

277

~~941~~

94

MEMORIALS

OF THE

BRITISH CONSUL and FACTORY,

AT LISBON,

TO

HIS MAJESTY'S AMBASSADOR

AT THAT COURT,

AND THE

SECRETARIES OF STATE

OF THIS KINGDOM.



L O N D O N :

at J. WILKE, at Number 71, in St. PAUL'S
Church-yard. MDCCLXVI.



P R E F A C E.

OUR Portuguese concerns being of the greatest importance and justly meriting the publick attention, it was thought proper to publish the following Memorials, that the nation in general may judge of the state of our trade in that country, and from the most authentick testimonies learn the true condition of our countrymen in Portugal.

THESE Memorials are set forth without comment, and the facts left to speak for themselves, to the end that the design of the following sheets may appear to be what it really is, a design to inform not to inflame; a design to obtain a redress, and conciliate amity between the two nations by a removal of grievances, not to widen breaches and promote animosities.

How far this natural purpose is answered in this publication, will best appear from a perusal of those Memorials and Narratives in this manner presented to the publick eye.

RECEIVED

NOV 10 1880

NOV 10

NOV 10

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

NOV 10 1880

C O N T E N T S.

<i>Memorial to the Earl of KINNOULL, concerning the confiscation of money seized in the streets of Lis- bon on the person of a British subject</i>	P. 1
<i>Ditto to ditto, concerning the immunities of the persons and property of British subjects</i>	— 31
<i>Remonstrance to ditto, on the Monopolies of Companies</i>	40
<i>Letter to the Right Honourable Mr. Secretary PITT, concerning the grievances in general that affect the trade of Portugal</i>	— 67
<i>Ditto to the Earl of HALLIFAX, on the same subject</i>	92
<i>Appendix</i>	— 121

TO THE RIGHT HONOURABLE
THE EARL OF KINNOULL,

His Majesty's Ambassador Extraordinary and Plenipotentiary at the Court of Portugal.

May it please your Excellency,

THE Committee of British Merchants, appointed by the Lisbon Factory to confer with your Excellency on the state of their trade and grievances, most humbly beg leave to lay before your Excellency several papers relating to a seizure of money, made on the person of an officer of one of his Majesty's Pacquet-boats.

It may not be improper, at the same time, to acquaint your Excellency, that a tedious and expensive suit at law has been closely followed, for the recovery of this sum, in the name of Humphry Bunster, the person on whom it was found; and farther, that on the 26th of December, 1758, a sentence was issued, ordering that the money should be confiscated, half to the use of his Most Faithful Majesty, and the remainder to the persons who made the seizure.

B

THAT



THE

of the

of the

of the

of the

of the

of the

tion; hoping that this will plainly appear from the whole tenor of the sentence, as thereby no place can be held secure from seizures and confiscations, where a conjecture can be formed that an extraction is proposed, such conjecture being built on the testimony of the mean and indigent persons who made the seizure, and who are admitted as proofs sufficient to render it legal, notwithstanding that thereby a most important benefit accrues to them, no less than half the amount of the confiscations.

THE papers we have now the honour to present your Excellency are,

A Collection of the Laws of this Kingdom, prohibiting the Exportation of Gold, &c. with the English Translation annexed. And

A Petition to his Most Faithful Majesty, for a Revista or Revisal of this Sentence, drawn up by a Person reputed the greatest Lawyer in Portugal, which we have likewise translated for your Excellency's Use.

It only remains for us to inform your Excellency, that by the laws here, a revisal must be applied for and entered upon within two months after the sentence is issued, but it is not an unusual thing for his Majesty to dispense with this law, and grant a revisal to commence out of the common course of time. We, therefore, with submission to your Excellency's judgment, think the shortest and easiest way of defeating the pernicious effects to be feared from the

THAT on this unexpected and unprecedented event, the Proprietors of the money waited on the Honourable Edward Hay, Esq; his Majesty's Envoy Extraordinary to this Court, setting forth the dangerous consequences of such a sentence, and praying his interposition in favour of the Trade.

THAT notwithstanding the Envoy's endeavours to stop any farther proceedings, a second sentence was issued the 24th of March, 1759, confirming the former one: in pursuance of which the money was disposed of, half to the King's Exchequer, and half to the officers who seized it. That hereupon the Members of the Lisbon Factory thought it their duty to apply to his Majesty's Envoy for leave to transmit, through his means, to Mr. Secretary Pitt an humble representation of their hazardous situation, both with respect to their persons and effects, which was accordingly done, and a most gracious answer communicated to them by the Envoy, with assurances of being supported by his Majesty in all their just causes of complaint.

WE shall not take up your Excellency's time with shewing how interesting a point it is to Great Britain to have a tacit allowance from the Court of Portugal of remitting home in specie the balance of trade in our favour; nor shall we dwell on the hazard we run whilst the execution of an obsolete law is thus encouraged, to the involving not only the fortunes, but also the lives of every one of his Majesty's subjects engaged in a trade so advantageous to the nation;

(5)

whoever does the contrary, being found in the fact, or having it proved upon him, shall suffer death, and for the same act shall forfeit all his goods and effects, the half to the use of the person who finds or discovers him, and the other half to our Exchequer, and the same penalties shall likewise be incurred by those persons who consent to, or are aiding or assisting, or are privy to the carrying or sending out the aforesaid articles by others, and who knowing shall not immediately declare it to our officers of justice.

AND whosoever shall, in the same manner, carry or send the said gold or silver, or be aiding, assisting or privy to it, shall incur the said penalties, as soon as the said things are put in a boat, bark, or other vessel, to be therein carried on board any ship whether belonging to foreigners or to our subjects, notwithstanding they be not actually put on board such ships, and even although it be alledged that before its departure they were intended to be brought on shore, and that they were carried and kept on board because as foreigners, and not resident in the port or place where the ships were, they were kept on board till invested, and that the said gold and silver was the produce of wheat, or other merchandize brought to the kingdom.

I. AND whereas many persons put gold and silver, coined and uncoined, in bales, hogheads, pipes, barrels and cases, in which they put other goods and merchandize, intended to be carried or sent out
of

sentence, is, by your Excellency's influence, to obtain from his Most Faithful Majesty the grant of a revifal, with an intimation to the Judges of the unlawfulness of the sentence, that the same may be reversed; in consequence of which the Proprietors will receive half the confiscation from the King's Exchequer, and for the remainder will bring an action at common law against the officers who made the seizure, which will distress them sufficiently to hinder any the like attempts for the future, especially when they find, that after flattering themselves with having the money secure, they are obliged to refund it, and lose the charges of an expensive suit, which is little less than ruin to such people. By this measure, which we can venture to say is not new in Portugal, the sentence will be legally reversed and not hang over us as a precedent, and the captors will be deterred from attempting any thing that must end in their ruin: the whole of which we most humbly submit to your Excellency's superior judgment.

Lisbon, July 19, 1760.

BOOK V. Folio Edition, fol. 82. P.

Chapter 113. that Gold, Silver, nor Money, shall not be carried out of the Kingdom.

NO person whatsoever, either native or foreigner, shall export by land or sea, nor shall carry, or cause to be carried or exported out of our kingdoms and dominions, silver, gold, coined or uncoined, nor shall be aiding or assisting to the carrying it; and
 whoever

of the kingdom, in order to convey them in a more clandestine manner: for this alone, without any farther proof of their intending to export them, they shall incur the aforesaid penalties, notwithstanding the said bales, &c. may still be out of the ships, barks or boats.

2. AND those persons shall likewise incur the penalties aforesaid, who carry gold or silver by land from any village near the water-side, to the Bar, or to any other village nearer to the Bar; but such penalties shall not be incurred by those who carry money sufficient for their expences, according to their rank and the places whither they are going, nor by those who carry precious stones set in gold; provided that the gold be not so much as to shew that the stones are carried for the sake of the gold in which they are set.

3. AND in order to exempt from the penalties aforesaid those persons that carry money for their expences or precious stones set in gold, if in Lisbon before the said things are put on board, shall make it known to the persons by us authorized for this purpose, and in other ports, to the officers of justice, who shall fix what sums may appear to them sufficient for their expences, having due respect to their rank and the places whither they are going; of which they shall get information, delivering them a permit to carry or embark it; and in the like manner shall they examine the jewels they may want to carry
 4 away,

(7)

away, and finding that the gold in which they are set does not exceed what the stone requires, they shall pass them a certificate of it; and any person found in a ship designed to put to sea, or in a boat, or other vessel, with money or jewels, who do not shew such permit, or certificate, shall incur the penalties aforesaid, notwithstanding his saying that he carries the said money for his expences, and that it may not be more than sufficient for his journey or voyage, and notwithstanding his alledging that the gold in which the stones are set is not more than it should be, for it is our will and pleasure that for carrying the said things without a permit, he shall incur the penalties aforesaid.

4. AND in this manner may gold or silver, coined or uncoined, be carried to sea to the islands, or other parts in our kingdom or dominions, and from thence to foreign parts, provided that when they are intended to be embarked, it be first made known in the city of Lisbon to the Judge, to whose care it is committed, and in all other places to the respective officers there residing, it being declared to them to what place they are intended to be carried. And the said officers shall order an entry to be made in a book kept for that purpose, that such person carries out the said silver, gold, jewels or money, and for what place, by which entry the person shall oblige himself to produce a certificate that the said things were carried and landed in the place specified; for which purpose a convenient time shall be allowed him, due

con-

consideration being had to the distance and time, which entry shall be signed by the said person ; and in case he does not produce such certificate within the time allowed him unless hindered by some unforeseen accident, he shall incur the penalties aforesaid, as if he had carried them out of the kingdom, which we shall hereby consider as proved upon him, and if either foreigners or natives want to carry the said things in foreign ships ; besides the aforesaid bond, they shall give security equal to the value of the said things to produce such certificate, which not doing within the time allotted, besides incurring the aforesaid penalties, the value of said things shall be made good by their security, without any form or process.

5. AND whereas some persons, with a design of carrying the said things on board ship to be sent by sea from the place where they are, may put them in boats under pretence of carrying them to other parts of the river through which their journey lies, and afterwards embark them on board the said ship or ships, it is our will and pleasure that, when any person intends to carry the aforesaid things to any part of our kingdom, they shall be carried in one of the passage-boats going from such place to where the journey lies, which boat shall not be hired by him alone : and going in any other bark or boat, or in a bark hired by him alone, he shall incur the penalties aforesaid, besides the loss of what is found upon him, or may be proved he carried : but all persons who, it manifestly appears, do not carry the said things to embark them on board any ship
or

or ships in the harbour, may go and carry them in any boat or bark whatever, even though it may be hired by them alone.

6. AND we order the Judges of the several counties annually to take out a Devassa or secret enquiry of the foregoing, once in six months, in all our harbours and ports; and in the city of Lisbon, the Judge we have appointed for this purpose, imprisoning and prosecuting all transgressors: at the same time examining, by the books of entry, if the persons exporting said things to the Islands, or other parts of our kingdoms and dominions, have produced their certificates in the time allotted them, in order to prosecute those who have not done so.

7. AND the Judges who neglect taking out these Devassas or secret enquiries in the places, and at the time appointed, shall incur the penalties to which all Judges are made liable, by the laws of the kingdom, for omissions of this kind; and when they are removed from their posts, in order to be advanced, enquiry shall be made if they have done so, in order that they may be prosecuted accordingly.

8. BUT any person, going out of the kingdom, may carry trinkets of gold or silver for his own use, not exceeding sixty crowns, without being liable to any seizure or penalty whatever; as may likewise all persons, going from these kingdoms to those of Spain, carry what money may be required for their expences, according to their rank, and the distance of
C the

the places to which they are going, which shall be limited by the Judges and Bailiffs of the exports in those places through which they pass, after making the proper entries: and they shall be credited on oath in regard to the places whither they are going.

9. AND whenever we are pleased to grant any person the liberty of exporting from these kingdoms gold, silver, or money, he shall pay a tribute towards the redemption of slaves, besides what he is obliged to pay in the *Chancery*, and he shall go through the customary forms observed by such as export prohibited goods by our permission, as contained in the preceding chapter.

10. AND whoever shall carry gold, silver, or money to the kingdom of Spain, shall be liable to have it seized in the places and manner, and by the persons expressed in the preceding chapter.

ALVARA or Law ordering that money shall not be carried to Brazil without being registered.

DON John, by the Grace of God, King of Portugal, &c. be it known to those who shall see this law, that whereas experience has shewn the great prejudice resulting to this kingdom from the exportation of money to Brazil, whither it is frequently sent by traders and other private persons; which, if continued, will cause a considerable deficiency in this kingdom: and whereas, in order to put a stop to this evil, by limiting the money sent to that State to
such

Such a sum as may be sufficient to carry on its trade, and yet not exceed what is required, I have been already pleased to determine that no money whatever shall be embarked or sent to the State of Brazil, without its being first registered in the proper office, as was formerly practised, which registering should not be done without licence from the *Conselho da Fazenda*, under the penalty of loss of the money to such as appear to send it otherwise. In pursuance of which I have been likewise pleased to grant leave that, in the kingdom, or out of it, any private informations may be taken, and two-thirds of the seizures applied to my use, and the other third to that of the informer, declaring farther, that in other counties such licences shall be passed by the *Corregidores* or Judges, or in their absence by the *Juiz de fora*, which shall be regulated by the money that may have been sent out through the ports of their respective districts, judging from thence whether it may be proper to grant farther licences for Brazil, of which they shall by every post give an account to the *Conselho da Fazenda*, that thereby the sum registered, and the licence granted, may be exactly known.

AND in thus registering, it is my pleasure that the form hereafter mentioned be observed in the city of Lisbon. It shall be done by the proper Scrivener in his book, and in the several counties the *Corregidores* shall order books to be prepared for registering such licences, which shall be kept in the care of the Chancellor or eldest Scrivener: and in the absence of the *Corregidor*, the *Juiz de fora* who

may grant the licenses, shall order them to be registered in the aforesaid book, regulating their licences by the sum required, and those that have actually been exported; the whole of which shall relate to those *Corregidores* and *Juizes de fora*, in whose districts are any sea-port towns. And I order all *Corregidores* of the several counties, *Juizes de fora*, and other officers and persons, whose duty it is, that they observe, and cause to be kept and observed, the contents of this my law, which, that it may come to the knowledge of every person, shall be published in the *Chancellaria Mor*, and shall be registered in the books of the *Dezembargo do Pato*. And the Chancellor shall cause copies of it to be sent to the several counties under my seal, and signed by him. Given in this city of Lisbon 22d April. Antonio de Morais made this in the year of our Lord 1648. Pedro de Gouvea de Mello caused it to be wrote.

KING,

Decree ordering that a strict caution be given to all Judges in regard to the exportation of money out of the kingdom.

BEING informed that, notwithstanding the penalties inflicted by the laws of the kingdom on such as carry money out of it, yet, through the remissness of the officers in the execution of them, this practice still continues,

I RE+

(13)

I REQUIRE the *Dezembargo do Paço* to give them all strict orders on this head. Lisbon, 11th March 1652.

The KING's Cypher.

Sentence of the Court of Relaçam, condemning the money found on BUNSTER.

A G R E E D in this Court, that the articles, fol. 20, and following, are not proved, and therefore that the seizure is lawful, and the money confiscated agreeable to law, the pleadings being first duly examined; and as the laws of the kingdom not only prohibit the absolute extraction of gold and silver coined or uncoined by natives or foreigners, but even make the intention punishable, when it is found in bales, pipes, barrels, or cases, though with other merchandize, even before embarked in ships or boats; which law, though penal, may yet, agreeable to justice, be extended, when the gold or silver is found put up in any other thing or manner that indicates an intention to export it, as the law expresses, and is agreeable to its general design; for this case is not so much to be deemed extended, as comprehended in the law, and is agreeable to justice, even in penal cases, besides which, though the witnesses, fol. 5, and following, may be looked upon as parties concerned (and none are admitted as witnesses under the like circumstances) yet, as the King's Officers, they are not to be considered in this light, but as publick Officers, whose testimony is required to prove the seizure; which is agreeable to
the

the opinion of several authors. It is proved by the witnesses, fol. 33, and following, that this seizure was made on an English sailor, belonging to the packet's boat at the time they were carrying off silver, and that this money was found hid on him in canvas slings hanging from his shoulders as low as his breeches, and divided in six parcels covered with canvas sewed and sealed, bearing the marks and numbers declared fol. 2, from all which it cannot justly be alledged in favour of the Claimant (though he has thought proper to do so) that he brought the money to pay away in this city, it not being the coin of the kingdom of England; nor he a Merchant to need paying money here, nor can this plea be admitted, considering the manner in which it was found, and its being the current coin of this kingdom where it is certain he received it, it being no ways necessary for him to carry it about in manner above-related to pay away, but rather is the usual way of sending money out of the kingdom, for which reasons the presumption of the intention to extract it becomes the stronger, it being of very little consequence, whether the money was seized as the Captors depose, near the wall on the water-side, or in the middle of the street, as the witnesses swear on the side of the Claimant, they being both so near the place of embarking, that it no wise invalidates the proofs which are sufficient to condemn the Claimant in the loss of the money, agreeable to law, the sole intent of which is to hinder such practices at all events, as most pernicious to the public good, in favour of which the present extension of the law
may

may be with more reason admitted, as no corporal punishment is inflicted, but merely the loss of the money. All which considered, and the farther contents of the process, we judge the seizure to be legally made, and the money confiscated, half to the informers, and the other half to the use of his Majesty: And we also condemn the claimant in cost of suit.

Signed,

*Lisbon 26th,
December 1758.*

SEABRA, PERA, GIRALDES.

Present, A Cypher of the King's Attorney General.

MAY IT PLEASE YOUR MAJESTY.

*The Petition of HUMPHRY BUNSTER, an English
Man, setting forth,*

THAT at the suit of ANTONIO PERREIRA, Scrivener of the district of the *Rua-nova*, in the case of a sum of money seized on your Petitioner, a final sentence has been issued in March last year; and whereas your Petitioner's attorney applying for leave to make out a petition for a revival, had not completed it within the two months, prescribed in the Statute, lib. iii. fol. 95. they now offer it annexed, representing that no delay nor prejudice can arise from the grant of it, the sentence having been duly executed and the money paid into the Exchequer and to the informer, which the revival though granted could not impede; and whereas your Majesty, as a special favour, is sometimes pleased to dispense with the law, and allow a revival out of the ordinary course

of time, the Petitioner humbly prays that your Majesty may by a royal Decree grant leave to have cognizance taken of this revifal, the statute to the contrary notwithstanding, or that your Majesty will be pleased to call up the written procefs now finished, to the Secretary of State's Office of the inward department, ordering a fummery examination of the fentences.

May it please your Majesty, in confequence of what is above represented, and as a fpecial grace and favour, to grant this humble petition, or decree otherwife as your Majesty may think proper.

And your petitioner, &c.

To the KING's Most Excellent Majesty.

*The humble petition of HUMPHRY BUNSTER,
setting forth,*

THAT on the 31st May, 1755, near mid-day, your petitioner, walking in the public ftreet, on the Quay of Santarem, betwixt the water-fide and the houfes facing the river belonging to Francisco da Cunha, amongst many other perfons; was fet upon by feveral men calling themselves officers of Justice, who, upon fearching, took from him 6,652 M. R. 800 which your petitioner had about him in feveral parcels, being the ufual way of carrying a large fum of money. Your petitioner fubmitted to this, confidering the perfons who fearched him as Officers of Justice, they in no ways treating him as a criminal perfon, but fuffering him peaceably to depart: he

(17)

as a foreigner and subject of Great Britain, being unacquainted with their motive for thus detaining his money, but learning that he was suspected of having a design to carry it out of the kingdom, he enquired in what manner it was disposed of, and found it deposited, and an information lodged in the Tribunal of the *Saque da Moeda*, Antonio Perreira Scrivener to the Alcayde or Bailiff of the *Rua Nova* appearing as informer, and as witnesses the several Bailiffs by whom your petitioner was first laid hold of, and who are real parties interested in the decision of this seizure. The Plaintiff applied to the Judge, shewing by the petition, fol. 8, that the information ought not to be received; but by the sentence, fol. 9, the contrary was determined, and the Plaintiff left at liberty to offer the matter contained in his petition in arrest of judgment, in which light the articles of contestation, p. 20, were received by the sentence, p. 23. The informer opposed them, p. 26; the whole of which collected, with the several allegations of the parties answered by the Attorney-General, the information was admitted as legal, and the money ordered to be confiscated, half to your Majesty's Exchequer, and half to the use of the informer, as appears by the sentence, p. 126, confirmed by that, p. 159, condemning the pleadings, p. 130. These sentences are illegal, for notwithstanding its being acknowledged that the Plaintiff was not seized upon the walls, as the Defendant fairly urges and attempts to prove by the partial witnesses he produces, who, as not judicial, are liable to the exceptions made out, p. 88, yet has the seizure of money been deemed

D

legal

legal upon the bare presumption of the Plaintiff's carrying it privately about him, with an intention to export it; and therefore the point is reduced to this.

WHETHER in the present case a crime can be called consummated, where only the intention of committing it appears? And whether a particular law of the kingdom admits of that extension which the sentence calls a *Comprehension ex identitate rationis*, and which is allowable in penal cases, particularly in favour of the Republic, and where capital punishment is not inflicted.

THE decision ought to have been: That the money should not be judged confiscable, the absolute extraction of it by sea not being effected; and this notwithstanding that from the presumptions insinuated but not proved the Plaintiff's intention to export it were ever so clearly manifested by his occupation, by the manner in which it is said he had the money about him, which is not judicially made appear, or finally by the packet's boat being near the Quay of *Santarem*, and the Plaintiff in the street, between the Quay and the houses; for the utmost this can be said to prove is,

That the Plaintiff intended to export this money, and that if he had not been seized in the public street, perhaps he might not have altered his intention, but carried it into execution, and consummated the crime.

No part of which is true in the present case; for he money was designed to make several distinct
pay-

payments, which, with its great weight, will account for his carrying it in slings hanging from his shoulders, and for the parcels being sewed in canvas; for had they been wrapped up in paper only, their weight would have burst them, especially as several of the parcels were carried together; but let us admit the circumstances that appear the strongest against the Plaintiff, still shall we prove that the present sentence is notoriously illegal, and that the penalty of forfeiture of the money could not be inflicted, where that of the loss of life is not equally incurred, the statute leaving no medium in this case.

THE exportation of money should with reason be effectually prevented, it being the strength and support of the kingdom. Let whoever commits the crime of exporting it, not only lose the money, but likewise suffer death, as is lawfully and politically determined by the statute of this kingdom, book v, chapter 113 *in princip.* and § 1 and 2; but this penalty being so severe, and admitting of no modification, it follows, that where death is not inflicted, the forfeiture of the money cannot, nor should not, take place, no such separate penalty being expressed in the statute.

IN order to inflict the penalty, the actual consummation of the crime is by law required, and not the simple intention; for in all cases where a penalty is denounced, the crime is considered as accomplished, and not barely as intended, nor is it fair to draw

conclusions from other cases, as is done in the present sentence.

THE law specifies two ways in which money may be exported, one by land, the other by sea.

THE first does not affect our present purpose, the second does, it being supposed that the Plaintiff intended to export this money in the packet, designed to put it in the boat, or embark himself with it.

AND here the statute says, that the crime shall be looked upon as consummated, and the penalties shall be incurred whenever the money is in fact put on board any vessel, although it may not be the same designed to transport it out of the kingdom, it being sufficient that such vessel be employed to carry it to any other, *ut videre est in princip. diet. ord. vfa.* “the said penalties shall be incurred,” *ib.*

The aforesaid penalties shall be incurred as soon as the said things are put in a boat, bark, or other vessel to be therein carried on board any ship whether belonging to foreigners, or to our subjects, notwithstanding they be not actually put on board such ships, &c.

THE words—*as soon as*—and the context of what is above transcribed, signify the fact consummated, and exclude even the more immediate proofs of the intention, and much more do they exclude remote
and

and inconclusive presumptions, *ut est in lib. 4. If de Condic e demonstrat.*

THE farther context of the statute does the same by positive determinate words applicable to the consummation of the fact, *ut ibi*, “shall not or may not export”—“shall not carry”—“shall or may not cause to be exported or carried”—it no where saying, “shall not intend to export”—“shall not intend to carry, &c.”

THE 139 chapter of the regulations of the revenue, § *item* “we forbid”—on which likewise the present sentence is founded, makes clearly against it; for the exporting to Spain gold, silver, coin, horses, other beasts, and arms, being thereby prohibited, it in no wise punishes the intention, but even limits the penalty in cases where the crime has been accomplished, to imprisonment and forfeiture of the things seized; for being a statute of a later date, it appears to moderate the capital punishment and confiscation imposed by the old law *dicto* fol. 113, not considering the crime as consummated from any previous tokens of the intention, but requiring as essential, that the prohibited things be found on the borders, or at the extremity of the kingdom, *ut ibi*.

And whoever is found on the borders with any of the afore-mentioned things without our permit, shall forfeit the same, and be imprisoned.

AND in the subsequent section, directed to hinder the abuses committed against the Traders

Traders who bring goods and merchandize from Spain, on the bare presumption of their being bought with gold and silver carried out of this kingdom, it is said that in future no prosecution shall be carried on upon such presumptions, even tho' it may afterwards be proved, and that unless the things are seized on the borders, no penalty shall be inflicted, *ut ibi.*

In order to avoid these prosecutions, and as useful to our service, we order that those Traders, on whom shall be found on the borders gold, silver, or any other prohibited goods going to Spain, shall forfeit the whole to our use in virtue of this our law, but after having passed, and nothing being found on them, it is our will and pleasure that they shall not on this account be liable to future prosecutions, notwithstanding its being afterwards proved that they carried such goods, and this, any law to the contrary notwithstanding.

THE intent of this statute is sufficient to clear up all doubt, by shewing that no punishment whatever is annexed to the simple intention of committing the crime of exporting money *maximè*, if we duly weigh and connect the words, “on whom shall be found on the *borders* gold, silver, &c. with”—“but after having passed”—which implies that there cannot be a distance between the borders of the kingdom and such their passage; for were any allowed, then no longer would it be the border or extremity of the

(23)

the kingdom, as may be seen in the Portugueze Dictionary of *Father Bluteau*, letter E, p. *mibi Colunt in fine Colun 2 in princip. ibi.*

Extremity or border, that indivisible point which is either beginning or end.

Extremity or border, is the furthest removed from the middle, and from whence appears the greatest distance to the other extremity. Our birth or death, East and West are extremes.

IN Naples exists a Statute or Pragmatick resembling that of our kingdom, in which it is said, explaining when the crime of exporting money may be looked upon as consummated, that by sea it shall be understood as completed when the money is put on board the vessels, or on persons already embarked in them. This pragmatick is transcribed, being the 23d extraction, by the learned *Angell de Delict*, p. 1. cap. xlv. *sub* No. 20: it says as follows.

Si debbia intendere consumato il delitto, &c.

FROM whence the same *Angell* concludes in the 5th sect. *ita ut*, that whatever is seized out of the vessel, through which the extraction is proposed to be effected by sea, or is met with before its arrival at the borders of the kingdom, if proposed to be carried out by land, can in no wise be detained, *ut ibi.*

Ita ut repertus, &c.

AND in No. 24, he gives the reason for this, which is, that the person detected before the consum

summation of the export proposed, however clear his intention may be proved, may repent and alter his design, *ut ibi*.

Ac in super si Statuto, &c.

THIS will admit of little or no dispute when the words of the Statute v. fol. 113, *in princip.* are considered, where the penalties inflicted on the exporter is expressed in the preter tense, whoever has, or may have exported, and not in the present tense, whoever does export, giving to understand that it requires the crime to be compleatly consummated, *ut ibi*.

Those who in such manner have, or may have carried or sent . . . shall incur the aforesaid penalties as soon as . . .

AND whenever a law inflicting a punishment on exporters, is expressed in the preter tense, it cannot be said that the intention is punishable, nor that thereby, however near to the absolute commission of the crime, it can be deemed as consummated.

Gand. de Reb. &c.

Salzed, in his *Juridical and Political Treatise on Counterband Trade*, Cap. 10. No. 13. *ibi*.

Unless the Exportation of them be compleat or perfect.

AND it is notoriously unjust to extend a penal law beyond what it comprehends, for the assertion that
such

such Statutes admit of an extension *ex identitate rationis*, in cases useful to the Publick, is a conclusion void of all foundation in law or equity: for every penal Statute, directed to punish offenders, must be useful to the Publick by extirpating crimes; and therefore if this reason is sufficient to justify the extension of any one penal Statute, then may they all be equally extended. Whereas, in fact, the rule to go by is, that none of them admit of an extension, and therefore the above reason loses its force.

THE following proposition will set us right, and at the same time refutes the distinction made between the penalty annexed to the crime, and that left to the direction of the Judge. Either by the Statute in the present case, the intention is punishable, or it is not: if *primum*, then should not the penalty have been lessened or moderated; if *secundum*, then should not any penalty have been inflicted: for the Statute cannot be extended directly contrary to what it decrees.

By the common practice of all nations, Statutes enacting penalties for the bare intention to transgress are laid aside, except in cases of high treason or rebellion, to which is generally added poisoning, as is said by *Raynold*, Vol. Crim. 45 *maxime* No. 46. *ibi*.

Quod omnibus juribus, &c.

AND although in cases of the most atrocious crimes the intention is liable to be punished at the

E

dis-

discretion of the Judge, it is either when made capitally punishable by the Statutes, or when such intention manifests itself by circumstances that shew its not being consummated to be merely the effect of chance. If any person, with an intention to commit murder, lets off a fire-arm and it misses fire, his crime shall not be punished with death, but with a penalty at discretion of the Judge, because the transgressor did his utmost to perpetrate the fact from whence the death of the party might ensue. This was the case mentioned above by *Raynold*, and in the like, it is but just that the intention be made punishable; but where it amounts only to bare presumption, and if even proved, gives time for repentance before the execution of such intention, there is no law nor equity that inflicts a penalty even at discretion of the Judge. It is proved and acknowledged in the sentence, that the Plaintiff was walking in the publick street; and however plain it may appear that his design was to proceed to that part of the Quay where the packet-boat lay, certain it is that when he was seized he had not got to the place where the crime could be consummated, and no less certain it is that he was still in time to repent and turn back. The officers therefore should have waited till he had got out of the street into the boat with the money on him, in the same manner as by land they should suffer him to go as far as the extremity mentioned in the regulations of the Revenue, that is to the borders of the kingdom; and
till

till he had done so any seizure must be illegal, as has been determined in a case already mentioned, relating to a similar law, as we are told, *Revisiter Acle Marin na observat. a decis. 552. No. 3. vs. et ita*, which is said to have been determined before the learned *Capic. Galior, ut ibi.*

Et ita per Regiam, &c.

WHICH decision was confirmed by the opinions of *Cust. Feud. p. 2. Cap. iii. No. 112. mauran de Contrab. q. 6. No. 18.* Therefore there is no place privileged whose immunity can screen an offender who commits a crime in it. *Ord. L. 3. F. 5. §. 2.* Nor can any conclusion in favour of the argument be drawn from the 1 §. of the same law, whereby it is enacted, that the crime shall be considered as consummated whenever gold or silver is found hid in bales, hogsheds, pipes, barrels or cases, jointly with other things and merchandize, in order to be carried away; for this in no wise regards money that is not hid or covered by other things or merchandizes; rather the words of the Statute in this Section, by limiting its general sense, fixes in what manner it is to be understood.

FOR in this particular instance the law determines, that the crime be looked upon as consummated, and the intention as plainly made out, although the things in which the money is hid be found before embarked, *ut ibi.*

Notwithstanding that the said bales, &c. be still out of the ships, boat, barks, &c.

It is therefore necessary to distinguish between money hid in such manner as that from the appearance of the thing that covers it, it cannot be known to contain money, and between money packt up by itself in such manner as to leave no doubt of it from the appearance of the parcels. In the latter case, where the money is not hid or covered by other things, the Statute says, that the crime of exporting it shall be deemed consummated as soon as it is embarked, and not before: but when it is conveyed, hid and covered in bales of merchandize, or barrels of wet or dry goods, as they cannot be seen to contain money, the law directs that the crime shall be considered as consummated, notwithstanding the bales, &c. may be found before embarked. And thus great difference must be observed between the adverbs "as soon as," *Latine quam primum*, and "notwithstanding that," *Latine licet seu atriem si ou quamvis*; the first relates to the money not hid, the latter, being its opposite, relates to that hid or covered; and therefore to confound one with the other, and make use indifferently of either, shews a bad argument and worse judgment, and is a precedent of the most pernicious nature.

THE Exchange and the Custom-house, where considerable payments are made, are near the Quays and landing-places where boats lie; here large sums are received and payed by merchants of all nations,

(29)

and here Captains of ships receive freights and bills of exchange to a considerable amount: if it exceeds a certain sum it cannot be carried in their pockets without great inconvenience, and even in such case the person on whom it is found may be seized, under pretence of his intending to export it, being found near the landing-places where several boats are lying.

THE Statute is wisely directed, but the Plaintiff was not found with the money hid or covered by goods or merchandize. It is not customary to carry it openly: the making it up in parcels is a commodious way of conveying a larger sum than can otherways be carried: its being in canvas slings hanging from his shoulders was a like precaution for his greater ease in walking.

It is possible that this might have been designed to export, and perhaps the appearances are such as are usual on the like occasions; but arguments drawn from the possibility of a thing, or from trifling appearances, are never admitted as conclusive.

FROM the whole of which, and from what offered in the pleadings, p. 94. and the embargoes, p. 130. supported by those, p. 144. agreeable to law, to fact, and to established precedents in the like cases, the first sentence being the illegal one, of which a reversal is here prayed, will, it is hoped, appear just and reasonable on which it may be granted.

MAY

MAy it please your Majesty to grant an *Alvara*,
or Decree of Revival in the ordinary way, that the
sentences here represented against may be examined,
and your Petitioner and his Lawyer exempted from
the penalties of the Statute.

And he, as in duty bound, &c.

Signed,

JOHN CARLOS MORAO PINHEIRO.

TO THE RIGHT HONOURABLE
THE EARL OF KINNOULL,

His Majesty's Ambassador Extraordinary and Plenipotentiary at the Court of Portugal.

May it please your Excellency,

THE Consul General, and the Committee appointed to confer with your Excellency, having frequent application made to them from different Members of the British Factory, to implore your Lordship's indulgent attention to various points whereby they daily suffer, in discharge of the trust reposed in them, are in duty bound to lay before your Excellency several grievances to which the British subjects are exposed, by disattention to the Treaties, in manifest prejudice of their commerce.

THE fifth article of 1654 is so explicit, and makes such judicious provision for the security of their debts in cases of confiscation by the Court of Inquisition, that, it might be presumed, from the clearness of the expression, the sense could be subject to no misinterpretation, and that the effects of the delinquents should irremissably be in the first place

place appropriated to the payment of their debts; but the practice of latter times too plainly evinces the contrary. This is so clearly illustrated in a Memorial addressed to the Committee (which they take the liberty of presenting to your Excellency) that they have only to confirm the facts, and to adjoin some certificates in proof of these unjust measures, to make appear that these proceedings, in these cases, are far from being conducted with lenity and justice, in deference to the treaties, as was formerly practised.

THE *Junto de Comercio* or Board of Trade, of late years established upon principles contrary to the antient laws of this kingdom, and the privileges conferred on foreigners who reside here, must be productive of the most pernicious consequences; it tending to deprive the British subjects of great part of the large capitals due to them from those of his Most Faithful Majesty, by granting protections upon all occasions to such of their debtors as are disposed to claim it, stopping the execution of all sentences issued by the Judge Conservator, debarring them from making any attachments for the security of their debts, and obliging them to acquiesce to whatever dividends the said Board may in future distribute from the effects, which the bankrupts are pleased to deliver in as the remainder of their capitals.

By these means the British Merchants are arbitrarily compelled to submit to the sentences of this new Tribunal, and to behold general acquittances
given

given to their debtors, in open violation of the thirteenth article of the Treaty, wherein is expressed that

“ They shall not be hindered by any permits or
 “ protections to be granted by the King of
 “ Portugal to his subjects, or others frequent-
 “ ing his dominions, from recovering their
 “ debts; but they shall have a right to sue any
 “ man to justice for the recovery of any just
 “ debt, although he be sheltered under the
 “ patronage or protection of any person what-
 “ soever, or secured by any Alvara, or whether
 “ he be a farmer of the revenues, or invested
 “ with any other privilege.”

It is remarkable that, since the establishment of this tribunal, only some trifling dividends have been made among the creditors of the bankrupts, and that in these cases such proofs of the debts are demanded as are frequently impracticable to be given; since even bonds of the debtors, confessed by themselves or attested by a publick notary, are deemed insufficient, without an addition of such witnesses as the Members of that Board are pleased to require.

ROYAL letters of favour, which of late years we have had frequent instances of, furnish another cause of complaint, being derogatory to the tenor and spirit of the Treaties which give the British subjects full scope to demand their just debts in opposition to all protections whatsoever. These royal

letters, termed *Moratorios interinos*, suspend all prosecutions during the debate in the King's Council, whether or no they shall be carried to a further extension; and this consultation frequently taking up several years, the creditors are debarred during that interval from pursuing the common course of law, towards securing their debts; or for a still farther term of years, in cases where his Most Faithful Majesty complies with the request of the party by granting a formal *Moratorio*. These letters ought by no means to be prevalent, in regard of debts due to British subjects, seeing that by the seventh article of the treaty there can be no appeal but to the *Relaçam*, there to be determined in the space of four months.

In a separate article of the Treaty it was plainly stipulated, that the duties on all goods of British manufacture should at no time exceed twenty-three per cent. on favourable valuations, according to the Custom-house book of rates, nor those valuations be ever altered without mutual consent; to which end the Consul General should chuse two merchants to examine whether there be any just grounds for such alterations. This, it is plain, is wholly disregarded. The advance of the duties to twenty-seven per cent. verifies the failure of one part of it; and the extraordinary rise in the present rating of the goods is too notorious to admit the least doubt of the breach of the other. The old book of rates has been, for some time past, totally suppressed, and the estimate of goods left to the wanton determination

mination of the officers, who are become as well parties as judges, since by a late institution Custom-house salaries have been superceded, and in lieu thereof a certain proportion of the actual duties were appropriated to their payment.

As therefore an enhancement of duties is an increase of the officers income, they extend to the utmost a mercenary power upon which there is no reasonable check ; and as the British manufactures were before rated proportionally higher than those of other countries, they can less bear these advances, and consequently their consumption in this kingdom must gradually decrease.

THE several articles prohibited by the pragmatics law affords one glaring instance of the present schemes, to reduce the commerce from Great Britain to Portugal; as does the particular decree to suppress the use of British tanned leather another: But it would be endless to enumerate to your Excellency the various measures which have been of late years propagated with that view.

THE numberless innovations made of late years in the charges upon shipping, is a very great discouragement of the British navigation to this kingdom. The twentieth article of the Treaty regulates how that ought to be governed in the following manner :

“ THE people and merchants of the Republick

“ of England, who frequent the dominions

F 2

“ of

“ of the King of Portugal, upon account of
 “ trade, or who arrive at his harbours with
 “ their ships, shall not pay for anchorage
 “ or other port charges, or other duties, or
 “ sums of money more than those which are
 “ customary to be paid to the King and Cham-
 “ ber of Lisbon; but if any ill custom should
 “ introduce others for the future, they shall
 “ not be paid.”

THE preceding article, it is apprehended, in di-
 rect terms restrains his Portuguese Majesty from
 levying any additional charge on British ships, fix-
 ing at a standard for futurity what was paid in
 1654; and notwithstanding, such accumulations
 have from time to time been made, that the port
 charges are now become double what they were at
 that period.

Some Principal Instances are:

THE imposing a new tax of two hundred reis
 per ton on every ship, under the denomination of
 light money, only when they return out fully laden
 with the produce of the country; in which case this
 exorbitant impost is mitigated to fifty reis per ton.

THE charge of one million five hundred reis on
 every vessel, as well small as great, by way of
 raising a salary for the members of the Board of
 Trade. And

To

To these might be added several smaller appointments to officers, and emoluments claimed by them, to the perpetual harrassment and burden of trade.

IT has till very lately been a standing custom with such ships as touch at the port of Lisbon for orders and informations of the state of markets, to suffer them to return out again in the space of twenty-four hours, without any charge, agreeable to the expression in the second article of the Treaty.

“ AND with the same liberty to depart from
 “ thence with their goods and merchandize,
 “ and all other things whatsoever, either to
 “ their own or foreign countries, as they shall
 “ think fit; and that without any hindrance
 “ or impediment.”

BUT this is now obstructed, and *Franquias* must be taken, which besides creating a heavy charge, generally causes a considerable delay, and frequently a reduction of price upon the cargoes at the markets where they are forwarded.

THE proceedings of the Health officers appointed by the Senate to inspect into the quality of provisions, though the last grievance mentioned, is not the least in importance. The seventeenth article of the Treaty speaks very clear to this point.

“ IF it happens that any controversy does arise
 “ between the said King’s Inspectors, Officers or
 “ Ministers,

“ Ministers, and the said Merchants, concerning
“ the goodness of fish or any other sorts of
“ provisions whatever, which shall be carried
“ to any of the said King’s dominions, the
“ same shall be determined by the arbitration
“ of good men, provided they are Portuguese,
“ who shall be equally chosen by the Magi-
“ strate of the place and the Consul of the
“ English nation, and they shall determine the
“ business in such manner, that no damage
“ may accrue to the owner in the mean time
“ while the matter is in dispute.”

HOWEVER, it is not attended to, and the persons employed in this office assume the whole authority to themselves, adjudging without appeal, fish, corn, &c. to be cast into the river as corrupt; raising their emolument upon the ruin of the proprietors, as their sentence, however it be unjustly given, is always attended with fines and fees, from the person they condemn, to the officers benefit.

THE Consul General and the Committee, in this and their preceding Memorials, having offered to your Excellency’s notice the heads of the principal grievances, which have gradually encroached upon the national Treaties, humbly flatter themselves that what they have had the honour to represent will sufficiently demonstrate the justice of their complaints.

THEY have endeavoured, as much as possible, to confine themselves to a plain narration of un-
doubted

doubted facts, convinced that such must carry full weight before a candid Judge, of extensive knowledge in the laws and interests of commerce. The indulgence shewn by his Majesty in graciously attending to the remonstrances of the Factory, his royal wisdom apparent in selecting your Lordship for his Representative at this Court, and the assurances which your Excellency has been pleased to give of employing your efficacious good offices towards obtaining proper redress, incite the most sanguine hopes of speedily seeing the British rights firmly re-established in this kingdom, as a shield to the property of every individual of his Majesty's subjects connected with it; and that the British commerce, now languishing under the present restrictions, may again revive, and continue to Great Britain those useful supplies which must ever render it an object worthy of national regard.

Lisbon, September 10, 1760.



A R E.

A REMONSTRANCE relating to the Prejudice arising from the Establishment of Companies, for carrying on the Brazil Trade. Presented to the Right Honourable the Earl of KINNOULL, his Majesty's Ambassador Extraordinary and Plenipotentiary at the Court of Portugal, May 24, 1760.

THE erection of trading Companies, from hence to the Brazil, must necessarily produce the most destructive consequences to the British Commerce, not only by diminishing the export of our manufactures, but also by lessening the import of the coin of Portugal into Great Britain.

THESE Companies have solely the permission and privilege to supply the Brazils, and some of the Directors have openly declared, that their views and designs are to prefer the exportation of the commodities of their own country produce, which consequently must find a sale, when no other goods are in competition with them, either in quality or price.

To this end they are encouraging and establishing several new manufactories, making new laws to prevent the exportation of wool (obliging the farmers to sell at a low price to the clothiers) tempting foreign artificers to enter into their employment, and aiming at all methods to render this country less dependent on a trade with other nations.

As yet there have been but two Brazil Companies established, one for *Maranhão* and *Grão Pará*, the other to *Pernambuco*.

THE *Maranhão* Company was established in the year 1756, with a capital stock of one million two hundred thousand cruzados: no dividend since the first institution has been made, and it is generally believed, though their *Cacao* sold the last voyage to great advantage, that by ill management, usual to most Companies, their stock is considerably diminished.

BEFORE the erection of this Company the trade to *Maranhão* was in a most flourishing condition, annually employing at least fifteen or sixteen ships, which number is now reduced to three or four.

THE *Pernambuco* Company has been but lately established; the capital proposed to be raised by subscription is to be three million four hundred thousand cruzados, which sum is not yet complete, the greatest part of subscriptions hitherto, having been made in shipping, the owners not having any other employment for them; and as for the monied merchants, few have subscribed but such as have been powerfully prevailed upon, &c.

THE trade and navigation to *Pernambuco* is much more considerable than that to *Maranhão*, for the last fleet from thence consisted of 45 ships fully laden with sugars, hides, red wood, some gold, &c.

AND if this Company proves as unsuccessful as that of *Maranbam* (as it probably will, and is expected to be) the consumption of our British manufactures must also considerably lessen and diminish in that part of the Brazils.

THE formation of a third Company to the *Bahia* is also projected; some say it will be put off for another year, not to interfere with the *Pernambuco* Company till the stock of that be compleated. This Company will require a very large capital; but infinitely greater must be the stock of a fourth Company designed and projected for supplying the *Rio de Janiero*, the mines, &c. in that part of the Brazils.

THE trade to all the settlements in the Brazils, if not entirely, has chiefly been carried on by the credit that the foreign nations have given to the Portuguese merchants, particularly by the English: so soon as their private traders are excluded from a continuation of their commerce and only way of livelihood, by the establishment of these Companies, no payment of debts owing for goods sold at credit, can from them be expected, but will infallibly be lost, though the Companies should be of short duration.

A GREAT capital is outstanding in the Brazils, mostly due by the merchants at the mines to merchants at the *Rio de Janiero*, *Bahia*, &c. and to factors for goods bought upon credit in Portugal by the Portuguese merchants and sent to the Brazils, adjusted to be paid at the return of the fleet belonging

ing to the place where they are sent to, which agreement is seldom complied with, and the foreign merchant is satisfied with receiving half or even a third of his debt by the first fleet, and does not think it very bad pay if he receives the whole at the return of the third fleet.

EVERY person in business here is sensible, that generally when the Brazil merchant or factor, upon the arrival of the fleet, receives the money sent him by it, he goes to his foreign creditors, to see if he can have the assortment of goods he wants; that if he does not find with them the said assortment, or farther credit, he carries the money to other foreign houses, and there buys the goods he may have occasion for, and gets credit by giving in part of payment the money due to his former creditors.

IN the same manner when the merchant from the mines comes to the *Rio de Janiero*, &c. and finds that his creditors cannot give him the assortment of goods he wants, he goes to the house of those who can supply him, and instead of paying to his former creditors the money he brings, pays it to those who sell him the assortment, and by this means gets credit for what he had not money to discharge.

BY forming these companies, the Brazil Merchants, who owe the greater part of the money due to them at the mines, will be excluded that trade, and by not being able to supply the Merchants there with goods as usual, they will lose the said debts, as

the Merchants at the mines will keep their ready money to buy goods, and obtain credit from the Companies, and by the loss of the Brazil Merchants debts there, they will be rendered incapable of paying the foreign Merchants here.

It is computed that the produce of the three fleets from each of the places in the Brasils they are bound to will not pay the sum that is due to foreign nations ; so that suppose the Merchants at the mines can be compelled to pay their debts, how is it possible for these Companies to carry on such an immense trade without receiving ready money, until these debts are discharged by the said Merchants : it is therefore evident that the intention of forming these Companies is purely to deprive the foreigners of the vast sums due to them, and to sell goods in the Brasils for the ready money, which ought to be remitted here to pay the said foreign creditors.

THERE are very few wealthy Portuguese, of whom the greatest part owe much more than their capitals to the strangers ; so it is plain that the subscriptions into these Companies must be made with the money due to the said foreigners, and that it is manifest injustice to make these subscriptions without first paying their debts ; and until they do honestly pay their debts, we may justly say they make Companies with foreign capitals.

SOON after the erection of their intended Companies, they threaten us that they will settle in every
city

(45)

city and town of trade in England Factors of their own to supply their Companies with goods at first hand, which if effected will entirely change the circulation and channel of trade from the hands of British subjects to Portuguese, and consequently we shall be deprived of the great advantage of our commission business, and other profits that arise from the sale and purchase of our commodities, which to the British importer, upon an average, may amount to 12 or 15 per cent. and it cannot be supposed that the Company will pay this advance when they can have their goods directly from England, and upon their own account, consequently Great Britain must annually lose the said 12 or 15 per cent. the profit made by the British importer. Such an alteration will be extremely hurtful to our navigation; the trade being entirely carried on by the Portuguese, they will without doubt employ their own ships; and also must of course be attended with two certain prejudicial consequences, viz. It will force the major part of the British Merchants and Factors now residing in Portugal to leave the country, and will extremely influence the price of our manufactures in Great-Britain, when the multitude of buyers and traders are so reduced, and the whole trade to Portugal confined, and only carried on by a few Portuguese Factors settled in the trading cities of England.

WE trusted the subjects of the King of Portugal in full faith that the trade would continue free, and be carried on upon the same footing as it was at the time we gave them credit; let them pay us our debts;

debts; and leave it to our option, whether we will carry it on under the new regulations; but to invite us, under specious appearances, to sink a large capital in a trade, and then lay a dead weight on it, is highly unjust, and greatly prejudicial to the interest of Great-Britain.

A COMPANY will not take off the same quantity of goods as is expended by a free private trade, for it is by its charter engaged in many heavy expences, that the trade hitherto has been exempt from, and consequently must import goods into the Brasils considerably dearer than the private trader. This is a circumstance that we know by daily experience lessens the consumption of goods, as when dear much fewer are expended in Portugal: besides, it will be more advantageous for the Company to make as large profits as they can with the smallest outsets; whereas the private trader will carry on business for one half, nay one third of the profit, and try to make it up by running off a large quantity of goods.

AN exclusive Company is to be looked on as a single buyer, from whence arise the following inconveniences.

Company Will make their own prices for the goods they purchase here, well knowing that as we have no other vent or market for them, we must in the end let them go on their terms.

Free Trade We have the choice of our debtors; if one man will not buy, another may, consequently

we

we are not obliged to let goods go at the low prices, to be feared the Company will purchase at.

Company Will keep up the prices of their goods in the Brasils, where they intend to import barely the goods necessary for the supply of the place, their scheme being with a small outset to get large profits.

Free Trade Will undersell, and be content with half the profit on double the quantity of goods; a point extremely necessary to be considered, both as it expends more of our manufactories, and employs more shipping.

Company We have no farther security for the goods delivered to the Company than to see that an entry is made of them in the books, nor can we oblige the Company to pay at the time fixed.

Free Trade We have bonds in proper form from our debtors, and in case of failure we have it in our power to sue them when we think proper.

Company Their capital, by the connivance of the Directors, may be applied to certain private uses, not considering that it is in fact the capital of foreign Merchants who have sold their goods on credit to the Company; it is said the Directors of the *Maranham* Company have secretly applied a considerable sum, for which reason no dividend has hitherto been made, notwithstanding that Company has now been established above four years.

Free

Free Trade We have not our whole capital shut up in the hands of a single debtor, for if one debtor does not pay us, another may, so our money is continually circulating; besides the substance of a private Merchant cannot in a private manner be secretly applied without his knowledge and consent.

Company For payment of our debts we must either purchase goods at the Company's public auction (which will be of course at such times and seasons as suits their interest best) or wait till two or three months more are elapsed to give the Company time to receive money of their purchasers.

Free Trade We begin to receive the payment of our debts a month after the fleet's arrival; every private trader is desirous to pay the soonest he can, to recommend himself to the Merchant, in order that he may obtain from him a fresh credit.

Company We all know that the whole trading part of this kingdom is averse to these Companies, and that the Brasil Merchants in America are equally so; how then can it be thought that their establishments can be of a long duration, and if they once drop, what is to become of their debts, nobody being obliged to pay them, for the very Directors are obliged only for their stock.

Free Trade Every man is cautious and upon his guard, and if any of his debtors fail, it is but a
small

small part, whereas the oversetting the Company sweeps away the whole at once.

THE clandestine trade carried on by the Portuguese in the Brasils to the Spanish Colonies, so very advantageous and profitable to this nation, will also be infallibly lost, if their intended Companies take effect, who will not practise those methods by which private traders reap great profits, and generally make their fortunes. This trade takes off a large supply of goods, and brings considerable sums of silver in return to Europe in the Brazil fleets, which is chiefly re-shipped to England on board his Britannick Majesty's ships of war and packet-boats, consequently the consumption of British manufactures at Buenos Ayres, and in the Spanish settlements adjoining to the Colonia do Sacramento in the river of Plate, will be considerably lessened and diminished.

THE heavy expences of the Company will greatly enhance the price of their goods imported in the Brasils, and in a just proportion the produce of that country ought to be raised in value, and in this case the prices of sugar, cocoa, &c. will be so high, that the foreign markets of Europe will be supplied at a much cheaper rate by other nations. But it is expected that the inhabitants of the Brasils will be obliged to buy the Companies goods at the high prices which must be fixed on them to secure a profit, and that the inhabitants will be forced to take the low prices offered for their sugars, cocoa, &c. that the Company may be enabled to dispose of

H

them

them without loss, for other countries of Europe, which terms the people there must inevitably comply with.

By these methods the industry of the said people will be so much discouraged, that the produce of that country will daily decrease; and this is already confirmed by what has happened at Maranham by the above methods pursued there, so that the consumption of European goods will decrease in that country in the same proportion with their trade.

By the treaty with Oliver Cromwell, it is expressly stipulated, that the trade to the Brasils shall be general and free; in short, if these Companies are suffered to be erected, and their present designs put into execution, it must and will inevitably reduce the ballance of our trade with this kingdom to a par, and exchange of one commodity for another; consequently it will put an entire stop to all exportation of gold from hence, especially if the importation of their diamonds be permitted into Great-Britain.

We likewise beg leave to observe that all their present schemes, breach of treaties, and innovations (so apparently levelled at our destruction) do not proceed from any inveteracy of the generality of the Portugese to our nation; far from it, for in general they esteem the British subjects.

THE erection of exclusive monopolizing Companies is expressly contrary to several of the sub-
sisting

fitting treaties between this kingdom and Great-Britain, viz.

Article 2d of CROMWELL's Treaty.

By this article it is agreed that the subjects of each nation shall have entire liberty of going to all ports and dominions belonging either to Great Britain or Portugal, and there to reside and trade, if they think proper, without ever being obliged to take out any license general or special for that purpose.

By the 3d Article of ditto,

It is expressly stipulated that we shall not be obliged to buy of monopolists, nor at fixed prices, paying only the duties of March 1653-4.

The 10th Article of ditto

Is very full in regard to granting us the liberty of a free trade with the subjects of the King of Portugal.

By the 11th Article of ditto,

Which relates wholly to the Brazils, we have clearly and expressly full liberty to go into any of their ports in those settlements with our ships, and if we think proper, there to live, trade, and inhabit.

By the treaty between the two crowns, concluded on the marriage of Queen Catherine, all former

treaties with our privileges were fully ratified and confirmed, only with this restriction, that not more than four British families shall be allowed to reside in each place or conquest in the Brasils, but there is no restriction of our going thither with our ships to trade, if we think proper.

*By an ALVARA or Royal Decree dated
4th July, 1657.*

THE 10th and 11th articles of Cromwell's treaty are expressly ordered to be observed.

*Arguments in favour of Exclusive Companies fairly
stated and answered.*

I. THAT his Most Faithful Majesty has an undoubted right to lay the trade in his own dominions under what regulations he thinks proper, being obliged by Treaty only to suffer throughout his dominions the free sale of English goods, in which he no ways circumscribes the British merchants, there being no law to hinder them from selling their goods to any person that will buy them.

A N S W E R.

TO confute the first part of the above assertion, it surely will be sufficient to appeal to the judgment of any person who has read the Treaty of 1654, between the two Crowns, which gives the subjects of Great Britain the most ample right to a free trade in Portugal, and its dominions, which right we have sufficiently made appear, and whether we ap-
peal

peal to the letter or the spirit of the Treaties, an ample trade, free from any limitations whatsoever, either in buying or selling, is granted to the subjects of Great Britain throughout the dominions of Portugal, any *subsequent* laws, regulations or decrees to the contrary notwithstanding.

It therefore plainly follows,

THAT his Most Faithful Majesty has not a right to lay the trade in his dominions under what regulations he thinks proper, when such regulations interfere with his *prior* engagements with the Crown of Great Britain. But in order to give the argument in support of his Most Faithful Majesty's right, the most impartial and fullest scope, we will here observe, that in the second article of the Treaty of 1654, which gives us the liberty to a free trade in Portugal and its dominions, there are these words, viz.

“ Saving however all Laws and Statutes of each
“ place.”

By which can be meant only the Laws and Statutes in force at the time that the Treaty was concluded.

FOR to admit in his Portuguese Majesty a right of establishing from time to time such Laws and Statutes, as may appear convenient to him, no one article of our Treaty can be binding, which defeats the very end and purpose of it, and indeed gives an opening to evade the most solemn engagements.

In

In Answer to the Assertion,

THAT his Most Faithful Majesty is obliged by Treaty only to suffer throughout his dominions the free sale of English goods, in which he no ways circumscribes the British Merchants, there being no law to hinder them from selling their goods to whomsoever will buy them ;

We shall only beg leave to observe,

THAT it is a meer evasion, for the Treaty that stipulates our right to a free trade, can never be supposed to leave the Kings of Portugal a liberty of prohibiting their subjects buying our goods, when they acknowledge in us a right to sell to any person whatsoever.

THIS would indeed be admitting our woollen manufactures into this kingdom, to the greatest prejudice and disadvantage of Great Britain, which can never be supposed was the intention of the Treaty.

UPON the whole therefore it is manifest, that the new regulations lately established in Portugal, and particularly that of confining the Brazil trade to Exclusive Companies, are directly contrary, both to the letter and spirit of our Treaties.

THEREFORE,

THAT his Most Faithful Majesty, agreeable to his engagements with the Crown of Great Britain, has not a right to enforce their observance.

AND

AND in order to prove the right of his Most Faithful Majesty to make what regulations he thinks proper in his own dominions, it is said :

THAT the Treaty of 1654 is looked upon to secure reciprocally to the subjects of the contracting parties, the enjoyment of those rights and privileges claimed by us in virtue of it. Whereas it is well known, that the subjects of his Most Faithful Majesty are not allowed in England many of the advantages granted to those of Great Britain in Portugal, which is deemed a manifest violation of this Treaty, and as such leaves his Most Faithful Majesty at liberty on his side to make what regulations he thinks may best promote the interest of his kingdoms.

In answer, we shall observe, that the Treaty of 1654, does not reciprocally convey to the subjects of both nations the same rights and privileges as may easily be seen for though it is true that the *second article* gives to all Portuguese subjects the same *right* freely to trade in the dominions of Great Britain, that is granted to Englishmen in those of Portugal; yet it is to be observed, that this right to the Portuguese is by the same article confined

“ To those places in which there is at present,
 “ or has been, commerce in times past. And
 “ that without any *hindrance* or impediment,
 “ saving however, all the Laws and Statutes
 “ of each place.”

AND

AND this was so clearly understood at the making of the Treaty, that the third, tenth and eleventh articles were added, whereby is granted specifically to the *British subjects* in the dominions of Portugal, not only in Europe, but in every other part of the globe, *free from any confining clause*, the strongest *right* to carry on the most ample and extensive trade, both in buying and selling: but it is no where said the Portuguese shall enjoy the same in the dominions of Great Britain. And it is observable, that where this Treaty is designed to convey a reciprocal benefit to both nations, it is clearly and plainly so expressed in the particular article.

THEREFORE,

THE best confutation of this argument is the Treaty itself, whereby it manifestly appears;

THAT the *subjects of Portugal* have no *right* to a free trade in the dominions of Great Britain, except

“ In such places where (at the time of concluding the Treaty) there actually was, or had
“ been commerce in times past.”

And farther:

THAT many other privileges *granted* to the subjects of Great Britain in Portugal, do not extend to those of his Most Faithful Majesty in England; indeed many of them would be found useless there, for *England* is the land of liberty, and needs no provisional

visional clauses in Treaties to secure to every dweller in it, whether native or foreigner, those *blessings* of which it was necessary to stipulate the grant to us in Portugal.

THE second argument in favour of Exclusive Companies in Portugal, is, That this establishment no ways affects Great Britain, as a nation, it being indifferent whether its manufactures are introduced into the Portuguese colonies by exclusive Companies, or by private traders, provided that the same quantity be exported from England, as it is affirmed will be the case.

IN the foregoing pages, we have plainly demonstrated the absurdity of this assertion, and sufficiently proved that the natural tendency of these Companies is highly and essentially prejudicial to Great Britain, as a nation.

From these Considerations,

1st. WE have observed, that they will render the receiving our old debts, not only precarious, but in some measure *impracticable*.

2dly. THAT this establishment will lessen the amount of our imports into Portugal.

3dly. THAT it will give the Portuguese an opportunity of purchasing our goods on their own terms, and by oversetting the body of British Merchants,

established in Portugal, a large sum, their annual profit, will be a dead loss to Great Britain.

4thly. WE have also proved that their *Establishment* will decrease the exportation of bullion from Portugal, and reduce many other profits here too tedious to enumerate; and therefore now only beg leave to observe, that commerce is of a nature too delicate to bear any great revolutions, for, as with liberty it flourishes and improves, so under restraints it generally grows languid and falls to decay.

WHEN business is collected into united bodies, either the purchaser or vender will have it in their power to make their own terms; if the buyer prevails, the prejudice is obvious; but admitting the seller to gain the ascendant, still the advantage will be equal to Great Britain, as a nation; for the overrating our manufactures will give encouragement to those of our neighbours, who are upon the watch to improve every opportunity for their introduction, and they have the advantage of lower valuations in the Custom-house to pay the duties on, than the British Merchants.

The third Argument in favour of Exclusive Companies, is,

THAT our effects will be safer in the hands of a Publick Company, and that the foreign merchants by trusting a set of private traders of no capital, have contracted many bad debts, which they have not the least prospect of recovering.

(59)

NOTWITHSTANDING the above assertion, we can with great truth assure your Excellency, that we verily believe that the debts lost by trusting private traders, have not amounted to above one and a half per cent. on the sales, double of which sum we would cheerfully allow to have a number of purchasers for our goods, instead of being confined to sell only to a Company; well knowing, as must every person concerned in trade, that we shall find a much more considerable difference in the prices of our goods, when we are once left to the mercy of a single buyer.

WHAT security have we for our money in case the Companies should be of short duration?

SUPPOSE the next Prince who ascends the throne of Portugal should dissolve these Companies, what is to become of our debts, and to whom is Great Britain to apply for the property of her subjects?

WE cannot compel these Companies to pay their debts, with the same facility as we can sue a private merchant.

BESIDES, we are deprived of one thing very necessary to be observed by every man in trade, the caution of dividing our risks.

IF a private trader fails, he carries off but a small part of our fortunes, but the fall of a Publick Company sweeps away the whole at once.

BUT to prove beyond a contradiction the fallacy of the arguments used in support of Exclusive Companies, and that they are calculated to blind those persons who are not versed in trade; let the question be fairly put to the whole body of British Merchants residing in Portugal,

Whether they chuse to have the Trade carried on by Exclusive Companies, or by private free Merchants?

AND it will appear, that not above three or four of that numerous body will vote for Companies, who, perhaps, either from some private connexions with the Court of Portugal, or from views of getting the commission to purchase in England the Companies' assortment of goods, may be induced to differ in sentiments from the rest of their community.

The fourth Argument in favour of Companies.

THAT we should not complain before we are aggrieved, and that all our present clamours are only founded upon meer suspicions and apprehensions.

ANSWER.

THAT complaints should not be made without a cause, is not to be disputed; but they seldom start without some foundation: it certainly is prudent to ward against a depending blow or evil; the man that waits till it crushes him, deprives himself of the power of seeking a remedy.

IT

It has artfully by some been suggested, that Great-Britain has broke through the treaty of 1654, and 1703 particularly, by increasing the duties in England on Portugal wines.

A N S W E R.

THE second article of the treaty of 1703, to which we refer, certainly will justify us in raising the duties on Portugal wines, provided that the duties on the wines of France are increased one-third in proportion more than on the wines of Portugal, which it is well known has constantly been complied with; and that when the duties were raised in England, that proportion was strictly attended to, and justice done to this kingdom. The preference and favour on our part to Portugal have always been maintained, whilst we unfortunately can boast of neither at the Custom-house of this city.

BUT lest any doubt should remain, we shall here mention a case in which we are also said to have violated the treaty of 1654, viz.

BY the frequent Acts of Parliament that have from time to time increased the duties on foreign commodities imported into England, when in the secret article of this treaty, it is said, that the subjects of Portugal shall pay the taxes and duties newly settled in May 1654.

In answering this we should be glad to have found some particular instances mentioned, to prove that the duties on the produce of Portugal (wines excepted) have been raised since the date of the treaty.

But supposing it has been done, we do not see how it will appear from the tenor of the article, that we have not a right to increase these duties, or even to lay on fresh ones. Let the article be carefully and impartially examined, it is verbatim as follows:

“ AND the above-said inhabitants of the said
 “ kingdom (of Portugal) trading in the
 “ dominions and lordships of this Repub-
 “ lick, shall pay the present taxes and du-
 “ ties as they are newly imposed and settled
 “ in this present month of May, 1654, ac-
 “ cording to the usance and laws of the
 “ place, both parties observing the laws
 “ and statutes of each place respectively.”

By which it indeed appears, that the Portuguese are to pay the duties and taxes of 1654, but it is neither said, nor, as we can find, implied, that they shall pay no others, which brings the argument on our side.

*We have farther to observe as a strong refutation
 of their assertion,*

THAT the crown of Portugal claimed the benefit of this treaty, *now said to be violated and
 set*

set aside by us, in the year 1735, when in virtue of it a powerful British fleet was sent to Portugal, and there continued twenty-two months, at the expence of a million sterling to the nation, to protect the trade and dominions of that crown.

THE rights of this treaty were farther claimed by his Most Faithful Majesty about the year 1750, when a petition was made to Parliament by the West-India Merchants, setting forth the prejudice arising from the importation of Portugal sugars into Ireland, and praying a prohibition of it, which was rejected, and the sugars continue to be permitted to an entry there, upon the representation of the Portuguese Minister, that the right to do so was founded on the treaty of 1654.

SOON after the great earthquake of 1755, the city of Lisbon felt the benefit of the treaty, *though not claimed*, by the humane and ready supply of the necessaries of life from the King and Parliament of Great-Britain, whose noble concern for the distresses of its ancient ally could not be more strongly expressed than by a free gift, which cost the nation one hundred and fifty thousand pounds sterling.

A LITTLE time after the benefit of this treaty was claimed by his Most Faithful Majesty, in order to obtain the liberty of exporting culm *duty free* from England to his own dominions, which was granted by the King and Parliament of Great-Britain, from the noble and disinterested motive of assisting to
rebuild

rebuild the capital city of our good friend and ally the King of Portugal.

THE benefit of this treaty has been claimed so lately as the year 1759, in an instance of a Portuguese ship called the Santo Antonio e Almas, Francisco Xavier da Costa master, from Nantes to Lisbon, taken by one of our privateers, and carried into Falmouth, where the cargo was condemned by a decree of our Court of Admiralty, as belonging to the enemies of Great-Britain, which decree was reversed by the Lords of Appeal, on the representation of the Portuguese Envoy in London, the treaty of 1654 being by them acknowledged a subsisting one, and in virtue of the twenty-third article of it, the ship and goods were restored; a privilege, it is well known, Great-Britain has very recently refused to the Dutch and other neutral powers.

WHEN their *claims* were made, no violation of the treaty was thought of, but its rights in favour of Portugal largely insisted on; from whence we beg leave to argue in our turn,

THAT since Great-Britain has, in virtue of treaty, so essentially complied with the rights of Portugal, his Most Faithful Majesty *is not at liberty* to make such regulations in his own dominions as any ways affect the rights and privileges of a British subject.

WHAT we have observed we hope will be thought a sufficient answer to a groundless notion industriously propagated in Portugal;

THAT

(65)

THAT the whole advantage of the subsisting treaties is on the side of Great-Britain, and that in fact Portugal receives little or no benefit from them.

OF late years a mistaken notion has also prevailed in England, that the trade to Portugal being so essentially beneficial to Great-Britain, should not be interrupted by mere punctilios, but that rather our right to privileges of little importance should be waved upon occasion, not to put the Court of Portugal upon a renewal of treaties, which we cannot expect would be so favourable to us, as are those under which we trade at present. This doctrine has been strongly inculcated in England to serve particular purposes; and to give it some weight, the Lisbon Factory was represented as a set of clamorous and obstinate people, who wanted they knew not what.

BUT now we have the satisfaction to find that the malicious intentions of such reports are plainly discovered and disregarded, his Majesty having been most graciously pleased to assure this factory of his royal support and protection in all its reasonable causes of complaint.

IT would therefore be an unpardonable neglect in its members, if the present innovations in Portugal were suffered to pass unregarded by them, and it is humbly hoped that this candid and impartial view of their situation in that kingdom will plainly evince,

K

that

that the new regulations lately made in its commerce are not confined to mere punctilios or privileges of little importance, but that they strike at the very root of our trade, and obviously tend to the destruction of a considerable body of British subjects, in whose support his Majesty's royal interposition and protection is most humbly implored through your Excellency's intercession.

AND we do assure your Lordship that we shall ever acknowledge with gratitude your Excellency's kind indulgence in permitting us at this time to lay before you our distressed state and situation in this kingdom, beseeching your Excellency to represent our case in the strongest and most favourable light to our Sovereign,

Who, we hope, will be most graciously pleased to grant us such relief as He in his Royal Wisdom and Goodness shall think fit.

TO THE RIGHT HONOURABLE
WILLIAM PITT, Esq.

One of his Majesty's principal Secretaries of State.

*The Memorial of Sir HENRY FRANKLAND, Bart.
Consul-General, and the Committee of British Mer-
chants, named by the Lisbon Façtory to lay before
the Earl of KINNOUL, his Majesty's Ambassador
Extraordinary and Plenipotentiary at the Court of
Portugal, all matters relating to their trade and
grievances,*

Most humbly sheweth,

THAT your Memorialists, in discharge of the trust committed to their care, have had the honour of representing to his Excellency the Earl of Kinnoull the many fatal consequences with which the British commerce in this kingdom is threatened by the establishment of Companies exclusively trading to Brazil; but find, from what his Excellency has been pleased to communicate to them, that he is not directed by his instructions to make any remonstrances to the Court of Portugal on this interesting subject.

K 2

YOUR

YOUR Memorialists therefore think it their duty, Sir, to lay the same before you, hoping that a plain and impartial account of the state of this trade, from persons deeply engaged in it, residing on the spot, and well acquainted with the genius and disposition of the Portuguese nation, will not be thought improper, at a time when its commerce undergoes so many alterations, in which that of Great-Britain appears to be nearly concerned.

AND as your Memorialists are sensible that a breach of treaty is the only solid foundation upon which a national complaint can be grounded, they humbly presume, in the first place, to inquire in what manner these establishments interfere with the treaties at present subsisting between the Crowns of Great-Britain and Portugal; from whence they hope to make appear,

THAT the establishment of exclusive Companies in this kingdom is no less a direct infringement of treaty, than it confessedly is a measure of the most extensive pernicious influence to the trade and interests of Great-Britain.

THE several articles of our treaties, on which we found our right to a free and uncontrouled trade in the dominions of his Most Faithful Majesty, are the 2d, 3d, 9th, 10th, and 11th of 1654, the 12th and 13th of 1661, and the 1st of 1703, of which your Memorialists beg leave to transcribe such extracts as
appear

appear material, making those remarks on each that naturally occur on a careful perusal of them, submitting, Sir, the whole to your consideration. The 2d article of 1654 stipulates,

“ T H A T there shall be *free commerce* between the subjects of the two Crowns, without any *hindrance* or *impediment*, favouring however all the laws and statutes of each place.”

IN which your Memorialists humbly conceive that the first thing to be considered is,

What can be termed *free commerce*?

To them the words seem necessarily to convey not only the liberty of offering goods for sale, but the same free leave for the Portuguese to purchase of us: for although it must be granted in case of any restriction on either, a commerce may still subsist between the two nations; yet most certainly this cannot with any propriety of expression be termed a *free commerce*, and much less can it be said to exist without *hindrance* or *impediment*.

To this perhaps it may be replied,

T H A T his Most Faithful Majesty has a natural *right* in common with every Sovereign Prince, to lay the trade of his own dominions under what *internal regulations* he pleases; and therefore that no treaty can be
sup-

supposed to limit this power where the interests of his people call upon him to exert it: His Most Faithful Majesty by treaty being only obliged to permit throughout his dominions the free sale of English goods, a point in which he does not circumscribe the British Merchant, there being no law in Portugal to *prohibit him* from selling his goods to whoever will buy them.

To which your Memorialists offer this plain and simple answer,

THAT the treaties were evidently concluded (nay in the 12th article of 1661 are expressly said to be concluded) to secure for every British subject the *full* enjoyments of the benefit of commerce with the subjects, and in the dominions of his Most Faithful Majesty, agreeable to which they specifically stipulate for us a *right* of carrying on there an ample trade, free from all restrictions whatever, either in buying or selling; the *full* enjoyments of which, is in fact the only thing that can render these treaties *beneficial* to Great-Britain in return for the many solid advantages Portugal draws from them. Now,

If by any regulations, whether *internal* or external, we are deprived of this benefit, it follows,

EITHER that the treaties are infringed; or, That the *benefit* we are to enjoy from them

(71)

them is left to be settled by such *regulations* as may suit his Most Faithful Majesty's convenience.

AND what those regulations are like to be appears from the one now under consideration, from the Wine Company at Oporto: from the increase of duties on our goods to 27, though by the secret article of 1654, they are never to exceed 23 per cent. from the pragmatick or sumptuary law, in which the importation of several English commodities is forbid: from the institution of the Junta de Comercio, or Board of Trade, whereby our right expressly stipulated in the 13th article of 1654, of suing all our debtors, is no longer allowed us: and from many others, equally tending to injure and discourage our trade here; from whence your Memorialists must draw this obvious conclusion.

THAT if we are in fact liable to all internal regulations here, then may every article of our treaties be superseded and rendered to us useles. Your Memorialists, Sir, cannot avoid observing the mischievous consequences of allowing his Most Faithful Majesty to prohibit any of his subjects from purchasing our goods by the evasive measure of not permitting their exportation to Brazil, unless by the Companies; for if this claim is founded on the treaties limiting our right to barely importing the goods for sale, then may his Most Faithful Majesty in plain terms prohibit all his subjects from buying English goods, which the treaty gives him the same right of doing,

as

as of confining these purchases to any particular body of them. It therefore appears to your Memorialists, that by our consenting at present to be hindered and circumscribed in the most valuable part of our *free commerce*, the trade to Brazil, his Most Faithful Majesty may establish a right to clog every branch of trade in his own dominions with such *internal regulations*, as may appear to promote the interests of his own subjects, however fatal they may be to those of Great-Britain, paying in all future regulations as little regard to the *benefit* we have a right to enjoy in his dominions, as has been shewn in those already referred to.

As therefore by the establishment of exclusive Companies trading to the Brazils, there can no longer be said to exist a *free commerce* without *hindrance* or *impediment* between the subjects of Great-Britain and Portugal; your Memorialists are humbly of opinion, that the 2d article of the treaty of 1654 is, by such establishment, clearly and manifestly violated.

THE 3d article of 1654 seems chiefly directed to secure for us,

AN unlimited right of purchasing and freely carrying away from the dominions of his Most Faithful Majesty all sorts of wares, goods, and merchandize, granting further to the subjects of England a liberty *as they please* to sell, traffick, &c.

UPON

UPON which your Memorialists have to observe, that as this article stipulates for us a liberty to sell and traffick *as we please*, they are humbly of opinion that we cannot be liable to any restrictions; for then in fact we shall have liberty to sell only as the *King of Portugal pleases*.

HERE it may be proper to compare this with a similar expression in the 12th article of the treaty of 1661, namely,

“ T H A T four British Merchants or Factors shall have liberty to reside in whatever places *they please* of his Most Faithful Majesty’s dominions in the East and West Indies.”

THE expression is precisely the same in both cases, but your Memorialists humbly conceive that it is not hereby intended to subject to the regulations of his Most Faithful Majesty the choice of those places in his dominions where our Merchants are to reside. Now the same construction given to the expression *as they please*, in one of these cases, is most certainly applicable to the other, from whence your Memorialists with submission take liberty to conclude,

T H A T if we have an acknowledged *right* to reside in what part *we please* of the dominions of Portugal, we then have the same *right* there to sell and traffick *as we please*, and in neither case are we obliged to do as the King of Portugal pleases.

L

THE

THE 9th article of 1654 is a repetition and a strong confirmation of the 2d, it stipulating,

“ T H A T the sales of our goods and merchandise shall not be *hindered or delayed*
“ for any reason whatsoever.”

Now if by the establishment of exclusive Companies here our imports into Portugal are diminished from what they were before such establishments took place, then does it plainly follow,

T H A T the sales of our goods and merchandise are *hindered and delayed* for some reason or other.

AND that the late adopted system of throwing the management of the Brazil trade into the hands of exclusive Companies does unavoidably tend to the lessening our imports into Portugal, it is thought cannot be denied, to which may be added, in support of this opinion, the fate of the Maranh Company, erected in 1755, when it employed annually fifteen ships, now reduced to three or four, and yet is still continued with a perseverance that distinguishes the present æra in Portugal.

As a farther confirmation of our imports lessening, by the establishment of Exclusive Companies, may be mentioned, that the first fleet sent by the new Company to *Pernambuco*, carried not quite $\frac{1}{4}$ part in value of the preceding one which went on
the

(75)

the general account. From whence may be inferred, that on the establishment of the *Babia* and *Rio* Companies (the former of which is soon expected to take place) what is now partly opinion, will make itself so thoroughly felt in Great Britain, as to leave no longer room for doubt.

THE 10th Article of 1654 is still more explicit on the subject of a *Free Commerce*, it granting us a liberty

“ Freely to carry all sorts of merchandize into
 “ the kingdoms, ports and territories of the
 “ King of Portugal, and sell the same at *our*
 “ *will and pleasure*, to any person whatsoever.
 “ — and we are not to be *prohibited*, *circumscribed* or incapacitated by the King, his
 “ Ministers, Monopolists, &c.”

WHEN your Memorialists read over this article, it almost seems to them that the present establishments were foreseen, and every possible measure taken to provide against them; for, “ If we are still at *our will and pleasure*,” and “ *To any persons whatsoever*,” then must his Most Faithful Majesty’s preventing even a single person buying of us be deemed a direct infraction of this article of the Treaty, and much more so when this embarrassment extends to far the greatest part of the Portuguese nation.

YOUR Memorialists are sensible, Sir, that the British subject is not literally *prohibited* from selling his
 L 2 goods

goods in Portugal to whoever will buy them ; but if words are allowed to convey a determinate meaning, he is therein manifestly *circumscribed*, and that by *Monopolists*, contrary to the precise express words of this article.

It is true that we are not yet wholly *incapacitated* from vending our commodities in Portugal, but in the humble opinion of your Memorialists, the erecting Exclusive Companies tends so directly to curtail our trade as a nation, and to lessen our profits as individuals, that it is easy to foresee we shall by degrees be totally incapacitated from pursuing this commerce, so essentially beneficial to the trade and interests of Great Britain.

THE 11th article of 1654 gives us the most ample *right* freely to trade and traffick to and from Brazil and the other dominions of his Most Faithful Majesty in the East and West Indies.

To which may be added, that

THE 12th and 13th Articles of 1661, besides the foregoing, grant a liberty for four English Merchants or Factors to reside in each city there, in order as the 12th Article expresses,

“ That we may more fully enjoy the *Benefit of*
 “ *Commerce* in *all* the dominions of the King
 “ of Portugal.”

HERE,

(77)

HERE, Sir, your Memorialists beg leave to observe, that no part of our right is more clearly expressed and settled by Treaty, than this of trading to and residing in Brazil: and yet, upon a careful perusal of the Treaty, they no where find it expressly said that his Most Faithful Majesty shall not prohibit his subjects in his American dominions from purchasing our goods.

IT therefore follows, that he has the same right of extending these prohibitions to Brazil, as of laying them on in Europe; from whence this most obvious conclusion presents itself.

THAT if the particular articles of the Treaty, by which we hold the *right* of trading to, and residing in Brazil are so clearly expressed, as that in consequence of them the subjects of Portugal cannot be prohibited from *freely* purchasing our goods there, no more can they by a parity of reasoning be prohibited from doing the same in Europe; the right to both being, as far as your Memorialists can see, equally well and clearly expressed: from whence, it is hoped, they may ultimately conclude, that, in fact, his Most Faithful Majesty, agreeable to Treaty, has not a right to prohibit or embarrass either.

The first Article of 1703, says,

“ THAT the woollen manufactures of Great Britain shall be *admitted* for ever hereafter into
 “ Portu-

“ Portugal, as was accustomed, till they were
 “ prohibited by the laws.”

YOUR Memorialists think they may venture to say, that by right of Treaty wines of the growth of this kingdom are not understood by the Portuguese to be barely *admittable* into England, but are meant to have a *free sale* there, though most certainly it is not particularly so expressed in this article: and yet it cannot be denied that his Majesty has the same *right* of making *Internal Regulations*, as is claimed by the King of Portugal, and may, upon the same principle, retaliate the embarrassment in Portugal by admitting wines of that growth, and forbidding his subjects from purchasing them.

THUS, Sir, have your Memorialists gone through the several articles in the manner proposed, and hope they have made appear ; That,

IN contravention to the 2d article of 1654, the *Free Commerce* there stipulated no longer exists, but is subverted by the establishment of Exclusive Trading Companies in this kingdom ; That,

IN direct opposition to the 3d article, we are obliged to sell and traffick as the *King of Portugal pleases*, and not as we please ; That,

CONTRARY to the Stipulation in the 9th article, the sales of our goods and merchandizes are *hindered and delayed* ; That,

IN open violation of the 10th article, we are not suffered to sell *at our will and pleasure*, nor to any persons whatsoever, having no option left us but to sell our goods to such persons as his Most Faithful Majesty will permit to be the exporters of them, in which we are evidently *circumscribed* by *Monopolists*; That,

IN manifest contradiction to the 11th article of 1654, and to the 12th and 13th articles of 1661, we are no longer suffered *freely* (or indeed on any terms) to trade and traffick to and from Brazil, &c. and much less to reside there :

And finally, That,

ALTHOUGH in compliance with the first article of 1703, our woollens are *admitted* into Portugal, a right is claimed and actually exercised by his Most Faithful Majesty of hindering what part he pleases of his subjects from buying them, by committing the exports to particular persons, which renders this *admission* useles, or rather ruinous to Great Britain : from the whole of which your Memorialists humbly hope they have made appear ;

THAT the establishment of Exclusive Companies in the dominions of his Most Faithful Majesty is clearly and manifestly contrary to both the letter and spirit of the Treaties now subsisting between the Crowns of Great Britain and Portugal.

IT

It now remains for your Memorialists to point out a few of those destructive consequences which appear to render the establishment here mentioned the proper objects of a national enquiry, their natural tendency being to deprive us in part, if not wholly, of a ready and profitable market for our most valuable commodities, and of that constant supply of circulating cash, that, it is apprehended, will soon make itself generally felt in England, and more particularly so amongst the trading and manufacturing part of the nation.

THE first pernicious effect to be feared from these establishments is, that thereby the recovering old debts due to us, will be rendered not only precarious, but, in some measure, impracticable. The truth of which will appear, when it is considered, that a very large sum is due from the subjects of Portugal to those of Great Britain, arising from goods sold them payable on the arrival of their Brazil fleets in Europe. That the recovering these debts depends intirely on the fresh credit allowed the Portuguese, as by keeping a large sum constantly circulating in this trade, we at the same time collect in former debts, and enable their merchants to export annually to Brazil a much more considerable quantity of the manufactures of Great Britain, than it is acknowledged they could do if left to themselves. Now the establishment of Companies must put a full stop to this circulation, by excluding the present set of private traders from any farther concern

cern in the commerce to Brazil : for it is universally known amongst us, that their private traders to the Brazils, who are the original purchasers and importers of our goods into Brazil, allow their inland traders to the mines and other settlements, the same credit they get from us ; from whence it follows, that we are payed by them in proportion to the returns they receive by the fleets. Now the inland trader finding that his creditors are no longer permitted to supply him with the goods he wants, must be obliged to carry his money to the Companies' warehouse, where upon investing it, he gets credit for a larger assortment, payable the following year ; by which means he becomes the Companies' debtor, putting off the payment of his old debts, and consequently rendering it impossible for the Portuguese Merchants to discharge those contracted with us.

HERE it may be said by persons acquainted with the trade, that the law is open, and that we may sue our original debtors to comply with their contracts ; but as few or none of them have Capitals in Europe sufficient to answer their engagements, we must of necessity be satisfied to receive in our debts from them as they find means to collect theirs from Brazil.

IT may here farther be said, with some appearance of reason, that the merchant importer of our goods into Brazil, has the resource of obliging the inland trader by law to comply with his engagements ; but upon a fair enquiry, he will be found

M

almost

almost as much circumscribed in this particular, as in any other ;

For it must be considered,

THAT the inland traders in Brazil are in general men of no other principles than what their interests dictate ; settled at a considerable distance from any great city, with which they have little or no intercourse, but during the short time they allow themselves to purchase assortments of goods once a year, on the arrival of the fleets from Europe ; and in this light may justly be looked upon, when in their own houses, as out of the reach of any laws that can compel them to pay their debts.

THAT the Companies have a right, granted them by charter, of arbitrarily exacting the payment of all sums due to them, as if contracted to the King ; which in Portugal is done in a summary way, by immediately seizing the goods and effects of those debtors, setting aside all other claims, till that of the Company be fully satisfied. Now it cannot be thought that the Company will see any of its debtors constrained by law to pay old debts, without first exerting the right of securing that due to itself, which must draw on the utter ruin of such inland traders as are prosecuted in this manner : and therefore it is manifest to every person of experience in this trade, that all debts contracted to the Companies will be punctually complied with, when those due to the private trader, of perhaps some years standing,

standing, will be discharged only in part, or not at all, just as the inland trader's conscience may move him. Thus it appears, that by the establishment of Exclusive Companies trading to Brazil, the Portuguese Merchant, our original debtor, runs the hazard of losing the debts due to him from the inland trader, or at best of receiving them very late; the mischief of which in reality will fall on the British Merchant, there being no room to expect that our debtors can answer their engagements to us, if they are prevented from collecting their effects in Brazil.

AND here permit your Memorialists, Sir, to observe, that however indisputable may be his Most Faithful Majesty's right of laying the trade in his own dominions under new regulations, the recovering the sums already trusted to his subjects, they apprehended, ought not in justice to be hindered or obstructed, when it is considered, that under the specious appearance of the trade's continuing on the *free* footing it then was, we have been invited to sink a large capital, and this under the sanction of the most solemn Treaties.

WHEREFORE if it is thought proper to deprive us in future of the *benefits* of these Treaties, they humbly apprehend it would be but just that the debts due by the subjects of Portugal should first be paid, the option left us either to continue the trade or not under such regulations, and we apprized what we are to trust to, not to live under continual apprehensions

hensions of further *internal* restrictions, by which every advantage stipulated in our favour is countermined and evaded.

THE next fatal effect apprehended from these establishments is, That they will in time considerably lessen the amount of our imports into Portugal, and overset the body of British Merchants established here.

YOUR Memorialists, Sir, being sensible that the system of confining trade to Exclusive Companies is now generally condemned, will be on this head as short as possible. The dearth of the Companies' imports into Brazil over that of the private traders must be granted; from whence the lessening of their consumption is a plain inference confirmed by daily experience.

It is in consideration of the many extraordinary expences in which Publick Companies are engaged, that his Most Faithful Majesty has granted to the *Pernambuco* Company by the 27th section of its charter, a right of laying 45 per cent. profit on all dry goods sold for cash, with 5 per cent. extraordinary if sold at credit, reserving to this Company a farther right of increasing its profits, in proportion to any augmentation of duties or customs that may in future be laid on goods in Brazil: now as the Company has the sole right of vending there, it cannot be supposed that any part of the profit allowed by its charter will be given up with a view of encouraging

raging a greater consumption of goods ; but rather, should the demand in Brazil lessen, it is much to be feared that the Company's imports of goods will decrease in proportion, and that the deficiency this may cause in its profits will be amply repayed by beating down the prices of our goods in purchasing of us, an advantage the Company has by being the only buyer : and though it is true, that if the Portuguese want our goods (whether as Companies or as private traders) they must pay for them to Great Britain, such a consideration as will render it worth our while to supply them ; yet it is apparent, that if this trade leaves us 15 per cent. profit, and the Companies find means to reduce it to 8, it may still very well suit us to supply them, though with an absolute loss to great Britain of the 7 per cent. struck off.

It is not to be denied, that to get a large profit with a small outset is as much the interest of the private trader as of a Publick Company ; but upon enquiry will appear the great advantage England draws from the former.

For the British Merchant in Portugal, who constantly imports a much larger assortment of goods than he has a certainty of selling, finds himself under a necessity of tempting the Portuguese to take them off his hands ; and though perhaps to him at little profit, still the British nation gains very considerably.

The Portuguese Merchant, who send their goods to Brazil, where perhaps the markets are overstocked,

stocked, is under a like necessity of disposing of them on easy terms; and instead of 45 per cent. (the Companies' profit) sells at 40, 30, or even 20 per cent. nay sometimes with loss; it is all one to Great Britain provided the goods are disposed of; it being farther observable that the cheapness of goods imported into the *Rio Janiero* by the free traders, has of late years encouraged a new branch of commerce between the Portugueze and Spaniards; which a Company cannot afford to continue. Your Memorialists, Sir, further beg leave to point as a reason for the decline of our imports into Portugal, the directions given in the charters of the Publick Companies in this kingdom, to encourage their own fabricks, by taking off for America the greatest share of their produce that is possible. And notwithstanding your Memorialists are persuaded, that neither the fabricks of this nor any other country can furnish to Portugal the woollens it requires on the easy terms we do, yet when it is considered that the Companies' profit is 45 per cent. on all goods, whether dear or cheap, and that there is no danger of their meeting goods at market to vie with those they send, your Memorialists cannot but think that it may answer the Companies' purpose to send to Brazil the woollens of the manufacture of Portugal, though considerably dearer than those of Great Britain. But your Memorialists will suppose their Companies to take off the same quantity of our goods as is now done by the free traders; it is not pretended they can do so without having
the

the same credit allowed them : yet as it must be supposed that a little time will open the eyes of the trading people in England, when many doubts will arise in regard to the present security and duration of these establishments, then must the Portuguese find means to raise money sufficient to purchase all the goods they want with ready cash (which is impossible) or Great Britain will feel to its cost a very considerable decrease in the amount of its imports into Portugal. Your Memorialists presume, Sir, it cannot be reckoned a groundless assertion to advance, that the mischief already suggested will be of itself sufficient to overset and expel from this kingdom the large body of Merchants, his Majesty's subjects now employed here; but lest any doubt of this should remain, they farther beg leave to represent, that their profit, as importers of goods sold to the Portuguese free Merchants, may, upon an average, be estimated at 12 to 15 per cent.

Now it cannot be supposed that a Publick Company will employ us to bring them goods to market, as we have hitherto done, for the private traders, when by importing them on their own account, this 12 to 15 per cent. (the British importer's profit) will be saved to the Company, and of course a dead loss to Great Britain. And this single circumstance, if rightly considered, will in great part account for the present innovations in Portugal, by which that nation is like to become so considerable a gainer, though to the great and manifest prejudice of
of

of England in the decrease of the amount of its exports to Portugal, and in the ruin of the useful body of subjects by whom this trade is carried on at present.

YOUR Memorialists presume, Sir, that little need be said to prove that the establishment of Companies tends to decrease the exportation of bullion from Portugal: for if the preceding consideration is admitted, of the annual amount of our imports into that kingdom lessening, then must the balance of trade in our favour lessen in proportion, from whence the point in question is a natural inference. But farther it cannot be imagined, that a publick Company, erected under his Most Faithful Majesty's immediate protection, and the more immediate inspection of his Ministers, will venture to *export bullion*, a measure expressly contrary to the laws of the kingdom, and probably the *prevention of it* one of the motives that gives birth to the Companies, the exportation of bullion having for many years past been represented as highly prejudicial to the interests of Portugal, and the law against it said (in a late extraordinary sentence in the case of a seizure of money) to be solely intended to hinder such practices *at all events*, as most pernicious to the publick good.

SOME other methods must therefore be entered upon to pay foreign nations the amount of the Company's imports, and your Memorialists humbly apprehend that none can be thought of to make up to Great-Britain the want of a large supply of its circulating

lating cash, should their Companies occasion, as it is feared they will,

A Decrease in the exportation of bullion from Portugal.

HAVING already mentioned a trade commenced between the Portugese and the Spaniards on the river of Plata, through the means of the low prices at which our commodities are transported thither from Portugal, your Memorialists, Sir, beg leave to observe that this commerce grew to be considerable during the last war between England and Spain, and was carried on and encouraged by the cheapness with which the Spaniards were supplied with English goods sent from Lisbon in the Rio de Janeiro fleet, and from thence transported by sea to the Nova Colonia do Sacramento, whither the Spaniards resorted to purchase these goods, which were mostly paid in dollars returned to Lisbon by the Rio fleet, the greatest part of which may be said to center in England. The latter years of the Spanish war the importance of this trade began to show itself by the large sums of silver brought to Europe in the Brazil fleets, and had the war lasted a few years longer, we should by this inlet have supplied with English goods the greatest part of the Spanish settlements in South America. Now as the carrying on this branch of trade depends entirely on the cheapness of the commodities, your Memorialists justly apprehend that it will be lost in the hands of a publick Company, by its not being able to afford goods in terms to suit

the Spaniards, to which may be added that a publick Company will not venture to pursue a counterband trade; from whence Great-Britain will lose a present advantage in the sale of no inconsiderable share of its manufactures, and a much more extensive one in time of war with Spain.

THE last bad effect your Memorialists think it their duty, Sir, to represent, is that material one, of collecting by the establishment of Companies the whole capital of the trading part of this nation into the power of the King, which to persons the least acquainted with the government appears to render all future engagements with it hazardous and insecure; for it is not improbable that the experience of a few years will shew that exclusive Companies are as truly destructive in Portugal, as they are already found to be in every other commercial nation of Europe: when his Most Faithful Majesty's established right of making *internal regulations* may again be exerted to relieve his subjects from the oppression of a confined trade; but this relief, unhappy for us, will be applied at the expence of Great Britain, unless an immediate stop is put to all trade with Portugal upon credit.

THESE are reflections, Sir, of too alarming a nature, not to be layed before you as early as possible, from whence your Memorialists would not be thought desirous to press an ill-timed remonstrance, when affairs of equal, or perhaps more weighty national concernment, call for your whole attention, but
merely

merely to demonstrate that the innovations in Portugal are sufficient to justify the apprehensions of every prudent and considerate member of this factory; in whose preservation your influence, Sir, is most earnestly, though respectfully, entreated, by laying before his Majesty such parts of this humble petition as in your able and discerning judgment may appear to merit the royal attention; that so this useful body of subjects, under the government of the best of Kings, and the most publick-spirited of Ministers, may not be stripped of the advantages, which by its industry are rendered so greatly beneficial to the nation.

AND your Memorialists, with all submission, presume to hope, that his Majesty will be graciously pleased to give such instructions on this head to his Ambassador Extraordinary and Plenipotentiary, now at the Court of Portugal, as will effectually remove the evil from whence so many fatal consequences are justly apprehended.

Lisbon, June 3, 1760.

TO THE RIGHT HONOURABLE
THE EARL OF HALIFAX,

One of his Majesty's principal Secretaries of State.

*The Memorial of FRANCIS IBBETSON, Esq;
Deputy Consul General, and the Merchants of the
British Factory in Lisbon.*

May it please your LORDSHIP,

IN obedience to your commands, communicated to us by the Hon. Edward Hay, Esq; his Majesty's Envoy Extraordinary and Plenipotentiary at this Court, we have the honour to lay before you an humble representation of the state of our trade, and the grievances we labour under in this kingdom. These having undergone no favourable alterations, since the date of our late numerous and circumstantial Memorials on the same subject, transmitted home by his Excellency the Earl of Kinnoull, during his residence here in the character of Ambassador Extraordinary and Plenipotentiary from our Sovereign, and which are now in your Lordship's office, we should have little to do on the present occasion besides referring to those, were it not in compliance with your Lordship's desire of having a recapitulation

(93)

tion of the whole in one view, with quotations under each head, of the several articles of treaties thereby conceived to be contravened, and the addition of whatever innovations may have taken place since the æra of our last remonstrances; which we proceed to furnish you with in the most satisfactory manner we are capable of, beseeching your Lordship's indulgence, should our attempt prove deficient in point of form or perspicuity.

I.

TO begin with the most important of all our *privileges*, as the infringement of it is the source of almost every *grievance*. The right of having a Judge Conservator allowed us with an exclusive jurisdiction in all causes, whether civil or criminal, excepting where the Royal Exchequer is concerned, has, in our late representations, been traced as far back as the reign of Dom Ferdinand, about the middle of the fourteenth century; and has been renewed, confirmed, or augmented by edicts and decrees of almost all his successors before the late and present reigns: But not to swell this Memorial with a multiplicity of synonymous quotations, we will recur no further than the treaty of 1654; which, after confirming all prior concessions on this head, implying,

“ THAT no warrants for imprisonments,
 “ attachments of effects, search of houses,
 “ or other judicial acts whatsoever, should
 “ be served on any subject of England
 “ with-

“ without the mandate or acquiescence of
“ his Judge Conservator being first obtained
“ in writing ;”

FURTHER stipulates, article 7th,

“ T H A T for judging all causes that relate
“ to the English, a Judge Conservator shall
“ be deputed, from whom no manner of
“ appeal shall be granted, except to the
“ Court of Relação, where the suits must
“ be determined in four months.”

AND by the 13th article of the same treaty it is further provided,

“ T H A T none of those called Alcaydes,
“ or other Officers of his Royal Majesty,
“ shall seize or arrest any of the people of
“ England, of whatever rank or condition
“ soever, excepting in a criminal case, be-
“ ing detected in some flagrant act; unless
“ he be first empowered in writing by the
“ Judge Conservator.”

THE importance, or rather the necessity of these provisions, towards ascertaining to us every thing that deserves the name of privilege, is sufficiently manifest from the circumstance of the Conservatorial Court being the only one in the kingdom where any regard is paid to *treaties*; the decisions of all the others being regulated by the strict letter of the law. So many breaches, however, have been made of late
years

years in this bulwark of all our immunities and rights, both by law and practice; that, instead of a refuge and protection from violence, the name of it, which has survived its efficacy, is often a snare and a disadvantage to us.

By a Royal Decree, dated the 5th May, 1742, we were subjected to the Senate or City Court in every thing belonging to the police: whence we are liable to, and frequently suffer, the most grievous outrages from the several Officers of that Department, down to the Overseer of the Scavengers, who often enter our houses, distrain our effects, and levy fines on the most frivolous pretences, and in the most arbitrary manner.

By the 29th article of the Pragmatick, or Sump-
tuary Law, published the 24th May, 1749, our
privilege is violated, and the jurisdiction of our
Conservator taken away, in all matters relating to
the breach of that law.

By a law of his present Majesty, dated the 30th
October, 1752, it is expressly ordered that no Judge
Conservator shall grant counter-mandates to impede
the execution of any writs or orders, issued by the
ordinary Courts, under the penalty of six months
suspension from his office; whence it follows, that
the writ, or warrant of any judge whatever, may be
served on a British subject without the acquiescence
of his Judge Conservator, however contrary to privi-
lege, which he has it no longer in his power to
assert.

By

By the institution of the Company of Para, § 7th, and the statutes of the new Board of Trade, Cap. 4th (both of royal authority) Conservators are appointed to each of those Bodies Corporate, in favour of whom the exclusive jurisdiction of ours is superseded.

THE prejudices resulting to us from these royal infringements of this essential right are innumerable. In all law-suits with the natives, the subject of which is seldom any other than the recovery of our just debts, we are almost constantly entangled in preliminary litigations about the competency of the Court; all, or most of our debtors, belonging to some Company or Corporation that enjoys the privilege of a Conservator of *their own*, who seldom fails to dispute the jurisdiction of *ours*. By these controversies the most fatal delays are occasioned, of which other creditors taking advantage obtain sentences before us, and leave us, for all our trouble and expence, no other consolation than that of having done our duty, in contending for a privilege, upon the enjoyment of which the safety of our persons and effects so evidently depends. Nor does the sentence of our Conservator avail us, when obtained, seeing that by an appeal to the Relação (which is agreeable to treaties) the suit is often prolonged for years, and execution suspended; which is not the case with the sentences of any other Judge or Conservator in the kingdom: these are only carried to the Relação, on the footing of what is called an *Aggravo ordinario*,
 2 where

where the first sentence is admitted as a vote, and execution immediately takes place.

BUT these disadvantages, grievous as they are, appear trifling, compared with the insults that we are exposed to in our persons, and in our houses, from the Under Officers of several departments; such as the Health Office, the Custom-house, the Contractors for tobacco, soap, and cards; and the Board of Trade, by whom our houses are entered, and searched in the most arbitrary manner, without their showing any order, even from their own superiors, or any badge of office; at the same time that resistance, by a law just published, is made felony. Our alledging our privilege only heightens their insolence. They break open our doors, ransack every corner of our houses, without the least regard to decency or humanity; and sometimes even drag us to prison on the most frivolous pretexts; with circumstances of ignominy that would shock a British ear to hear described.

A FEW of the many complaints of this kind, presented to the Consul General and Committee, at different times, by individuals of our body, we take the liberty to transmit to your Lordship as Vouchers * of the veracity of what is here asserted; to which we beg leave to refer, as well as to a distinct Memorial upon this subject, now in your office (presented to the Earl of Kinnoull, and by him transmitted to Mr. Pitt) for a more particular idea of the

* Vouchers, A, No. 1, 2, 3, 4, 7, and 9; also Voucher, B, No. 5.

dreadful torrent of evils and oppressions that take their rise from this one source, *The Abridgement*, or rather indeed, *The Annihilation of Conservatorial Power*.

II.

THE Institution of Exclusive Companies trading to several of the Portuguese Colonies in America, particularly one to Gram Pará and Maranham, and another to Paraiba and Pernambuco, your Memorialists humbly conceive is another innovation, not to be reconciled either to the spirit or the letter of our treaties.

IT is not our business here to enter into a discussion of the principles upon which those institutions have been framed; though perhaps it would be no difficult matter to show that they are as ill calculated for the advancement of the Portuguese commerce as that of Great-Britain. The infringement of the privileges, and immunities stipulated for us by treaties, is what alone gives us a right to canvas any part of the internal œconomy of Portugal; and it was in this light only that we thought ourselves justified in making the earliest representations of the violence done to our rights, and the destructive consequences apprehended to our trade, from those extensive monopolies, in a Memorial now in your Lordship's office, addressed to Mr. Pitt, on this alarming subject.

THE 2d, 3d, and 9th articles of the treaty of 1654 are very explicit upon the subject of our enjoy-
ing

ing a *free commerce* in Portugal and its dominions, and not being compelled to purchase of Monopolists: And the 10th article of the same treaty expressly declares,

“ T H A T we may freely carry all sorts of
 “ merchandize into the kingdoms, ports,
 “ and territories of the King of Portugal,
 “ and sell the same at our pleasure, *either*
 “ *by retale or wholesale*, to any persons
 “ whatsoever, and at what price we can
 “ get; and that we shall not be prohibited,
 “ circumscribed, or incapacitated by his said
 “ Royal Majesty, or his Ministers, Govern-
 “ nors, Farmers of the Revenues, or Mono-
 “ polists: or by any chamber, or jurisdiction
 “ of any tribunal whatsoever, either publick
 “ or private.”

THE 11th article is no less clear with regard to our right

“ T O trade and traffick freely, and safely, to
 “ and from the Brazils, and other conquests
 “ of the King of Portugal in the West-
 “ Indies, as also to the dominions belong-
 “ ing to the said King in the East-Indies,
 “ Guinea, Bengal, the Island of St. Thomas,
 “ &c.”

By the Marriage Treaty in 1661, article 1st, all former treaties betwixt the two Crowns from the
 O 2 year

year 1641 are renewed, ratified, and confirmed in the strongest terms that language could furnish: And by the 12th and 13th articles of the same treaty, our right to trade to the conquests and colonies of Portugal is amplified as follows,

“ ARTICLE 12th, And in order that
“ the subjects of his Britannick Majesty
“ may more fully enjoy the benefits of com-
“ merce in all the dominions of the King of
“ Portugal, it is agreed that their Mer-
“ chants and Factors (over and above what
“ has been stipulated on this head by former
“ treaties) shall, by virtue of *this*, have leave
“ to reside in whatever places they please,
“ and shall enjoy all privileges and immu-
“ nities relating to commerce, the same as
“ the Portuguese themselves in the fortresses
“ and towns of Goa, Cochin, and Diis,
“ provided the number of British subjects,
“ so residing, never exceeds four families in
“ one place.”

ARTICLE 13th extends the same privilege to us
in the

“ B A Y of all Saints, Pernambuco, and Rio
“ de Janeiro; in the Brazil, and in all the
“ other dominions of the King of Portugal
“ in the West-Indies.”

ALL these articles your Memorialists, with due submission, apprehend are notoriously violated by the institution of exclusive Companies.

By treaty we are entitled to the enjoyment of *free commerce* : Now, with what regard to truth, can a commerce, so great a proportion of which is thus monopolized, shackled, and circumscribed, be termed *free* ?

By treaty we are to have the privilege of

“ *Selling to whom we please, &c.* ”

AND can we be said, without the grossest evasion, to enjoy this right, whilst his Most Faithful Majesty's subjects, except the few that compose the Companies, are incapacitated from buying our goods by being prohibited from sending them to the markets to which they are adapted ?

By treaty we are not to be compelled to purchase of Monopolists. But the Companies are Monopolists : And if not *expressly*, are we not *virtually* compelled to purchase of them, if we can get the products of their respective districts from no other hands ? Finally, by treaty we have a right to trade to, and reside in, all the ports and settlements belonging to Portugal in the East and West-Indies : Of this right we are deprived by the institution of Companies ; in common with his Most Faithful Majesty's subjects indeed, but publick faith required,

4

that

that in this case we should not have been confounded with them.

FROM this plain state of a few simple *facts*, we would willingly flatter ourselves that the incompatibility of such extensive monopolies with the *letter*, and much more with the *spirit* of the treaties subsisting betwixt the Crowns of Great-Britain and Portugal, will appear as clearly as from a much more elaborate deduction; to which we are unequal, and which at the same time is unnecessary, whilst we have the honour of addressing ourselves to a judge of your Lordship's superiour lights in commercial, as well as political affairs. On these facts we therefore rest our plea, and with the most implicit deference to your Lordship's judgement.

As to the destructive *tendency* of the Companies to *trade in general*, and the ruinous consequences resulting from them *particularly* to your Memorialists, and the important branch of the British commerce which they conduct; they have been set in so true a light by the sequel of the Memorial already referred to, under this head, that we have little to add, farther than to assure your Lordship, that the time that has elapsed since the date of that paper has only served to justify our fears, by aggravating the evils that were then begun to be felt, and realising others that were then only problematical.

III.

THE Pragmatick, or Sumptuary Law, published in 1749, and confirmed with some extensions
and

and modifications by an Alvará, of the 24th April, 1751, and still farther enforced and extended by an ordinance published by the Board of Trade the 24th of May, 1757, has proved in its consequences of the utmost prejudice to the British commerce in this kingdom. The declared aim of that law being to suppress luxury in the dress and equipage of the natives, it was at first imagined that our trade would not be, in any considerable degree, affected by it, as the exports of England to Portugal consist chiefly in the *conveniencies* and *necessaries* of life, and not in *articles of luxury*. By the original law, however, the *importation* of a considerable number of goods and wares, of the manufacture of England, and the *use* of others, which amounts to the same thing, were prohibited: And in the subsequent explanations, and extensions of the same law, several additions were made to the first list of articles prohibited, of very considerable prejudice to us, and likewise, as we humbly conceive, repugnant to treaties. But how must our mortification be heightened, to find that both in the letter and execution of this law, a partiality is manifested, and practised in favour of other nations, even of the constitutional enemies of Portugal, *France* and *Spain*?

IN the 3d article, by which the wear and importation of all figured silks is forbidden, a door is left open for the damask of Spain and Italy; and notwithstanding the list of goods declared contraband, published the 24th of May, 1757, includes under that

that denomination all figured stuffs of silk, even though mixed with other materials, the silk and worsted stuffs, of French manufacture, called Druggets, are every day dispatched in the Custom-house, whilst English goods, of the same materials *, are refused admittance. But this is not the only advantage that the French enjoy over us.

By the treaty of 1703, the prohibition was taken off the importation of woollen goods, in favour of Great-Britain : With respect to France, it remained, and still remains in force ; yet the French introduce their cloths in great quantities daily, without embarrassment, and as they confine themselves chiefly to those of a superior quality, they are not in the least affected by the 10th article of the law in question, by which all liveries, that are not of cloth, of the manufacture of Portugal, are forbid : The whole weight of this article falls upon us, as the cloths commonly used for the purpose just mentioned were those of the manufacture of Yorkshire, of a quality in which other nations have rarely interfered with us.

THE list of goods declared contraband by the resolution of the 24th of May, 1757, of which we take the liberty to transmit your Lordship a copy †, contains a considerable number of British exports of great consequence, never till then supposed to be excluded even by the law of 1749, nor capable of being construed articles of luxury, allowing the ut-

* Voucher, B, No. 2.

† Voucher, B, No. 10.

most rational latitude to that predicament : Yet, by the arbitrary decision of a single Officer in the Custom-house, fresh articles are daily added to it, and no one can tell where it will stop.

THE prohibition of tanned leather is a most sensible blow to the British commerce, as great quantities of that commodity were imported into this kingdom from Great-Britain, Ireland, and North America, and notwithstanding some old restrictions as to the use of it, continued to be dispatched, and to pay the duties, till by a decree, dated the 8th of April, 1758, it was ordered that it should no longer be admitted to an entry in the Custom-house.

As an instance of the rigorous execution of this law, not to call it by an harsher name, we beg leave to transmit to your Lordship a state of the case * of some Merchants here, in relation to a parcel of tanned hides landed in Portugal, so early as the month of March, before this law came out ; but in consequence of it, detained in the Custom-house, and refused to be admitted to entry till the 31st May last, when they were destroyed by fire. This case is of so remarkable a nature, that the sufferers earnestly request us to lay it before your Lordship, humbly hoping that it may be found in itself not unworthy of your attention ; and as it affords a striking proof of the need we have of some powerful interposition in our behalf, against the many innovations every day taking place in this country.

* Voucher, B, No. 9.

IV.

THE laying additional duties on our goods; the oppressive innovations that have taken place in the manner of their valuation in the Custom-house; the increase of charges upon our ships, and the many burthensome regulations with regard to their dispatch, that are every day taking place in this port, are articles no less contrary to the express stipulation of Treaties, than destructive to our trade, and discouraging to navigation.

By a secret Article of the Treaty of 1654, it is agreed, that

“ THE English trading to the dominions of
 “ the King of Portugal *shall not pay more*
 “ *duties or taxes*, but only in the manner fol-
 “ lowing, viz. The English goods, mer-
 “ chandize and manufactures, *shall never*
 “ *exceed 23 per cent.* on their valuation for
 “ the payment of the duties; and they shall
 “ be favourably valued according to the re-
 “ gimen of the Custom-house, and the *an-*
 “ *cient laws* of the kingdom; and supposing
 “ there should be any motives for raising
 “ the valuation, by reason of a rise of the
 “ real value of goods or merchandizes, *it*
 “ *shall not be done but by the consent*, and in
 “ *the presence of two English Merchants who*
 “ *reside, and dwell in Portugal, and are*
 “ *chosen by the English Consul.*”

YET

YET contrary to this agreement in every circumstance, about three months after the dreadful blow that commerce received from the memorable disaster of the first of November 1755, an additional duty of 4 per cent. was laid upon our goods, under the pretence of defraying the expences of building a *Custom-house*; a purpose to which another disaster, of a later date, affords a fatal proof that it has never been applied.

BESIDES this, the method of valuation is now become so arbitrary and severe, by the laying aside the old book of rates, and putting it intirely in the power of officers, who instead of fixed salaries (as was formerly the case) are paid a certain proportion of the duties they impose; that the exactions on many articles of British manufacture amount to a prohibition.

IT will be readily granted by all who have the least knowledge of commercial affairs, that the imposition of 4 per cent. alone, when it is to be added to a standing duty of 23 per cent. is much better calculated for diminishing the consumption of our goods than for increasing the royal revenues; but how must the case be aggravated, when the standard of exaction of both the old and new duties is left to be fixed by people in a low class of life, who are by the tenure of their office both judges and parties, whose poverty obliges them to grasp at

present advantage, and conspires with their want of knowledge to hinder them from looking forward to the certain, but more remote prejudices arising from their feverities.

THE 4th Article of the Treaty of 1654 stipulates, That

“ NEITHER while the English stay in the
“ said harbours (of the King of Portugal)
“ shall there be put on their ships more than
“ two guards or officers at most; and in
“ unloading their ships there shall be no un-
“ necessary delays: and if the said ships
“ which are loaden with dry goods should
“ not be unloaden within the space of ten
“ days, and the ships loaden with fish and
“ provisions within fifteen days after their
“ entrance into the port, they shall not,
“ however, be obliged to pay any stipend,
“ or sum of money, or any salary to the
“ said guards or officers; nor upon their
“ account be at any farther expences more
“ than for the said ten or fifteen days re-
“ spectively.”

By the 20th Article of the same Treaty it is declared,

“ THAT the English who arrive in the
“ harbours of Portugal with their ships
“ shall

“ shall not pay for anchorage, or other port
 “ charges or duties, any sums of money
 “ more than those which are customarily
 “ paid to the King and Chamber of Lis-
 “ bon.”

THESE Articles have been so compleatly disregarded, that the additional charges on shipping imposed from time to time are almost past reckoning up; and the different formalities and offices to be gone through are so numerous, that the dispatch of a vessel is become a science of so complex a nature, that the greatest adepts are apt to commit mistakes, at the same time that pains and penalties are inflicted upon every failure, with the utmost rigour.

OF these impositions some of the newest are 1500 reis to the new Board of Trade, 200 reis per ton for light money, excepting such ships as carry out full loadings of the products of Portugal, in favour of which this charge is mitigated to 50 reis per ton; the fees and emoluments of the Health Officers, which are greatly increased, as well as the expence of guards, whose fees are raised from 300 to 600 reis per day, their number frequently increased, and their stay on board prolonged, at the same exorbitant expence, till the final discharge of the cargo, though the same should exceed, as it generally does, the time limited by treaty.

THERE

THERE is another weighty grievance that comes under the same head, which is, that all ships that come into this port, whether forced by stress of weather, or voluntarily, in time of war to wait for convoys, or to procure intelligence of the state of the markets in the Mediterranean, for all which purposes the central situation of this port renders it highly convenient, are obliged to take out a licence, called a *Franquia*, and receive guards at the enormous rate abovementioned, which occasions great delays, besides the expence. This is expressly contrary to the 2d Article of the Treaty of 1654, already so often referred to, which says,

“ THAT the English without a permit, or
 “ other license, general or special, may
 “ enter, and navigate in the harbours and
 “ ports of Portugal, &c. and with the
 “ same liberty depart from thence with their
 “ goods, &c. either to their own or foreign
 “ countries, as they shall think fit.”

NOR is this all; several ships loaded with corn that came into this port lately have been detained by force, and obliged to discharge their cargoes, though destined for other markets, and at a time too when there was so little appearance of dearth or scarcity here, especially of grain, that the warehouses were so full of corn, it was with the utmost difficulty that a place was found to lodge what was thus detained.

YOUR

YOUR Memorialists are sensible that this is a right assumed by all States and Governments in cases of extreme necessity; but the practice on such occasions is to indemnify the proprietors by purchasing their cargoes at the prices the respective commodities bear at the places they were bound for, allowing a competent time for the ships to arrive: but we are sorry to observe, that the favourable part of this custom has not been practised in regard to us; on the contrary, these cargoes of grain were left on our hands to be disposed of in what manner we could for account of the original proprietors, who, in general, will be great sufferers by it, as the glut of corn at that time kept the prices very low, and occasioned slow sales; the extreme hot weather that immediately followed spoilt a considerable part of what remained unsold, and greatly reduced the value of the rest. Your Lordship has had a strong instance of an affair of this kind already laid before you, in the case of the two ships from Berwick, for which no redress has been yet obtained from this Court.

UNDER this head we further beg leave to refer your Lordship to a Memorial * presented to the Deputy Consul and the Committee, by the gentlemen employed as agents for the contractors for victualling his Majesty's ships of war, relating to a breach of privilege †, which occasions not only a considerable

* Voucher, B, No. 1.

† Voucher, B, No. 2.

prejudice to those gentlemen, but may often prove greatly detrimental to his Majesty's service, especially in time of war, with the exigencies of which the tardy proceedings and embarrassing methods of dispatch in the offices, here complained of, are totally incompatible.

V.

THE insurmountable difficulties that we encounter, in claiming debts due to us by such as are imprisoned and have their effects sequestered by the Inquisition, or by the King's Exchequer, call loudly for redress. Such ample provision is made in our favour by the 5th Article of the Treaty of 1654, that nothing more than the observance of it would be necessary to obviate every cause of complaint on this score. A separate Memorial, setting forth the present practice in cases of this nature, which is among those transmitted by the Earl of KINNOULL, will shew your Lordship, that instead of being paid out of the delinquent's effects, in a limited time, we are engaged in tedious and expensive suits at law, in the course of which such proofs are demanded as it is impracticable for us to furnish; in consequence of which we are condemned to lose our debts, to pay the costs of suit, and are judicially branded with the imputation of fraudulent collusions with the delinquents, only for making use of legal means to recover our property.

FRESH

(113)

FRESH causes of complaint on this head have arisen since the date of the Remonstrance in question, too numerous to be laid before your Lordship at this time, but your Memorialists humbly beg leave to recommend the grievance in general to your peculiar attention, as large sums are at this time withheld from us, that are our most undoubted property.

EQUAL prejudices arise to your Memorialists from the *Moratorios* or Royal Letters of Protection, often granted to screen our debtors from all prosecutions; and from the asylum afforded to all who chuse to claim it, by the Board of Trade, whose tardy proceedings in the administration of the affairs of bankrupts, after an experience of years, we find to be intolerable.

VI.

By the 9th Article of the Treaty,

“ NEITHER the ships, merchandize, or
 “ other goods belonging to the English are
 “ to be taken or detained, either for *war*,
 “ or *any other use whatsoever*, unless those
 “ to whom such ships or goods appertain
 “ are first apprized thereof, *and give their*
 “ *consent.*” And a little lower, “ Neither
 “ shall they be taken for the King’s use,
 “ nor for any uses whatsoever, if the persons
 “ who are concerned in the goods do not
 “ consent thereto.”

Q

DURING

DURING the late war several infringements of these stipulations were patiently submitted to by your Memorialists, in consideration of the urgency of the times; but it is with the utmost concern that we find ourselves under a necessity of complaining of the continuance of them during a time of profound and general tranquillity*. Cloths for cloathing the troops, lead, coals, rice, butter, and other stores and provisions for the royal magazines, and even for convents of Friars, who are maintained by the King, have been seized during and since the war, against the will of the owners, who after a solicitation of years have not been able to obtain payment of the value. The seizing of cloths in the Custom-house, even were they to pay for them immediately, would still afford a very just cause of complaint, seeing they spoil our assortments by their picking out such particular colours as they want, at the same time that they oblige us to dispatch, and pay duties for the whole parcel immediately, though by this means it is rendered unvendable, except at a great disadvantage. But the capital grievance is the delay of payments, which is to the greatest degree discouraging to trade, and ruinous to individuals, who after the signal losses they have so lately sustained, cannot afford to have any considerable part of their property so long detained from them.

* Vouchers, B, No. 3, 4, 6, 15 and 16. Also Voucher, A, No. 6.

VII.

YOUR Memorialists farther beg leave to represent to your Lordship, that a most illegal sentence in relation to a seizure of money, whereby the penal laws against the exportation of coin are extended to the most grievous and oppressive lengths, is still unrevoked, and stands as a most dangerous precedent against us, notwithstanding our late Sovereign's most gracious interposition in our behalf, in consequence of our humble applications, first by his Envoy Extraordinary the Honourable EDWARD HAY, Esq; and afterwards by his Ambassador Extraordinary the Earl of KINNOULL. The revivall solicited by his Lordship, and promised, was, soon after his departure for England, refused; which gives an higher sanction to the sentence in question than it had before. Copies of the papers relating to this affair we have the honour to transmit for your Lordship's perusal*.

VIII.

IN all countries where commerce is cherished, protected or understood, a merchant's book of accounts has always been considered as the most sacred article of his property †. Good reasons may be assigned for this, deduced from the ordinary course and nature of trade every where; but the particular circumstances attending the British commerce in this

* Voucher C. † See our Privilege, Voucher B, No. 12.

country render the observance of this rule a matter of the last importance to such as reside here, as the moment that it is violated our properties and those of our correspondents, and even our lives are at the mercy of any man that chuses to be our enemy. Yet a most flagrant instance of such violation your Memorialists have now before them, in the case of JAMES KELLY, late a merchant here, whose counting-house was broke open, by common officers of justice, and his books taken away by force, and carried to the house of a Judge, where they remained two days without being sealed up, or any precaution taken to hinder the bad consequences that might have resulted to him from having his private transactions in trade exposed to publick view : a case of so heinous a nature, that we want words to express to your Lordship the consternation it occasioned, or the fervency of our wishes that some expedient may be found to secure us from such acts of violence for the future.

IX.

THE last article of complaint with which we shall presume to trouble your Lordship at present is of a peculiar nature, and the only instance in which we have ventured to deviate from your injunctions, *to confine ourselves to the representations of such matters only as are really of great importance to our commerce.*

THERE

THERE are in this city several British subjects of fair characters, industrious and useful in their stations, who under pretence of their not being merchants, or wholesale dealers, are subjected to hardships and vexations which your Memorialists, oppressed and aggrieved as we are, in many other instances, are exempted from; such as having their goods seized for presuming to sell by retail, paying the *Decima*, or tax of ten per cent. and several other impositions and exactions levied upon them under various pretexts.

PEOPLE that deal in all kinds of stores for shipping, and even such as keep decent houses of entertainment for ship-masters and other foreigners, in a country where no such conveniencies are to be met with among the natives, are as necessary as a landing-place: but abstracted from their usefulness, it is humbly conceived, that they have the same title to enjoy the privileges of Treaties as we ourselves. For first their right of selling by retail cannot be questioned, if any regard is paid to the 10th article of the Treaty of 1654, which says,

“ And sell the same (their merchandize) at their
“ pleasure, either by retail or wholesale.”

BESIDES it appears by a letter of King John the First, that the English enjoyed this privilege even before his reign, seeing he confirms to them the
right

right of having green cloths at their doors, which is the sign of a retail shop to this day. And 2dly, your Memorialists are exempted from paying *Decima*, not as wholesale dealers, but as British subjects. Those poor people are British subjects as well as we; by parity of reason therefore, it is conceived, they are likewise to be exempted.

IN an Alvara, or Law, dated May 29, 1656, we find the following words :

“ IT is my will and pleasure to shew grace
 “ unto the English Merchants *and others of*
 “ *that nation*, residing in these kingdoms
 “ and dominions of Portugal, who have
 “ not been therein naturalized, by exempt-
 “ ing them from paying the *Decima* (or
 “ tenth) on their stock.”

AND by another of the late King, dated February 8, 1717, our nation is exempted from the like tax in the following manner :

“ BEING informed that the subjects of dif-
 “ ferent nations dispute the payment of the
 “ tax on their stock, which they were
 “ charged with, under pretence that they
 “ are privileged by the articles of peace
 “ which free them from paying the said
 “ tax, I was pleased to resolve on the 28th
 “ of April last, that the French and other
 “ nations

(119)

“ nations ought to pay the tax, and that the
 “ subjects of Spain, England and Holland,
 “ ought to be exempted from this contri-
 “ bution.”

THESE, we humbly conceive, are proofs of what we ventured to advance in favour of those poor people, that carry conviction along with them. A few of their Petitions * and complaints lately received we take the liberty to transmit to your Lordships, and should think ourselves wanting both in our duty to our Sovereign, and to those our fellow-subjects, were we to omit this opportunity of acquainting you with their sufferings, and that they intreat your Lordship would recommend them to his Majesty's protection.

HAVING thus enumerated, as briefly as we judged consistent with any degree of perspicuity, the principal maladies by which the British trade to this kingdom has been reduced to its present languishing state, and which without some speedy and efficacious remedy must soon effect its final dissolution; and having produced, at the same time, such articles of the Treaties betwixt Great Britain and Portugal, as we apprehend give us a right to solicit and expect redress, it only remains for us to express our most grateful acknowledgments to your Lordship for affording us this fresh opportunity of carrying our

* Voucher, A, No. 5 and 8. Also Vouchers B, No. 7, 8, 13 and 14.

grievances to the throne, and to implore your good offices in laying this our humble Memorial at the feet of our most Gracious Sovereign, from whose princely wisdom, paternal regard for the good of his subjects, and constant attention to the interests of commerce, we derive the most pleasing hopes of obtaining the restitution of those essential rights and privileges that have been so unjustly wrested from us, and of being protected in the uninterrupted enjoyment of them for the future, as the only means of preventing our speedy ruin as individuals; the loss of several millions of actual property to Great Britain, and the contingent advantages of a most important branch of her commerce.

READ and approved at a General Meeting of the FACTORY the 29th of November, 1764; as appears by their Resolution of said date, and signed by Forty Members then present.



APPEN-

APPENDIX.

THE four first Memorials of the former sheets were presented, during the administration of the late Mr. Pitt, now Earl of CHATHAM; but as the war was then in its greatest height, those turbulent times were probably deemed an improper season for discussions of that sort, which were but too likely to produce embarrassments to the publick affairs, and when the war was ended, that great Minister was unhappily removed from the high place he formerly occupied in the Administration.

THE last Memorial in the year 1764, addressed to the Earl of HALIFAX, did not, it is supposed, come to that noble Lord's hands till he had returned to a private station, so probably remains in his Lordship's private repositories; but as the grievances complained of therein have never been redressed, and are in a great measure the continued causes of the declension of our trade in Portugal, it seemed needful to communicate it to the world, that nothing interesting in an affair of such consequence might remain a secret from that Public which hath so great a right to be fully instructed in all our grievances in Portugal.

THE sentence mentioned in the first Memorial, whereby money taken from an English subject in the streets of Lisbon was confiscated, is but too plain a proof that the property of our fellow-subjects can be no longer secure in a country where Judges are permitted to found condemnatory sentences upon a bare supposition only, of an intention to export bullion: And though this precedent hath not hitherto produced further bad consequences, yet it remains ready to be quoted in support of oppressions of a similar nature, as it has now received the sanction of custom and judicative authority in its favour.

THE power of our Conservators in Portugal can be of no use for our security and protection unless their authority is allowed to subsist in the same extension as stipulated by Treaty. In a country, where every arbitrary *dictum* of a King or Minister must be taken for law, we cannot be safe unless our Conservator is enabled to preserve us from the violence of Judges acting under so despotic a command, where there is no Jury to appeal to, and no Judge who is not as subject to orders from the Minister as the meanest soldier in our armies to those of his General.

AND if we consider the nature of the Great Companies mentioned in the former sheets, it is easy to conceive what small degree of permanency can be promised to trade, under the influence of such powerful monopolists, cherished by the favour of an arbitrary Sovereign, and basking in the smiles of the
the

APPENDIX.

123

the favourite Minister who gave them being. A prohibition of sending our goods had effectually shut us out of Brazil, and the establishment of the Companies of Grand Para and Pernambuco hath ruined our trade to Portugal also, as none but those monopolists are permitted to deal with us for the affairs of these districts, and by subsequent regulations no ship is permitted to go to Rio de Janiero or Bahia, but by a special licence from the Minister.

THE benefit that is to arise to us from an alliance with Portugal is only of a commercial nature, notwithstanding which, we have not required any favourable distinction in point of duties on the commodities we send to that kingdom, though their wines are admitted into this country on paying only about two-thirds of what is paid on wine from France.

THE privileges granted to our countrymen are no greater than what a peaceable inhabitant ought to be entitled to in any country, and far less than what every foreigner enjoys in this.

By Treaty we are entitled to a free trade to Brazil, yet we have tacitly given up that privilege, though the only mark of favour which the commerce of England is distinguished by above others; our trade to Portugal ought, therefore, to be free and uncircumscribed, and the persons and property of our

countrymen safe and secure during their residence there.

THE acknowledged worth and extensive abilities of the Honourable Gentleman, now named to the important office of Envoy to the Court of Lisbon, give grounds for the most sanguine hopes.

THAT Gentleman, we are certain, will make the best use possible of the high authority with which he is invested, in order to obtain a relief from these grievances; but if a thorough redress of them is really comprized within his instructions, he must expect to encounter in the Portugueze Minister, still in high favour at Court, every obstruction that can be invented, ever positive to execute measures he advises; so that if the Envoy is not, in truth as well as appearance, furnished with the powers of a Minister Plenipotentiary, it may easily be foreseen that all our sanguine expectations, from so encouraging a nomination, will evaporate, without producing the desired end. Remonstrances, if these only are in view, though never so spirited, will, it is to be feared, succeed no better than former experiments of that sort, if we may judge of the future by the past, even though some singularly favourable circumstances now concur towards the promotion of success to this embassy which formerly existed not.

THE palliating system, hitherto observed with the Court of Lisbon, instead of diminishing, has rather encreased the disease, and rendered the cure more
diffi-

difficult. A continuation of the same languid measures must certainly continue to present us with a long train of unavailing remonstrances, complaints, memorials, and such like pusillanimous expedients of feeble Ministers calculated only for procrastination. But the character of our present Ministers flatters us with hopes of a superiour conduct, suitable to the genius of the noble Lord at the head of the Administration, who is not ignorant by what means success is to be insured to negociations in Portugal as well as in Spain, and is possessed of too strong a love for his country, to leave these means unessayed, in a matter of such consequence to the trade of this kingdom.

It is, I own, surprizing to hear some of my countrymen affirm, that there lies no remedy for the ills we complain of in Portugal, because every Prince has a right to make what internal regulations he thinks proper for the police of his own kingdom, without being answerable to any other power for the propriety of these regulations, which are only to be measured by the utility of his own subjects. All this would be very true, if there were no treaties between us and Portugal, or if treaties are only made to be broke; but if an observation of treaties is to be expected from his Most Faithful Majesty, that Monarch cannot justly make laws for the benefit of his own subjects derogatory to the privileges stipulated for the English Merchants resident in Portugal, by ancient leagues between the two nations.

LET

LET us turn the tables, and suppose monopolizing Companies, of the like nature as in Portugal, established here, one of these engrossing the wine trade, I mean, the trade of Port wine, and the other that of the Fruit, so that no person, except a few members of these Companies, could either buy Port wine or the fruits of Portugal. Would not his Portugueze Majesty have a just right, by his Ambassador, to remonstrate against this law as being prejudicially restrictive of the trade of Port wine and Portugueze fruits, and inconsistent with treaties? And would he not charge his Ambassador to obtain a revocation of this grievous statute or proclamation, as the case was? Can it then be reasonably denied that we have a like right to complain of pragmatical laws in Portugal injurious to the privileges of our fellow subjects there, and tending, not only to deprive us of our trade and the immunity of our persons, but also calculated for the iniquitous purpose of protecting our debtors from the jurisdiction of our Conservators, as some of us have already too severely felt? Let any man impartially consider the parity of the supposed case with the real one, too unhappily subsisting between us and Portugal, and say, after mature deliberation, if the establishment of the Monopolizing Companies is not utterly inconsistent with the treaty granting us a free trade in that kingdom, and insuring the independency of our Conservator: We, on our part, must give a constant support to the Royal House of Braganza, in lieu of this free trade, and the advantages arising from that intercourse of commerce between the two nations. We have been
just

just to our stipulations, and far from rigorous in our demands of the prestations incumbent on Portugal: Why then should we not be indulged in some sort of a compliance, at least, from that kingdom, with the treaty we so faithfully observe? Equity, sure, pleads in our behalf, and from the Patriot characters of our present Ministers, we are emboldened to hope for success in our endeavours to obtain that justice of Portugal, which every nation has a right to expect from its allies.

FINIS.

MEMORANDUM

TO : [Illegible]
FROM : [Illegible]
SUBJECT : [Illegible]
[Illegible text follows]

DATE: [Illegible]



