MEMOIR

ON

MARITIME LAW,

BY JOEL BARLOW.

Written for the French Government.

PARIS, 5 Dec. 1799.

(Concluded from our last.)

It will be remarked that England has been the principal opposer of this modern law, since the accession of the house of Hanover. During the last century and in the beginning of the present, her name is found in many treaties which recognize the new principle; and it is probably owing to her opposition to the general wishes of Europe during this century, that this advantage in favor of neutral commerce is not universally adopted at this day. I find no instance since the year 1713 in which she has acknowledged it; and she has made such a considerable figure in naval wars and the tyranny of the seas since that period, as to cause other nations to vary in their policy continually; sometimes forgetting their true interest and yielding to her ambition in supporting the Roman practice, and sometimes recurring to the more rational system, which they ought never to abandon.

But it is time that this question was settled irrevocably; and France at the moment of her regeneration is in a condition, if not to dictate the principle as immediately binding on other nations, at least to adopt it for herself as an inviolable maxim, and recommend it by her great example. A sense of interest will induce all other nations to recognize it immediately, except the English. And if the English should continue to oppose a measure so just, so convenient and so interesting to every maritime power, it will attach those Powers on all future occasions to the interest of France as their common benefactor, and oppose them to England as their common oppressor.

No nation can be more interested in the adoption of this measure than the French. Your resources in agriculture and manufactures are immense. The encouragement of your industry and the increase of your wealth depend on a free exchange. As long as you have such an insatiable rival as the English government in its present form, you can hardly expect to avoid naval wars, however sincere may be your wishes to avoid hem. Your object then is to establish such liberal principles with respect to neutral commerce that your agricultural and manufacturing interests may suffer as little as possible from a natural war which may obstruct your own navigation.

England has such a prodigious mercantile marine that she has little use for neutrals as carriers of her commerce. But if you allow neutrals to be her carriers it would tend to weaken her marine; as it would lessen the number of seamen in her service. English seamen would get into neutral employ for the sake of higher wages which neutrals could then afford to give; and such seamen would rarely return to their country. Whereas allowing neutrals to carry for the French would nourish their agriculture and manufactures, the great resource of the nation.

It seems therefore necessary that France should not only recognize the principle in all her future treaties, that the flag shall protect the cargo, but that such should be declared by the people at the head of the constitution, in order that all nations may see that a future legislative or executive cannot deviate from it.

3. There is another case in the rights of neutrality which deserves to be examined; in which I shall endeavour to establish a doctrine that will appear new, but I hope it will likewise appear just. It is this, *that there ought to be no contraband of war.* If, for fiscal or other purpose, a government chooses to prohibit the importation or exportation of certain articles, these may be contraband with respect to its own nation. But this is private contraband, and has nothing to do with public maritime law. *Contraband of war* supposes an abridgement of neutral right in favor of belligerent force; which is immoral and absurd. No principle is more clear in itself, or laid down with more precision by Wolff and his followers, on the Law of Nations, than this: *that a nation, remaining neuter while her neighbours are at war, retains all the rights which she possessed before the war began.* If this be true, there is nothing more contradictory than to say that certain articles which were lawful for that nation to carry to a certain country in time of peace, are not lawful in time of war. If the right existed before the war, it cannot be annihilated by any act of the belligerent powers; and for them to abridge the exercise of it is a violation of justice and an act of hostility towards the neutral nation, which affects not only her navigation and commerce, but likewise her manufactures and her agriculture. If the Russian has been in the habit of carrying cordage to the French in time of peace, and the American has been in the habit of carrying them tobacco; and afterwards the English begin a war with the French; then, according to the present rules of contraband, the English will say to the Russian, you shall no longer carry them your cordage, while they will say to the American, you may continue to carry them your tobacco. But why shall the Russian cultivator of hemp be deprived of the fruits of his labor and the rights of his neutrality, any more than the American cultivator of tobacco? The reason given by the Publicists for this distinction is by no means satisfactory. They allege the plea of necessity, which they say one belligerent power is under, to distress its enemy by depriving him of the articles used in war. This argument of necessity is misapplied, and may be answered by a stronger necessity on the other side. There is a more legitimate necessity that the inhabitant of a neutral country should live, and to this end be protected in their industry, than there is that one nation at war should destroy another. If there is, among all the elements of society, one principle more sacred than others, it is this, that more protection is due to the honest pursuits of industry which tend to multiply the supports of human life, than to the violent operations of war which tend to its destruction.

It ought then to be recognized as a principle of public maritime law, that no neutral nation shall be interrupted in the course of its accustomed navigation and commerce on account of the nature of the articles it carries to market; or in other words there ought to be no such things as contraband of war.

One objection however may be made to this doctrine, which it is incumbent on me to answer. It may be said that to allow a neutral to carry warlike stores to my enemy, I leave him not only the same advantages which he had before the war, but I allow him to increase those advantages; since my enemy has need of a greater quantity of those articles in war than in peace. To this it is replied tha. the neutral has not to thank me for the benefit; since it is not with a view to his good that I undertake the war, but for my own interest or passions.

Under the most scrupulous attention to the rules of justice on my part, it is impossible but that neutrals must suffer in many respects from my war. If my enemy increases his demand for one article, he probably lessens it for another. And I believe there is no instance of a war in which neutrals have not suffered immense inconveniences. We see them always rejoicing at the return of peace almost as much as the belligerents.

There will doubtless be some articles in which the neutral will find a benefit from my being at war; but as there are necessarily others in which he finds a detriment, I have no right to abridge his enjoyment of the first, since I do not lessen his suffering in the last. And he has as good a right to supply the extraordinary market that may offer itself to the fruits of his labor when such extraordinary market is occasioned by war, as if it were occasioned by famine.

There are some examples of incidental encouragement to the industry of neutrals, which are offered them by the temporary concession of a belligerent; such as taking off restrictions and prohibitions which have been customary in time of peace. The English in every war, and frequently in their intervals of peace, have suspended the rigors of their *navigation act*, for the sake of obtaining supplies of provisions either at home or in their foreign possessions. The French and Spanish governments sometimes open the ports of their colonies to the ships and produce of other Powers, and give an unusual latitude to some branch of commerce of which they stand in need. These occurrences create a higher market, and offer a temporary benefit to nations which are able to carry the supplies. And when they happen in time of war, they may throw a momentary advantage into the hands of neutrals. They must therefore be classed among the incidental rights of neutrality, of which no belligerent can with justice complain.

The English government, it is true, has denied this doctrine; and one of the members of that government, the earl of Liverpool, has written a book to prove that the commerce of neutrals cannot legally be extended, in time of war, either to any ports or places, or to any articles of merchandise, to which it was not accustomed to go in time of peace. But this position is so false in itself, and advanced with such an evident design to apologise for a part of a general system of tyranny over neutrals which that government has been pursuing for a number of years, that no writer, I believe, has yet thought it worth refuting. It is of kin to that other novel maxim of British invention that whole kingdoms may be blockaded by a proclamation.

But when the benefits of trade are extended in this manner, pretended to be unlawful, which party is it that does the wrong, —the belligerent that offers, or the neutral that accepts, the extention?

No English writer, I presume, will deny that the belligerent power has a right to open its own ports to any unusual branch of commerce; since his own government does it very often, no less than three times during the present war. It must be then, according to lord Liverpool, that the neutral is in fault; and that he has no right to go to the best market that is open. What is the consequence? Should the neutral refuse to go to the best market, and that best market was England, he would certainly be taxed, and very justly, with partiality to her enemy. When so much of the British Navigation Act is suspended (this is the case at the moment I write) as to allow a Swedish vessel, for example, to carry American flour to England, suppose such a vessel should be loaded in Philadelphia for London, and the custom-house should refuse her a clearance for that place where the market was high and a famine was apprehended, but should clear her for France, where there was great abundance and a low price, and should lay the vessel under bonds not to go into England (which would be the duty of the custom-house, if it was a crime to go there) would not this be called an act of partiality, an act of such enmity to England, as would amount to a breach of neutrality? But all this would follow from the principle laid down by lord Liverpool.

The English themselves, however, have never acted on this principle in all its parts, nor ever will. It is thrown out to intimidate neutrals. But it is time that the rule of justice was settled on this subject, as on many others. The rule ought to be this: that nations which remain neuter, and observe an impartial conduct while their neighbours are at war, retain all the rights which they possessed in time of peace, and all the additional and temporary advantages which the nature of the war itself may throw into their hands, or that may be conceded by any of the belligerent powers;—that is to say, complete and universal liberty should be left to neutrals to be the carriers of all sorts of goods, at all times and to all places, except only to places actually besieged or blockaded. And to determine what shall be understood by a place blockaded, the strictest sense of the phrases used by the armed neutrality in the year 1780 should be adopted: that is, when a place is so invested as that no vessel can pass into the port without imminent danger of being stopped by the investing force. But in no case can a whole coast be said to be blockaded by a fleet cruising in such manner as occasionally to stop a neutral vessel: a blockade in its nature being only applicable, if not to a single port alone, at most to such ports whose passage is absolutely impeded by the habitual disposition of the ships. And even in this case a neutral vessel ought not to be confiscated till she shall have been once stopped and sent away, and shall attempt to enter a second time.

To recognise these great principles in such a manner that they may serve as a guide to future legislators in the French republic, be adopted by other nations, and become a part of the public maritime law through all the civilized world, I would preface the new constitution with a declaration to the following effect.

ARTICLE I.

The French republic will be and remain at peace with all people and at all times, so long as peace can be maintained by the strictest observance, on her part, of justice and the Rights of Nations.

ARTICLE II.

The Rights of Nations are, interior government and self-control; the faculty of continuing their actual forms of government, or changing them for others; the faculty of remaining neuter, and observing an impartial conduct towards neighbouring nations while they may be at war.

ARTICLE III.

The Rights of Neutrality are, the faculty of making or not making a public declaration of neutrality (hostile intentions not being imputable but in consequence of an open act or declaration of hostility,) the faculty of navigating all seas, trading to all places, carrying all articles without any exception of contraband of war, and for all persons without any distinction of belligerent or neutral; the faculty in general of enjoying all the advantages possessed in time of peace, with the addition of such other advantages as may arise from the nature of the war itself, and also such as may be granted and conceded by one or more of the parties in the war; excepting only the case of a blockaded port or place.

ARTICLE IV.

A port or place shall be deemed blockaded only when the investing force is actually and habitually so disposed and stationed as that a vessel cannot enter without imminent danger of being stopped. And even then confiscation of a neutral vessel or of her cargo shall not be made, till she shall have been once stopped and sent away, and shall return a second time.

ARTICLE V.

The neutrality of a vessel, such as shall enable her to protect her cargo and passengers, of whatever nature or country, shall be proved without unreasonable formalities. The nature and form of the documents required for this proof shall be only such as shall have been declared to be sufficient by the neutral power in her own laws, or stipulated by her in treaties with other nations.

ARTICLE VI.

The French republic, convinced of the inconveniencies and immoralities which arise from the system of privateering, will no more grant commissions for cruising, or letters of marque and reprisal, to any private ship.

ARTICLE VII.

Solicitous to avoid and remove every occasion of war, not only by a steady pursuit of justice towards every government and people, but also by adopting some rational system of explanation of real or supposed wrongs which she and other independent powers may impute to each other in their various intercourse, the French republic invites them all to turn their attention to the discovery of some pacific mode of public arbitration; in which national grievances may be discussed, removed, attoned, compensated and finally settled, without recurring to the right of the strongest, as in barbarous and uncivilized ages. And she declares solemnly to all mankind, with whom she desires to live in peace, that she will do all in her power to investigate the means and arrive at the establishment of such a beneficent institution.

NAILS.

ALL Kinds of Hammered and Cut Nails, and Brads, Sold at my store in this place, between the President's house and the Six buildings, at the following prices for Cash only.

Hammered Nails and Brads.

	By cwt. or 1-2 cwt	by retail under 56.
20dy Nails	12 1-2 d. per lb	13 1-2 d per lb.
12dy do	13	13 3-4
10 do	13 3-4	14 1-2
8 do	15	15 1-2
Deck and Spike Nails,	11 1-2	
Cut Nails and Brads.		
20dy Nails	9 1-2	10 1-2
10 do	10	11
8 do	11	12
6 do	12	13
4 do	13 1-2	14
3 do	14 1-2	15

SAMUEL M'INTIRE.

Washington, Feb. 6, 1801. tf

Kid, Eliot & co.

HAVE received by late arrivals, a general assortment of Hard ware and Ironmongery which they offer for Sale at their Store opposite the Great Hotel.

They have also on hand

Madeira, Sherry & Lisbon } Wines.
Cogniac Brandy.
Jamaica Spirits,
Holland Gin,
Loaf and Brown Sugar,
Tea, Coffee, &c. &c.

Washington, Dec 18. tf.

NOTICE.

THE business heretofore carried on under the firm of ANDREW RUTHERFORD and Co. is this day, by mutual consent, dissolved.

JAMES THOMPSON,
ANDREW RUTHERFORD.

Washington, March 9, 1801. 3t