in compact only, and intended for the good of the whole, "that protection and allegiance are reciprocal obligations, and to support, neither in all governments, in all ages they have been, secured by the solemnity of an oath.

Shall then, is not the conduct of Britain a violation of the rights of our seamen? Are they not secured in these rights by the Constitution, and are we not bound by the most solemn obligation to protect them to the utmost of our power? (By the law of nations [Vat. 251. sec. 1.] "Whosoever uses a citizen ill indirectly offends the state which *ought to protect* their citizens, and his sovereign should *revenge* the injurious *punish the aggressor* and if *possible* oblige him to make *entire satisfaction* since otherwise the citizen would not obtain the *great end* of the civil association which is *safety*.

I cannot then permit myself for a moment to suppose that a right so important, *avowed by this to seamen*, and so palpably violated, will not be protected, to the utmost of the power of the Congress of the U. S. by all the legislative means they possess, consistent with the sound principles of legislation, and good government.

By the constitution, Congress are to define and punish piracy; in defining piracy, I wish them not to exercise a wide unbridged *discretion*, which is left undefined, "to fix them by law what is just." I will therefore call their attention to the subject, as it has been considered by the law of nations—the common and statute law of Great Britain. By the law of nations, [Mob. d. j. n. 57.] "the attacking a ship at sea and taking away some of the men to make them slaves is piracy."

By the common law, [4 Black. Com. 72—3. Inst. 109] piracy consists in committing those acts of robbery and depredation upon the high seas which if committed upon land would be felony—

[4. Bl. C. c. 71.] Every *community* have a right to inflict what punishment upon a pirate by the rule of self-defence, which an individual would in a state of nature have been otherwise intitled to, for any invasion of his person or property. By the statute of Elizabeth, [43. Eliz. I.] is enacted that whosoever shall hereafter without *lawful authority* take any of her majesty's subjects against their will and *detain them with force*, or to make a prey or spoil of his person or goods upon deadly feud, *or otherwise*, should be adjudged and taken to be a felon, and should suffer the pains of death without benefit of clergy.

This statute was predicated upon a state of things in that country, not more intolerable than the present state of American seamen; not can it be considered as an incorrect exercise of the discretion of Congress in defining piracy, to declare the impressment of our seamen, and confinging them to so abject a slavery as they are subject to on board British ships of war, piracy—when by the law of nations, by the common law, and by the statute of Elizabeth we discover ourselves perfectly justified in so doing. And I trust we can never find ourselves less disposed to protect *our citizens*, than *Britain* has been to protect *her subjects*, nor of declaring that act *piracy* committed on the *high sea*, that Britain considers a *felony of death* committed on *land*. Nor can we feel any difficulty in imposing the pains of death on the offender, for a piracy on *personal liberty*, when we impose it in all cases of piracy on *property*, and when we consider that it is the punishment imposed, by *all* nations, in *every* case of *piracy*. This brings me to the second section of the bill, which justifies the repelling force by force, and gives a premium for destroying the pirate, whom all writers denounce as out laws and enemies of the human race, and hold it lawful to destroy. Sir Edward Coke [3 Inst. 113.] says a pirate, to use his own words, is "*Hostis humani Generis*," which is an enemy to the human race. [Merr. C. 4. s. 4, Co. Lit. 128.] This an outlawed felon, is said to have *Caput Lupinum*, that he might be knocked on the head like a wolf by any one that should meet him, and judge [4 Bl. 70.] Blackstone tells us in more modern times, that a pirate has renounced all the benefits of society and government, and has reduced himself afresh to the savage state of nature; by declaring war against all mankind, all mankind must declare war against him: so that every community hath a right by the rule of self-defence, to inflict that punishment upon him, which every individual would in a state of nature have been otherwise entitled to do, for any invasion of his person or property. By the law of nations [Vat. 137. § 169.] "The right of punishing, which in a state of nature belonged to each individual, is founded in the right of safety. Every man has therefore a right to preserve himself from injury, and by force to provide for his own security, against those who unjustly attack him. Nor are we left to the elementary writers alone to support this doctrine. "The very point has been judicially determined in the [Foll. C. L. 154.] case of Alex. Broadfoot, who was indicted for the murder of Cornelius Calahan, and acquitted by Judge Foster's direction to the jury. The case was thus—captain Hanaway had a press warrant, with this direction inserted in the body of it—"You are not to intrust any person with the execution of this warrant but a commission officer, and to insert his name and office in the deputation on the other side hereof." He indorsed. "I do hereby depute A. B. a lieut. of the Mortar sloop to impress, &c. On 25th April, 1742, Capt. Hanway being at anchor, in Kingroad, at Bristol, ordered the ship's boat down the channel, to press as they should see an opportunity; the lieut. dined on board with the captain. In the evening the boat came up with the Bremen Factor, in that part of the channel, in the county of the city of Bristol, some of the crew went on board in order to press men, who being informed that one or two of the Bremen's men were concealed in the hold, Calahan with three others went thither in search of them, whereupon Broadfoot, one of the Bremen's men (who had provided a blunderbuss for defence against the press gang) called out and asked them what they came for; he was answered by some of the press gang, "we come for your comrades." Whereupon he cried out keep back, I have a blunderbuss loaded with swan shot." Upon this the other stopped, but did not retire. He then cried out, where is your lieutenant? and being answered "he is not far off," immediately fired among them; by this shot Calahan was killed, and one or two of the press gang wounded—And in this case, as you perceive, Broadfoot was acquitted by the direction of the Judge. Then if an Englishman may kill an Englishman in the attempt to impress him, because the authority was incorrectly executed, can we feel a doubt that an American may kill an Englishman when by no possibility there can be any *colour* of authority; and that too without the jurisdiction and limits of the British empire, when sailing under the protection of the American flag—I can feel no doubt.

And as to giving a bounty for killing, this *hostis humani generis*, wearing the *caput lupinum*, I trust there can be no objection, when we consider the practice of other states and nations, particularly Britain herself, who by the statutes of George II [8 Geo. 2, c. 24.] gives a bounty to encourage the destruction of pirates. The statute is in these words: "That to encourage the defence against pirates, the commanders or seamen wounded, and the widows of such seamen as are slain in any piratical engagement, shall be entitled to a bounty to be divided among them, not exceeding the value of one fiftieth part of the cargo on board." Can we then with the example of Britain before our eyes giving *bounty* for the protection of *property*, feel any reluctance in giving a *bounty* for the protection of *liberty*? Can it be possible that *Britain* shall protect the *property* of her *subjects*, with more vigilance and circumspection than *America* will protect the *liberty and lives of her citizens*? I will not for a moment permit the fruitful idea to torment me. It cannot be so.—As these provisions are mere declarations of the law, that our seamen may know their rights, and resist the unlawful force with safety; and as the exercise of this repulsive force may induce severities and death itself, it becomes necessary to secure the exercise of it by the provisions of this act. Therefore the next clause is introduced authorising the President to retaliate in case of any cruelties exercised on our seamen. This is *dictated* by the soundest policy, *legitimized* by the law of nations, and *recognized* by our own laws. By the law of nations, [Vat. 426. § 341] "when a sovereign is not satisfied with the manner in which his subjects are treated by the law and custom of any other nation, he is at liberty to declare he will treat the subjects of that nation in the same manner his subjects are treated; this is called the law of *Retortion*; there is nothing in this but what is conformable to sound politics [Vat. 432, § 351] At Athens the law permitted the relations of him who has been assassinated to seize three of the natives of that country, & detain them till the murderer was punished or delivered up—and our own law recognizes this principle. By the act of 3 March, 1799, it is provided, that if any seamen, who shall have been impressed on board any vessel of the powers at war with France, who shall be taken by France, and hath suffered death, or any corporal punishment by the authority, the President shall cause the most rigorous retaliation to be extended on any citizen of the French republic that may be taken under the laws of the U. S. But perhaps it may be insisted these were *Frenchmen*, and not entitled to the same measures of justice as *Englishmen*. By the law of nations [Vat 434 § 354] these measure are milder than war, which involves the *innocent* with the *guilty*. "The prince therefore who attempts this method, instead of coming to an open rupture is doubtless worthy of peace, on account of his moderation and prudence; but they who run to arms without necessity, are scourges to the human race, barbarians, enemies to society, and rebels to the law of nations, or rather to the common Father of mankind."

This brings me to the last section of the bill, which secures the impressed seaman compensation for his false imprisonment, not far beyond the wages in the merchant service, and authorizes the attachment of so much of the debts to British subjects, as may be necessary for that purpose—there being no other means of redress. All mankind will declare it just, and Britain herself has judicially established the principle in the case decided by C. J. Pratt afterwards Lord Camden [Say. Dam. 219.] The Earl of Halifax, one of his majesty's principal secretaries of state granted a warrant without previous information, against a journeyman printer of the North Britain, who was kept six hours and treated civilly, 300 pounds damages were given. On a motion for a new trial because of *excessive damages*—Pratt, chief justice, declared, that as it was a general warrant and an attack on *public liberty* and against Magna Charta, and as they attempted to justify its legality, there ought to be exemplary damages, and in all cases where an injury is done under the color of authority, as where an officer under an authority, to impress exceeds that authority—Motion over-ruled.

It will not then be said by an American Congress, that for the false imprisonment of an American seaman sixty dollars per month can be too high, for his bondage on board a British ship of war, exposed to every hardship, when a British subject for six hours confinement with civil treatment, had eight hundred dollars damages by a British jury; nor can the method of recovering the same be opposed upon sound principles [Vat. 431. sec. 350.] By the law of nations "justice is said to be denied, when the subject is not permitted to establish his right in the ordinary tribunals of justice, or when great and unreasonable delay is effected, equivalent to a refusal. And it can never be said, that after ten years spent in fruitless negociation, and after we have been informed by the President, that every spark of hope is extinguished, and the cup of humiliation drained to its dregs, that the delay is not unreasonable and equivalent to a refusal. And we are authorized by the law of nations, [Vat. 151. sec. 1.] to retaliate, to *inforce* if *possible*, the making the citizen *entire* satisfaction. It may be objected, however, that this remedy is in violation of the treaty of London of 19 Nov. 1794, which secures the inviolability of British debts; but it will be recollected that this violation on our part, is induced by the violation of the same treaty by Great Britain by an attack on the *liberty* of the citizen, and it can never be said that we are not justified by claiming the damages we have received by a violation on *personal liberty*, as a correct set-off against any damages they may receive by a breach of the same contract, by an attack on personal *property*. It can never be in the eye of justice, and in a land of liberty, that *property* is to be more respected than *liberty*, nor can we feel ourselves unauthorized when the law of retaliation, and self-preservation which are written on the heart of man by the finger of omnipotence, holds us justified. Nor, when we consider that we ourselves have *totally* annulled and declared void the treaty with France, because of her violation of her treaty by the spoliations on our commerce; refusing to do us justice can we hesitate to make this *partial* repeal of the treaty with Britain so far *only* as is necessary to do our oppressed seamen justice, by the sacrifice of *British property* at the shrine of *American liberty*, when we reflect that it is the only means whereby we can remunerate our injured seamen for their cruel bondage—that the safety of the people is the supreme law, and that we are the centinels, to protect their rights, and avenge their wrongs.

MESSAGE

FROM THE

PRESIDENT of the UNITED STATES

respecting the application of

HAMET CARAMALLI,

Ex-Bashaw of Tripoli.

(Concluded.)

Extract of a letter from Robert Denison, secretary to the commander of the Mediterranean squadron, to the secretary of the navy, dated

MALTA, 22d May, 1805

It appears, by a variety of letters which have been received that the Bashaw is seriously disposed and earnestly desirous for peace with the United States and what confirms this idea beyond all doubt is the receipt by colonel Lear, of a letter, written at the express solicitation of the Bey, by the Spanish consul, with overtures for opening a negociation, and accompanying a teschera or passport under the Bey's seal, guaranteeing the inviolability of any person or persons sent to Tripoli to treat of peace. These correct evidences of a pacific disposition in the Bashaw were a few days ago prefaced by a communication to commodore Barron from Mr. Nissen the Danish consul, written at the desire of the minister, Sidi Mahomet Dogires, expressing the minister's sincere and earnest wish for the re-establishment of peace, and recommending that a person should be sent over immediately to commence a negociation. In consequence of those repeated and unequivocal manifestations of a disposition, on the part of the enemy, to accommodate differences, the commander in chief thought it his duty officially to communicate to the consul-general his opinion that the present moment is favorable for opening a negociation, and he latter having expressed his coincidence therewith, the measure has been agreed upon, and col. Lear is making arrangements to proceed, on board the Essex frigate, to the coast of Tripoli, in the course of two or three days. Commodore Barron entertains the most sanguine hopes of the happy issue of this measure, and anticipates, with not less confidence than pleasure the speedy emancipation of captain Bainbridge and his suffering companions. I think it is not hazarding too much to say there is scarcely a doubt but the business will be honorably and satisfactorily terminated in less than a fortnight.

Article 3d of the preliminary articles of a treaty of peace to be entered into between the President and citizens of the United States of America, on one part, and the Bashaw, Bey and subjects of Tripoli, in Barbary on the other part.

At the conclusion of a peace as aforesaid, between the United States and the regency of Tripoli, all the forces of the United States which have been, and may be, in hostility against the Bashaw of Tripoli, in the province of Derne, or elsewhere, within the dominions of the said Bashaw, shall be withdrawn therefrom, and no supplies shall be given by or, in behalf of the said United States, during the continuance of the peace aforesaid, to any of the subjects of the said Bashaw, who may be in hostility against him, in any part of his dominions; and the Americans will use all means in their power to persuade the brother of the said Bashaw, who is co-operating with them at Derne, &c. to withdraw from the territory of the said Bashaw of Tripoli: but they will not use any force or improper means to effect that object; and in case he should withdraw himself as aforesaid, the Bashaw engages to deliver up to him his wife and children, now in his power.

(Signed)

TOBIAS LEAR.

Commissioner in behalf of the United States for negociating a peace with his excellency the Bashaw of Tripoli.

EXTRACTS.

Colonel Lear to Wm. Eaton, esq

Tripoli, 6th June, 1805.

In consequence of a representation made to me by commodore Barron, that the present was a favorable moment for for us to enter into a negociation with the bashaw of Tripoli, and my instructions leaving it to the commander of our forces in this sea to determine the proper time for such an attempt, I repaired to this place on the 26th ultimo, in the United States' frigate Essex, and immediately opened a communication with the bashaw. His demands were 200,000 dollars for peace and ransom, and the delivery on our part of all the Tripolitans in our possession, and a restoration of all their property. These terms were at once rejected *in toto*; and after some discussion, I proposed as the ultimatum, that a mutual delivery of prisoners should take place, and as he had a balance of more than 200 in his favor, I would give him 60,000 dollars for them; but not a cent for peace, which should be made on terms of the most favored nation with whom he has a treaty, and a regulation respecting prisoners, if a future war should take place between our nations; and in order to prevent any fruitless altercation, I declared I would not go on there to complete the business until these terms were formally acceded to. The weather proving bad for the season, obliged our vessels to keep off, and prevented a regular communication with the shore, which prevented the completion of the preliminaries until the 3d inst. when they were sent off to me with the bashaw's seal. I immediately went on shore, and in 24 hours all the officers and crew of the late frigate Philadelphia were sent on board the ships.

I found that the heroic bravery of our few countrymen at Derne, and the idea that we had a large force and immense supplies at that place, had made a deep impression on the bashaw. I kept up that idea and endeavored from thence to make an arrangement favorable to his brother, who, altho' not found to be the man whom many had supposed, was yet entitled to some consideration from us.—But I found this was impracticable, and that if persisted in, would drive him to measures which might prove fatal to our countrymen in his power. I therefore engaged, of course, that on the conclusion of peace, we should withdraw all our forces and supplies from Derne and other parts of his dominions; and the bashaw engages, that if his brother withdraws himself quietly from his dominions, his wife and family should be restored to him. This is all that could be done, and I have no doubt the U. States will, if re serving place him in a situation as eligible as that in which he was found.

TRANSLATED.

Copy of a letter from Hamet bashaw Caramalli to his friend and brother William Eaton, late general and commander in chief of our allied force in our kingdom of Tripoli.

Without placing in view the misfortunes which so long pursued me, I cannot forbear expressing to you at this moment of our final separation, the deep sense of gratitude I feel for your generous and manly exertions in my behalf. Be assured, that in whatever situation the will of God shall place me, I shall always bear this impression of gratitude on my heart.

On return to your happy country, to which I wish you a safe passage I request you will express to your sovereign, my cordial thanks for his manifestations of friendship towards me. Had it been ordained, that measures might have been carried forward to the attainment of my wishes, the restoration of my rightful dominions to me, it would certainly have been cause of eternal gratitude. But it is true, my own means were small. I know indeed they did not answer your reasonable expectations. And this I am ready to admit, is a good reason why you should not choose to persevere in an enterprise hazardous in itself, and perhaps doubtful in its issue. I ought, therefore to say, that I am satisfied with all your nation has done concerning me. I submit to the will of God; and thank the king of America and all his servants, for their kind dispositions towards me. Situated as am, you must still allow me to ask another expression of your friendship. You tell me that in your treaty with Jussuff bashaw, my perfidious brother, he has promised to restore to me my family. I pray you will use your influence with your admiral, to permit one of your vessels to go and ask for them, and that he will give me the means of repairing, with some small assistance to enable me to subsist myself and suite, into some country where I may hope to spend the residue of my days in peace.

Again I repeat to you, my love and esteem, and I send honor and long life to your sovereign, which may the merciful God confirm to him.

Done at Syracuse, the 29th day of June, 1805.

[*Hamet's Seal.*]

William Eaton, to commodore Rodgers.

Syracuse, January 30th, 1805.

I have been yesterday and to day occupied with the proceedings and records of the court of enquiry, on capt. Bainbridge, which is the reason I did not wait on you on board yesterday morning.

Inclosed is a copy by translation, of a letter Hamet Bashaw has written me, dated 29th. This, I think, is enough to do away any situation concerning our intercourse with this prince, injurious to the honor of the United States. He tells me he shall write to the same effect to the president.

To-morrow morning I will do myself the honor to wait on you with a statement of the pay due the troops, who served with me through the defart of Derne.

To the people of the United States of America.

It is known to the whole world that the reigning bashaw of Tripoli, Jussuff, obtained the throne by the murder of our father and elder brother, and by my exile who came next in succession. Driven by his impious and cruel usurpation, I took refuge in Egypt, where I was kindly received by the Mameluke beys, who gave me a distinguished rank in the military service. Reposing in the security of peace I had ceased a repine for the loss of my throne and regretted only the lot of my unhappy subjects, doomed to the yoke of my cruel and tyrannical brother

It was at this epoch, that the arrival of general Eaton gave me hopes of better fortune; and though I could not tell what were his powers, I trusted to the faith of a great people, of whom he was the ostensible representative, and threw myself into his arms. We concluded a treaty at Alexandria, a copy of which is among the papers of commodore Barron, in custody of his secretary Mr. Robert Denison. This treaty not only stipulates the recovery of the throne for me, but also includes several advantageous articles for the United States, for which general Eaton will be my voucher. Ought I then to suppose that the engagements of an American agent would be disputed by his constitutional government? I cannot suppose that a gentleman has pledged towards me the honor of his country on purpose to deceive me.

General Eaton and myself, with our joint followers, had already advanced 600 miles into the kingdom of Tripoli; and a general defection has seized my brother's army, and all things prepared the protected of America to be hailed sovereign of his usurped throne. At this juncture a peace is concluded, in which a throne, acquired by rapine and murder, is guaranteed to its usurper and I, the rightful sovereign, the friend and ally of America, am left unprovided for. No article in my favor, no provision for me and my family, and no remuneration for advantages I had foregone in yielding to American honor. I am left in Syracuse with thirty dependents on the pittance of two hundred dollars per month, and no prospect of future establishment. What with the expences of my retinue &c. &c. I, a sovereign prince, am now reduced to the pension of 150 cents per day.

I must here observe, that Mr. Eaton whose generosity I cannot sufficiently praise, has relieved me from his own