13 Dezbr 1825 And protocolation

The Undersigned, Chargé des
affaires of The United States of America,
presents his compliments to The Viscount
de St Amaro, Counsellor, Minister and Se-
=cretary of State for Foreign affairs, and
acknowledges the receipt, on the days
of their respective dates, of His Excellency's
communications of 6th and 7th Inst. the
first announcing that "H. M. The Em-
=peror had ordered to be fitted out
a Naval force with the object of plac-
=ing in effective blockade all the ports
belonging to the Government of The United
Provinces of The River of Plate," and the
second, giving notice, that the said
ports "were to be immediately block-
=aded by order of H. M. The Emperor,
by the forces already there stationed, re-

enforced by those which have just departed."

As this measure of war, cannot fail deeply to affect the interests of neutral nations, the merchants of which, with their own ships and capitals carry on almost exclusively the foreign trade of Buenos Ayres and the other ports intended to be blockaded — and as the general terms of the notification, "all the ports" of a coast several hundred miles in extent, involves a question of infinite importance to the interests of the United States and all the other Powers of America, as well as the secondary states of Europe — The Undersigned as representing one of the nations most interested, conceives it to be his duty to bring into the view of His Majesty's Government, some observations upon the principles of blockade as maintained by the United States

in their construction of National Law,
in the hopes, that they may be found
to be in accordance with those professed by
His Majesty's Government, and that thus
all liability to any misunderstanding
which might possible arise, from the
misapplication of those principles,
may be removed at the onset. The ne-
=cessity of making this representation
is rendered the more imperious upon
the Undersigned, by the occurrence of
a case, wherein a valuable American
Ship, seized by one of the Commanders
in His Majesty's naval service for an
alleged breach of the blockade of Per-
=nambuco in September 1824, remains
to this day, after a lapse of near fifteen
months, not only without a decision
in the first instance, but even without
an early prospect of one. As this matter
however, will form the subject of a se-
=parate communication, no further re-
=marks in relation to it, will here be made.

It cannot but be known to His Excellency, that the doctrine of blockades, as maintained in the practice of modern times, by some of the European Powers, has been entirely subversive of the principles respected by the majority of nations, and which have been uniformly held to be settled, by the most distinguished writers on Publick Law, and even by those very Powers themselves, in theory. The right of a Belligerent to distress his enemy by the institution of seiges and blockades, cannot be questioned; but the extent to which he may lawfully prejudice the interests of neutrals, is a matter which it is not, competent for the Belligerent alone to decide. Neutrals as well as Belligerents have their rights, and if the former have acceded to the rule, that trade in articles contraband of war, may not be carried on with the country of a Belligerent, this acquiescence is to be viewed,

as the result of that respect for the laws of humanity, which desires to see a speedy termination to the disasters of war wherever they have unhappily been displayed. To this same respect for the laws of humanity is to be ascribed that further concession in favour of Belligerents by which neutral nations agree not to convey provisions or other supplies to ports or places actually besieged or blockaded, and upon no other principle, can the abandonment by neutral nations of their innocent commerce, be contended for.

Neutral nations however, in thus giving up for the common good, a portion of their natural rights by no means intended that an assailing Belligerent should be invested with an artificial power to distress his antagonist with any advantages not due to the positive force of his arms. It was for this reason, that the maxim was set-

=tled that no port could be considered
as in a state of blockade, unless so guarded
as that "no vessel could enter without
evident danger, on account of vessels
of war so stationed there, as to form an
effectual blockade." From this principle
it followed that if any withdrawal
of the blockading force should at any
time take place, owing to the power of
the Besieged or his allies, or to the ne-
=cessity of refitting or procuring supplies,
or, for the purpose of cruizing or blocka-
=ding other places, or from any other
cause (except storms which drive it
temporarily from its position, but which
it immediately resumes) the blockade
was considered at an end, and any
repetition of it, could only be consider-
=ed as a new blockade, and not as
an uninterrupted continuation of the
original one, which could affect the
interests of neutrals, who had entered
the port in the mean while, when no

blockading force was present to warn them off, or obstruct their entry. In accordance with this equitable construction of the laws of blockade, as defined above by the armed neutrality of 1780, the government of Great Britain, [redacted] the most powerful maritime nation of the world in a convention with the Empire of Russia formed in the year 1801, stipulated, that "in order to determine what characterizes a blockaded port, that denomination is given only to a port where there is by the disposition of the power that attacks it with ships stationary or sufficiently near, an evident danger in entering." It is needless to say, that the other powers of Europe, as well as the United States, at that time the only independent american Power, never having disputed the principle, it could not be otherwise regarded, than as the established law of nations at the commencement of the present century,

and it is equally clear, that it must be so considered at this day, notwithstanding the numerous violations that have been practiced by States, which acknowledged its correctness.

The principle then being indisputable, that the existence on the spot, of the means adequate to the end, was necessary for the institution of a blockade the next question which presented itself was, how were neutrals to be notified of the fact. That all aggressions upon an innocent and friendly stranger, were contrary to the laws of humanity and justice, was too palpable to be denied, and the very proper practice was soon introduced, of warning neutrals about to enter a blockaded port, of the existence of a blockade, and without this warning by the blockading force, they could not be considered as liable to capture and confiscation. This just and equitable rule, not at all shaken by the

refinements of modern sophistry, or the outrages of modern injustice, was grounded upon a fair demarcation of the limits between the rights of Neutrals and the rights of Belligerents, and is supported by the following reasoning.

The right to prevent the entry of Neutrals into the blockaded Port of a Power, with which they are in amity, is as above declared, the result of a concession in favour of the Belligerent; but a concession only made for such length of time as the blockading party maintains the blockade. To prevent the entry of a neutral, even for a moment, after the raising of the blockade, would be a manifest infringement of his rights, and if the doctrine were admitted, that a notice, published in a distant country, of a blockade, which might by possibility be raised long before any Rebel could reach the designated Port, was the only requisite, the consequences would be highly injurious to the interests

of a distant nation, whose merchants would be deprived of the advantages, enjoyed by those near at hand, of furnishing supplies to the parties, which had been by the occurrence of peace, or other causes, relieved from the distresses of a seige. In countries which are proximate to each other, as Great Britain, France, Holland &c, where the intercourse requires but the lapse of a few hours or days, the institution or the withdrawal of a blockade may be known in so short a period of time, as to render the importance of the principle here advocated, less manifest than it is to nations, which are relatively more distant, such as those that are separated by the Atlantic Ocean, and especially those which are located in different hemispheres. To meet this argument by contending that a vessel is bound to call for confirmation of a neighbourship fact, would be substituting one measure of injustice for another. leaving out

of the question, the impracticability in many cases, especially those wherein whole Coasts are blockaded, of complying with such a demand, no Belligerent has a right to compel a neutral vessel to perform a circuitous route to the port of her destination, nor has he the right to impose upon her, the necessity of incurring the expense of Ports and other charges, in his own ports, of those of any other nation. So satisfied of the correctness of this principle was the Government of Great Britain that, in the year 1804, in consequence of a remonstrance made by the American Government against a declaration of a general blockade of "the Islands of Martinique and Guadaloupe" proclaimed by a British Naval Commander, orders were issued to him, "not to consider any blockade of those Islands as existing, unless in respect of particular ports, which may be actually invested, and then not to

capture vessels bound to such ports, unless they shall previously have been warned not to enter them.

The United States maintain-=ing these same principles, have always denied the doctrine of general and di-=vonatic notifications of blockades, as binding upon them citizens. Whenever, they are made, however, they regard them as friendly offices of the Power of the Sovereign from which they pro-=ceed, because it gives their merchants an opportunity of taking into the cal-=culation of their voyages the contingency of a continued effective blockade of the ports designated, and also gives them an occa-=sion for advancing their own particular views upon that branch of the Public Law, which has been so flagrantly vi-=olated by some of the principal Powers of Europe. In the year 1816, the Sovereign of the United States, having been notified by the Spanish Minister at Washington of a declaration of the blockade of the

ports of the Vice Royalty of Santa Fe," lost
no time in protesting against the gene-
-ral terms of the decree, and its Represen-
-tative at Madrid was instructed to
advise the Government of Spain, that
"a blockade to be acknowledged as
valid by the United States" must be
confined to particular ports, each
having a force stationed before it,
sufficient to intercept the entry of
vessels, and no vessel shall be seized,
even in attempting to enter a port so
blockaded, till she has been previously
warned away from that port. It was
also noticed, that indemnity would
be claimed for all captures of ame-
-rican vessels not made in accordance
with this rule.

~~It is manifestly not the in-~~
-terest of the new independent Ameri-
-can States to adopt in their practice
the broadest possible construction of
the Laws of blockade, for the time may

come, when being at war with the powerful maritime nations of Europe they may find it all important to be able to shew, that like the United States, they have always adhered to those maxims, which have been received and acknowledged as settled principles of National Law, and have always been ready to observe those rules which, consistently with self protection, have operated least injuriously to neutral and friendly nations. It is In this reason, that the Undersigned begs leave to invite the attention of His Excellency to the following considerations, connected with the important question referred to.

The Laws of Blockade

the [illegible] as above established, is a concession granted to the Belligerent, and can only be construed to extend so far, as shall promote his benefit. Every act therefore, which

can be shewn to inflict A a positive injury upon a neutral, without conferring a benefit on the Besieger in the furtherance of his plans, must be inadmissible upon the common principles of natural justice. Thus, if a neutral's vessels and property are within a port, at the time of the institution of a blockade, it would be manifestly unjust to prohibit their departure, inasmuch as by so doing extensive evils would be brought upon the citizens of friendly nations, in their pursuits of a lawful commerce. It is indeed difficult to imagine what justifiable motive could influence a besieger to prevent a neutral from withdrawing from the besieged place, his ships and property, for by such act, the means of escape and of defence, as well as the means of prolonging the contest, would be at the same time withdrawn from the enemy.

With respect to the right of neutral ships to depart, there seems to be no difference of opinion amongst nations, but the same does not happen in regard to their cargoes. In the year 1813, while Great Britain was at war with the United States, some of the European Powers remonstrated against the unjustifiable pretensions of her system of blockade, which embraced the ships part of the coast of the United States, and in an answer to the Minister of Sweden, it was contended, that although neutral vessels, which had entered the enemies ports without a knowledge of the blockade, might in conformity with the established rule, be allowed to depart, yet that this permission could not be extended to their cargoes. Special motives in this particular case on the part of Great Britain, might comply account for a measure, which she might not perhaps willingly have approved, if adopted by any other power, and it is not to be wondered at, that a

nation, which already monopolized so great a share of the commerce of the world, should have pursued a system, calculated to exclude from competition the capitals of other States. If therefore it can be made to appear to the satisfaction of His Majesty's Government, that the Citizens of Nations with which His Majesty is in amity, are the proprietors of a large amount of property already in the ports of the United States, which may enter them before the institution of the blockade, the undersigned would respectfully submit to the consideration of His Majesty, whether it would not be advisable to punish the officers who are to direct the scene (in case the measure has not already been adopted) with explicit instructions on the subject, in order that by no misconception

=ception of powers, many neutrals be ex=
=posed to the privation of their property,
either by detention in port, or by seizure
after Decree &c.

The Undersigned trusts that in
this communication, His Excellency
will perceive an additional evidence of
the desire by which he is actuated, of
endeavouring to perpetuate the harmony
and good understanding which so hap=
=pily subsists between their respective Nac=
=tions, and which will be more and more
strengthened, in proportion as their mutual=
=ly embrace the same principles of jus=
=tice, and of respect for each others rights.

The Undersigned on this occasion
renews to His Excellency the Viscount de St
Anero the assurance of his great respect
and esteem; and of the high consideration,
with which he has the honour to sub=
=scribe himself — His Excellency's
most Obedient and
Humble Servant
Chas. Stuart

Rio de Janeiro.
December 13. 1825.