions; and that the freedom of navigation and commerce, which the subjects of Great-Britain have an undoubted right to by the law of nations, and by virtue of the treaties subsisting between the two crowns of Great-Britain and Spain, has been greatly interrupted by the Spaniards under pretences altogether groundless and unwarrantable; that before and since the execution of the treaty of Seville, and the declaration made by the crown of Spain pursuant thereunto, for the satisfaction and security of the commerce of Great Britain, many unjust seizures and captures have been made, and great depredations committed by the Spaniards, attended with many instances of unheard-of cruelty and barbarity; that the frequent applications made to the court of Spain for procuring justice and satisfaction to his majesty's injured subjects, for bringing the offenders to condign punishment, and for preventing the like abuses for the future, have proved vain and ineffectual, and the several orders or cedulas, granted by the king of Spain for restitution and reparation of great losses sustained by the unlawful and unjustifiable seizures and captures made by the Spaniards, have been disobeyed by the Spanish governors, or totally evaded and eluded; all which violences and depredations have been

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carried

carried on to the great los and damage of the subjects of Great-Britain trading to America, and in direct violation of the treaties subsisting between the two crowns.

A motion was made, and the question being put, that the said resolution be recommitted;

It passed in the negative.

Then the said resolution, being read a second time, was agreed to by the house.

Mr. Alderman Perry also acquainted the house, that he was directed by the committee to move the house, that an humble address be presented to his majesty, humbly beseeching his majesty, to use his royal endeavours with his catholick majesty, to obtain effectual relief for his injured subjects, and to convince the court of Spain, that, how desirous soever his majesty may be to preserve a good correspondence and amity betwixt the two crowns (which can only subsist, by a strict observance of their mutual treaties, and a just regard to the rights and privileges belonging to each other) his majesty can no longer suffer such constant and repeated insults and injuries to be carried on, to the dishonour of his crown, and to the ruin of his trading subjects; and to assure his majesty, that in case his royal and friendly instances, for procuring justice, and *for the future security of that navigation and commerce*, which his people have an undoubted right to by treaties and the law of nations, shall not be able to procure, from the equity and friendship of the king of Spain, such satisfaction, as his majesty may reasonably expect from a good and faithful ally, this house will effectually support his majesty in taking such measures, as honour and justice shall make it necessary for his majesty to pursue.

And Mr. Alderman Perry moved the house accordingly.

Resolved,

That an humble address be presented to his majesty, humbly beseeching his majesty, to use his royal endeavours with his catholick

tholick majesty, to obtain effectual relief for his injured subjects, and to convince the court of Spain, that, how desirous soever his majesty may be to preserve a good correspondence and amity betwixt the two crowns (which can only subsist, by a strict observance of their mutual treaties, and a just regard to the rights and privileges belonging to each other) his majesty can no longer suffer such constant and repeated insults and injuries to be carried on, to the dishonour of his crown, and to the ruin of his trading subjects; and to assure his majesty, that, in case his royal and friendly instances, for procuring justice, and *for the future security of that navigation and commerce*, which his people have an undoubted right to by treaties and the law of nations, shall not be able to procure, from the equity and friendship of the king of Spain, such satisfaction, as his majesty may reasonably expect from a good and faithful ally, this house will effectually support his majesty in taking such measures, as honour and justice shall make it necessary for his majesty to pursue.

Veneris, 7 die Aprilis, 1738.

Mr. Speaker reported, that the House attended his Majesty with their Resolution and Address of the 30th day of March last, to which his Majesty was pleased to give this most gracious Answer, *viz.*

Gentlemen,

I AM fully sensible of the many and unwarrantable depredations committed by the Spaniards; and you may be assured, I will make use of the most proper and effectual means, that are in my power, to procure justice and satisfaction to my injured subjects, and *for the future security of their trade and navigation*. I can make no doubt, but you will support me, with chearfulness, in all such measures, as, in pursuance of your advice, I may be necessitated to take, for the honour of my crown and kingdoms, and the rights of my people.

The

A LETTER TO

The humble ADDRESS of the Right Honourable the Lords
Spiritual and Temporal in Parliament assembled.

Die Martis, 2 Maii, 1738.

Most Gracious Sovereign,

WE your majesty's most dutiful and loyal subjects, the lords spiritual and temporal in parliament assembled, having taken into our serious consideration the many unjust violences and depredations committed by the Spaniards, upon the persons, ships, and effects of divers of your majesty's subjects in America, have come to the following resolutions, which we beg leave in the humblest manner to lay before your majesty, for your royal consideration, *viz.*

I. Resolved, That the subjects of the crown of Great-Britain have a clear and undoubted right to navigate in the American seas, to and from any part of his majesty's dominions; and for carrying on such trade and commerce as they are justly intitled unto in America; and also to carry all sorts of goods and merchandizes, or effects, from one part of his majesty's dominions to any other part thereof; and that no goods, being so carried, are by any treaty subsisting between the crowns of Great-Britain and Spain, to be deemed or taken as contraband or prohibited goods; and that the searching of such ships on the open seas, under pretence of their carrying contraband or prohibited goods, is a violation and infraction of the treaties subsisting between the two crowns.

II. Resolved, That it appears to this house, that as well before, as since the execution of the treaty of Seville, on the part of Great-Britain, divers ships and vessels, with their cargoes, belonging to British subjects, have been violently seized and confiscated by the Spaniards, upon pretences altogether unjust and groundless; and that many of the sailors on board such ships

have been injuriously and barbarously imprisoned and ill-treated; and that thereby the liberty of navigation and commerce belonging to his majesty's subjects, by the law of nations, and by virtue of the treaties subsisting between the crowns of Great-Britain and Spain, hath been unwarrantably infringed and interrupted, to the great loss and damage of our merchants, and in direct violation of the said treaties.

III. Resolved, That it appears to this house, that frequent applications have been made, on the part of his majesty, to the court of Spain, in a manner the most agreeable to treaties, and to the peace and friendship subsisting between the two crowns, for redressing the notorious abuses and grievances before-mentioned, and preventing the like for the future, and for obtaining adequate satisfaction to his injured subjects; which, in the event, have proved entirely fruitless, and of no effect.

We think it our duty, on this important occasion, humbly to represent to your majesty, That we are most sensibly affected with the many and grievous injuries and losses sustained by your majesty's trading subjects, by means of these unwarrantable depredations and seizures; and to give your majesty the strongest and most sincere assurances, That in case your friendly and powerful instances for procuring restitution and reparation to your injured subjects, and *for the future security of their trade and navigation*, shall fail of having their due effect and influence on the court of Spain, and shall not be able to obtain that real satisfaction and security, which your majesty may in justice expect; we will zealously and chearfully concur in all such measures as shall become necessary for the support of your majesty's honour, the preservation of our navigation and commerce, and the common good of these kingdoms.

His

His MAJESTY's most Gracious ANSWER.

My Lords,

I AM sensibly touched with the many hardships and injuries sustained by my trading subjects in America from the cruelties and unjust depredations of the Spaniards. You may be assured of my care to procure satisfaction and reparation for the losses they have already suffered, *and security for the freedom of navigation for the future*; and to maintain to my people the full enjoyment of all the rights to which they are intitled by treaty and the law of nations.

I doubt not but I shall have your concurrence for the support of such measures as may be necessary for that purpose.

POST-

P O S T S C R I P T.

SINCE I wrote my letter, news is come into the country that two or three of our ships have been very lately taken by the Spaniards, one of them by a Spanish man of war, with the king's commission, on the high seas, the captain of which is now imprisoned at Cadiz; and that two floops belonging to the South-Sea company are detained, and a guard is set upon our factory at the Havannah. If these are the *first-fruits* of our peace, what will the harvest be?

But after all, Sir, have we any peace at all? have we any thing granted us that will even bear that name? or have we been only amused by the Spaniards, till they could *get their money home*, (which we hear is hourly expected in two richly-laden ships,) and till the season should be past for us to act with advantage?

I would also beg leave to ask one question more. We were told some time ago that one of our men of war in the West-Indies had taken the Spanish register ship, but that, by orders of commodore Brown, it was immediately afterwards carried back to the latitude in which it was taken, and restored again. Did the captain who took it act *without*, or *against* orders? if he had orders to *cruise*, why was his capture *restored*? were those orders only given for *show*, to *amuse the merchants*, and to *look like action*? would it not have been right and prudent to have kept the money, that was aboard this ship, as a *pledge in our hands*, in case that peace should be refused us upon proper terms? We might have kept it justly, as a *security for the repayment of our losses*; whereas the act of the Spaniards, in detaining our effects at the Havannah, is in reality adding a *new robbery* to the past. Let me however observe, that, though *reparation*

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to our merchants is highly fit, and necessary, and what we ought to demand, it is by far the point of least importance to the nation. We are interested no doubt for them upon many accounts, but both we and they have a much greater interest in the future security of commerce being firmly established. This is the national concern, this both houses of parliament have strongly insisted on, this his majesty has promised to procure for us. If this be neglected, any present gratification will be of little advantage, and should be thought of with scorn.

L E T-