AMERICAN AFFAIRS.

Extract of a Letter from General Armstrong to Mr. Smith, dated Paris, March 10th, 1810.

"I have at length received a verbal meſſage in anſwer to my note of the 21ſt ult. It was from the miniſter of foreign relations, and in the following words: "His Majeſty has decided to ſell the American property ſeized in Spain, but the money ariſing therefrom ſhall remain in depot." This meſſage has given occaſion to a letter from me, marked No. 2.

No. 2. *Paris, March* 10, 1810.

SIR—I had yeſterday the honor of receiving a verbal meſſage from your excellency, ſtating, that "His Majeſty had decided that the American property ſeized in the ports of Spain ſhould be ſold, but that the money ariſing therefrom ſhould remain in depot."

On receiving this information, two queſtions ſuggeſted themſelves—

1ſt, Whether this deciſion was, or was not, extended to ſhips as well as to cargoes? and

2d, Whether the money ariſing from the ſales which might be made under it, would, or would not, be ſubject to the iſſue of the pending negotiation?

The gentleman charged with the delivery of your meſſage, not having been inſtructed to anſwer theſe queſtions, it becomes my duty to preſent them to your excellency, and to requeſt a ſolution of them. Nor is it leſs a duty, on my part, to examine the ground on which his majeſty has been pleaſed to take this deciſion, which I underſtand to be that of *reprisal*, ſuggeſted for the firſt time in the note which you did me the honor to write to me on the 14th ultimo. In the 4th paragraph of this note it is ſaid, that "his majeſty could not have calculated on the meaſures taken by the United States, who, having no grounds of complaint againſt France, have compriſed her in their acts of excluſion, and ſince the month of May laſt have prohibited the entry into their ports of French veſſels, by ſubjecting them to confiſcation."

It is true that the U. S. have, ſince the 20th of May laſt, forbidden the entry of French veſſels into their harbors—and it is alſo true, that the penalty of confiſcation attaches to the violation of this law. But in what reſpect does this offend France? Will ſhe refuſe to us the right of regulating commerce within our own ports? Or will ſhe deny that the law in queſtion is a regulation merely municipal? Examine it both as to object and means—what does it more than forbid American ſhips going into the ports of France and French ſhips from coming into thoſe of the U. S.? And why this prohibition? To avoid injury and inſult; to eſcape that lawleſsneſs, which is declared to be "a forced conſequence of the decrees of the Britiſh council." If then its object be purely defenſive, what are its means? Simply a *law*; previouſly and generally promulgated, operating ſolely within the territory of the U. States, and puniſhing alike the infractors of it, whether citizens of ſaid States, or others—And what is this but the exerciſe of a right, common to all nations, of excluding at their will foreign commerce, and of enforcing that excluſion? Can this be deemed a wrong to France? Can this be regarded as a legitimate cauſe of repriſal on the part of a power who makes it the firſt duty of nations to defend their ſovereignty, and who even denationalizes the ſhips of thoſe who will not ſubſcribe to the opinion?

But it has been ſaid that the "United States had nothing to complain of againſt France."

Was the capture and condemnation of a ſhip driven on the ſhores of France by ſtreſs of weather and the perils of the ſea—nothing? Was the ſeizure and ſequeſtration of many cargoes brought to France in ſhips violating no law, and admitted to regular entry at the imperial cuſtom houſe—nothing? Was the violation of our maritime rights, conſecrated as they have been by the ſolemn forms of a public treaty—nothing? In a word, was it nothing that our ſhips were burnt on the high ſeas, without other offence than that of belonging to the United States; or other apology, than was to be found in the enhanced ſafety of the perpetrators? Surely if it be the duty of the United States to *reſent* the theoretical uſurpations of the Britiſh orders of November 1807, it cannot be leſs their duty to *complain* of the daily and practical outrages on the part of France! It is indeed true, that were the people of the United States deſtitute of policy, of honor, and of energy, (as has been inſinuated) they might have adopted a ſyſtem of diſcrimination between the two great belligerents; they might have drawn imaginary lines between the firſt and ſecond aggreſſor; they might have reſented in the one a conduct to which they tamely ſubmitted in the other, and in this way have patched up a compromiſe between honor and intereſt, equally weak and diſgraceful. But ſuch was not the courſe they purſued, and it is perhaps a neceſſary conſequence of the juſtice of their meaſures, that they are at this day an independent nation! But I will not preſs this part of my ſubject; it would be affrontful to your excellency (knowing as you do, that there are not leſs than one hundred American ſhips within his Majeſty's poſſeſſions, or that of his allies,) to multiply proofs that the United States have grounds of complaint againſt France.

My attention is neceſſarily called to another part of the ſame paragraph which immediately follows the quotation already made. "As ſoon," ſays your excellency, "as his Majeſty was informed of this meaſure (the non-intercourſe law) it become his duty to retaliate upon the American veſſels, not only within his own territories, but alſo within the countries under his influence. In the ports of Holland, Spain, Italy and Naples, the American veſſels have been ſeized, becauſe the *Americans had seized French veſſels*"!

Theſe remarks divide themſelves into the following heads:

1ſt. The right of his Majeſty to ſeize and confiſcate American veſſels, within his own territories.

2d, The right to do ſo within the territories of his allies; and

3d, The reaſon of that right, viz. "*because Americans had seized French veſſels.*"

The firſt of theſe ſubjects has been already examined; and the ſecond muſt be decided like the firſt, ſince His Majeſty's rights within the limits of his ally cannot be greater than within his own.—If then it has been ſhewn that the non-intercourſe law was merely defenſive in its object; that it was but intended to guard againſt that ſtate of violence which unhappily prevailed; that it was reſtricted in its operation to the territory of the United States, and that it was duly promulgated there and in Europe before execution, it will be almoſt unneceſſary to repeat, that a law of ſuch deſcription cannot authoriſe a meaſure of repriſal, equally ſudden and ſilent in its enactment and application, founded on no previous wrong, productive of no previous complaint, and operating beyond the limits of his Majeſty's territories and within thoſe of ſovereigns, who had even *invited* the commerce of the U. S. to their ports!

It is, therefore, the third ſubject only, *the reaſon of the right*, which remains to be examined; and with regard to it I may obſerve, that if the alleged fact which forms this reaſon be unfounded, the reaſon itſelf fails and the right with it. In this view of the buſineſs I may be permitted to enquire when and where any ſeizure of a French veſſel has taken place under the non-intercourſe law? and at the ſame time to expreſs my firm perſuaſion, that no ſuch ſeizure has been made: a perſuaſion founded alike on the ſilence of the government and of the journals of the country, and ſtill more on the poſitive declaration of ſeveral well informed and reſpectable perſons who have left America as late as the 26th of December laſt. My concluſion therefore is—that no French veſſel having violated the law, no ſeizure of ſuch veſſel has occurred, and that the report which has reached Paris is probably founded on a circumſtance altogether unconnected with the non-intercourſe law or its operation.

Though far from wiſhing to prolong this letter, I cannot cloſe it without remarking the great and ſudden change wrought in his Majeſty's ſentiments with regard to the defenſive ſyſtem of the United States. The law, which is now believed to furniſh ground for repriſal, was firſt communicated to his Majeſty in June or July laſt, and certainly did not *then* excite any ſuſpicion or feeling unfriendly to the American government. Far from this, its communication was immediately followed by overtures of accommodation, which though productive of no poſitive arrangement, did not make matters worſe than they found them.

On the 22d of Auguſt laſt I was honored with a full expoſition of the views and principles which had governed, and which ſhould continue to govern his Majeſty's policy in relation to the United States, and in *this* we do not find the ſlighteſt trace of complaint againſt the proviſions of the law in queſtion.

At a period later than the 22d of Auguſt, an American ſhip deſtined to a port of Spain, was captured by a French privateer. An appeal was made to His Majeſty's miniſter of war, who having ſubmitted the caſe, received orders to *liberate all American veſſels deſtined to Spaniſh ports, which had not violated the Imperial decrees.*

Another American ſhip, at a point of time, ſtill later than the capture of the preceding, was brought into the port of Bayonne, but *having violated no law* of his Majeſty, was acquitted by his council of prizes; and laſtly—

In the long converſation I had the honor of holding with your excellency on the 25th of January, no idea of repriſal was maintained by you nor ſuſpected by me; but on the contrary, in ſpeaking of the ſeizure of American property in Spain, you expreſsly declared, that it was not a *confiscation.*

Can proofs be more concluſive, than from the firſt promulgation of the law down to the 25th of January laſt, nothing in the nature of repriſal was contemplated by his majeſty?

What circumſtance may have ſince occurred to produce a change in his opinion, I know not; but the confidence I feel in the open and loyal policy of his majeſty, altogether excludes the idea, that the rule was merely found for the occaſion, and made to juſtify ſeizures, not otherwiſe juſtifiable.

I pray your excellency to accept, &c. &c.

(Signed) JOHN ARMSTRONG.

His Excellency the Duke of Cadore, Miniſter of Exterior Relations.

LONDON.

HOUSE OF COMMONS, MAY 11.

SIR FRANCIS BURDETT.

The Report of the Committee on the proceedings relating to Sir Francis—the Notices, Proceſs and Writs on the *Speaker* and *Serjeant* at *Arms*, having been read,

Mr. DAVIES GIDDY moved, "That the Speaker and Serjeant be permitted to appear and plead to the ſaid actions."

On the queſtion being put,

Mr. PONSONBY aroſe. He preſumed that the motion juſt made met with the concurrence of His Majeſty's Miniſters. Before he proceeded he wiſhed to underſtand whether he was correct in that ſuppoſition?

The CHANCELLOR of the EXCHEQUER ſaid, he had no heſitation in ſaying that he adviſed the motion, he wiſhed the Hon. Gentleman would always act with the ſame candour.

Mr. PONSONBY ſaid, if he had been in the place of the Right Honorable Gentleman who had juſt ſat down, he would not have drawn the Houſe into ſuch a ſituation as they were in at preſent; but having done ſo, he would not have ſhrunk from adviſing them.—He thought the Houſe did poſſeſs the power of committing for a breach of privilege. If in making this declaration he ſhould become unpopular, he would bear it with all the patience and reſignation he was able; for he would treat the people as he would treat the King—he would ſerve both, but flatter neither.—The Houſe of Commons were undoubtedly the ſole judges of their own privileges, and there was no Court in the kingdom which could or ought to interfere; and when the Houſe had declared its will, he was certain the Court would not interfere. He had given the ſubject the moſt mature conſideration; and that the Houſe might have the exact grounds on which he had founded his opinion, he had brought the books from which he had taken his law, rather than quote from them, and render himſelf thereby liable to a charge of having miſrepreſented them. The firſt book he ſhould produce as authority for the doctrine he held, was Lord Hale's Treatiſe on the Original Inſtitution, Power, and Juriſdiction of the Houſe of Commons. He then read a paſſage from it, which went to ſhew that the privileges of the Houſe were not to be taken according to the rules of the common law, but according to the *consuetudo* and law of Parliament. Lord Hale ſhewed, throughout the whole of his Treatiſe, that he had grounded himſelf very much on the authority of Lord Coke, whoſe legal knowledge was allowed to ſtand in the higheſt rank. It had, however, been ſaid, that Coke and Hale had too much reverence for Parliament. Modern law writers had, however, not only agreed to their doctrine, but one of the moſt celebrated among them had even carried it further. Sir William Blackſtone had often been referred to. He would not quote, but read from Blackſtone, who ſays, "Parliament is ſo high and mighty in its nature, that what was not law it might make law, and what was, it could make not law;" and afterwards, ſpeaking of its privileges, he ſays, "they are not to be defined—for, that an attempt to define the privileges of Parliament would be an act ſubverſive of it." He then read a paſſage from a tract of Sir Robert Atkins, who was a Judge in the Court of Commons Pleas, who, in the 69th page, had ſaid, the Houſe had three powers, legiſlative, judicial, and *Conſilium Regni*, to which were attached privileges of which they were the ſole judges. There were many writers a hundred years ago who had held the ſame doctrine. Lord Holt, indeed, had differed on this point with the other eleven Judges, and had ſaid, that if this doctrine was true, there was no limit, and no one could ſay where the power would end. He thought Lord Holt's argument was a very weak one—for the queſtion was, not what is right, or what ought to be, but what is? There muſt be a diſcretionary power ſomewhere; and where could it be placed more ſafely than in the Houſe of Commons? And while the Houſe of Commons ſubſiſted as it did, nothing could be more idle and miſchievous than to think to mend the Houſe of Commons, by depriving it of its privileges.—In ancient times, the greateſt men of the State had no idea of preſerving the liberties of the people by deſtroying the privileges of the Houſe of Commons. They knew it was impoſſible—they knew that the intereſts of both were identified. At the Revolution, for inſtance, there were Lord Somers, a friend to liberty, and a man of great conſtitutional information; Sir William Maynard, ſkilled in legal knowledge, and certainly no enemy to popular freedom; Sir Joſeph Jekyll, who united an enlightened mind with an ardent intereſt for whatever he conceived right—Did thoſe men, in conſequence of the Kentiſh Petition, attempt to diminiſh or deſtroy, or curtail the privileges of that Houſe? Far from it. Did thoſe zealous champions for freedom, who were ever ready to lay down their lives for the rights of the people, adopt as their principle the depreciation of the Commons? Nothing could be farther from their thoughts—They knew the proper value of an Aſſembly, to which the people had delegated their privileges, and knew alſo that that value was diminiſhed when their authority was called in queſtion. He would not now lend himſelf to tear down that Parliamentary privilege which the wiſeſt and braveſt men in the land had thought was eſſential to a Conſtitution the beſt in the world.—*(Hear, hear.)* When the Lords and Commons ſat together, they poſſeſſed thoſe powers; and when for convenience they, each in a legiſlative capacity, ſeparated, it was only juſt that each ſhould individually retain what they poſſeſſed together. To prove that this was borne out by precedent, he would read to the Houſe an opinion drawn up for a cauſe (though not delivered, becauſe that cauſe was not concluded) by Lord Chief Juſtice Wilmot, a man of the ſoundeſt knowledge and moſt ſtrict integrity. Chief Juſtice Wilmot held that the power of attachment in Courts was coeval with their exiſtence; and that the power of Parliament was ſimilar. This power of attachment had, by the uſage of the Court, become law, and that law was as ſtrict as the letter of Magna Charta. This was the opinion of Judge Wilmot. Now with reſpect to the proviſion in Magna Charta which protected men from impriſonment without trial by their Peers, all he ſhould ſay was, that it was impoſſible for any man, any ſchool boy, who had taken up a law book, in his own cloſet, not to ſee that there were many caſes in which a man muſt neceſſarily be