

174
3616

131957

THE PROPERTY OF THE
HOME DEPT
OF THE GOVERNMENT OF IRELAND

H I S T O R Y



OF THE

A

OF



Shipping and Navigation.

By JOHN REEVES, Esq.

AUTHOR OF

"THE HISTORY OF THE ENGLISH LAW."

131957



L O N D O N :

PRINTED FOR E. AND R. BROOKE, BELL-YARD,
TEMPLE-BAR ; AND J. SEWELL, CORNHILL.

M,DCC,XCII.

82094

MINISTRY OF THE
HOME DEPT
GOVERNMENT OF INDIA

131.6.57



TO THE RIGHT HONOURABLE,
LORD HAWKESBURY,
P R E S I D E N T
OF THE
COMMITTEE OF PRIVY COUNCIL

APPOINTED FOR THE
CONSIDERATION OF ALL MATTERS
RELATING TO
TRADE AND FOREIGN PLANTATIONS;

THIS BOOK,
COMPOSED FOR THE USE OF THE COMMITTEE,
IS RESPECTFULLY INSCRIBED
BY HIS LORDSHIP'S MOST OBEDIENT
AND FAITHFUL SERVANT,

June 1792.

JOHN REEVES.

A2094



131 G 57

CONTENTS.

131 G 57

	Page
INTRODUCTION,	i

PART I.

First Act of Navigation—Petition of the Commons on the Carrying Trade—An Easement in Duty for English Ships—Stat. 5. Eliz.—The Fisheries encouraged—The Coasting Trade—The Plantation Trade—Act of Navigation 1651,	— — — — — 11
---	--------------

PART II.

INTRODUCTION,	54
---------------	----

CHAPTER I.

Import and Export in English Ships—Enumerated Goods—European Goods sent to the Plantations	
--	--

CONTENTS.

tions—Plantation Bonds—Acts of Navigation enforced—Relaxed and dispensed with—Stat. 7. & 8. Will. 3.—Navigation Act relaxed—Irish Linens—Rice—Sugar—American Acts Stat. 4. Geo. 3. Stat. 5. Geo. 3. and Stat. 6. Geo. 3.—Free Ports established—The Export Trade from Ireland—Import and Export Trade granted more fully—The Restraining and Prohibitory Acts—Newfoundland—Honduras—Surat, — — — 58

CHAPTER II.

THE TRADE WITH ASIA, AFRICA, AND AMERICA.

To be carried on in English Shipping—and directly with those Countries—Exceptions thereto—Persian Goods through Russia—Coarse Calicoes—The East India Company—South Sea Company—Hudson's Bay Company—African Company—Fourth Section of the Navigation Act—What is a Manufacturing—Of direct Importation—Of the usual Ports for first Shipping—Of returned Goods, — 139

CHAPTER III.

THE EUROPEAN TRADE.

The Eighth Section—Complaints against the Act—Prohibition of Goods from the Netherlands and Germany—Provision in the Treaty of Breda

CONTENTS.

Breda—The Prohibition relaxed—The East-land Company—The Russia Company—The Turkey Company—Usages contrary to the Prohibition—Of Shipping in the European Trade—Foreign Prize Ships—Of English Ships sold to Foreigners—Of the Country where foreign Ships built—Stat. 22. Geo. 3. c. 78.—Of the Country of the Master and Mariners—Of Prize Goods—What is an Importation—Act of Navigation dispensed with in War-Time,
196

CHAPTER IV.

THE COASTING TRADE,

278

CHAPTER V.

THE FISHERIES.

Certain Sorts of Fish foreign-caught to pay double Aliens' Duty—The Herring, North Sea, and Westmony Fisheries encouraged—The Greenland and Newfoundland Fisheries free of Duty—Importation of Fish foreign-caught in foreign Ships prohibited—The Newfoundland Fishery—All Fish bought of Foreigners prohibited—Allowances on salted Fish British-caught and cured—Bounties in the Greenland Fishery—Bounties in the Newfoundland Fishery—and in that of the Gulf of St. Laurence and Labrador—Bounties in the Southern Whale Fishery—The Society of the Free British Fishery instituted,
— — — 280

CHAPTER

CONTENTS.

CHAPTER VI.

OF BRITISH SHIPS.

How English-built Shipping to be understood—
Foreign Ships, English-owned, to be registered
—English Ships to be English-built—The
Plantation Register Act, Stat. 7. & 8. Will. 3.
c. 22.—Of Registers lost or mislaid—When
foreign Seamen employed—Ships made free by
Letters Patent—By Private Acts—By the Com-
missioners of the Customs—Of Prize Ships—
Of Master and Mariners naturalized, 302

PART III.

INTRODUCTION, 341

CHAPTER I.

THE PLANTATION TRADE.

The American Intercourse Bill, Stat. 23. Geo. 3.
c. 39.—The Newfoundland Supply Bill—Stat.
28. Geo. 3. c. 6.—Intercourse with the West-
Indies—With the American Colonies—The
American Orders in Council—Doubt thereupon
removed by an Explanatory Order—Free Port
Act, — — — 344

CHAPTER

CONTENTS.

CHAPTER II.

TRADE WITH ASIA, AFRICA, AND AMERICA,	378
--	-----

CHAPTER III.

THE EUROPEAN TRADE,	380
---------------------	-----

CHAPTER IV.

THE COASTING TRADE,	385
---------------------	-----

CHAPTER V.

THE FISHERIES.

The Newfoundland Fishery—The Greenland Fishery—The Southern Whale Fishery—The British Fisheries—The Herring Fishery—The Deep-Sea Fishery,	— 386
--	-------

CHAPTER VI.

OF BRITISH SHIPS.

Frauds in Registering—Smuggling—Defects in the Registering Laws—Intended Amendments therein—Points submitted to the Commissioners of the Customs—Their Report thereupon— Proposals	
--	--

C O N T E N T S.

Proposals for amending the Laws—The Opinion of the Committee of Trade thereupon—Stat. 26. Geo. 3. c. 60.—Of British-built Ships—Of Registering—The Bond—Indorsement on the Certificate—Bill of Sale—Change of Name—Certificate lost or mislaid—Prize Ships—Amendments made in Stat. 26. Geo. 3. c. 60.—Of Shipping in the Eastland Trade—Remedies proposed in Aid of British Shipping—Easement in Duties for British Ships—The Case of a Bill of Sale—Macneal's Case, — 410

C O N C L U S I O N, 515

A P P E N D I X, 549

131 G 57



Shipping and Navigation.

INTRODUCTION.

IT is proposed to take an historical view of the law of England with regard to Shipping and Navigation. The increase of shipping, and the improvement of navigation, are objects that have frequently engaged the attention of the Legislature; and various provisions have been made from time to time, by which it was endeavoured to confine, as much as possible, the trade to and from this country, the employment of the fisheries, and the conveyance coastwise, to the shipping and mariners of this country

INTRODUCTION.

country alone. The History, therefore, of Shipping and Navigation includes in it the history of the different branches of foreign and domestic trade, and of the fisheries carried on either upon our coasts or abroad ; and we shall accordingly, in pursuing this enquiry, be led to consider the laws that have been made for better regulating those various objects of commercial policy.

BUT this, understood in its largest extent, opens to us a field of more space and greater variety than is necessary for our present purpose ; some limit must therefore be set to our research : in so doing it is meant to confine ourselves merely to such matters as belong to *shipping* and *navigation* in the stricter sense of those words, or at least in the parliamentary sense which they have acquired from the use and application of them in different acts of parliament. Thus, whatever relates to a *ship*, and its qualifications of *ownership*, or *built*, the master who commands, and the seamen who *navigate* it, the *goods* and *commodities*, and the *places* from which it may import by virtue of such qualifications ; all these are peculiarly subjects of the present History, and will of themselves bring before us the trade and commerce of the whole

INTRODUCTION.

whole world. But any incidents and circumstances relating to that trade and commerce, and not originating from, or belonging to, the precise nature of such qualifications of the *ship* and its *navigation*, are extraneous and foreign. Thus the whole concern of customs and duties being merely regulations of revenue; the detail for collecting and securing such revenue, including the numerous provisions about smuggling; with an infinitude of other matters lying within the department of the custom-house, are all excluded, as no part of this work. In short, it is intended to touch upon those topics, and those only, which compose the famous *Act of Navigation* made in the 12th year of king Charles the Second, and which has in its title the same words in the same sense in which they are here to be understood: *An Act for the Encouraging and Increasing of SHIPPING and NAVIGATION.*

SUCH is the nature and extent of the proposed design; which will comprize a history of what are usually termed *The Acts of Navigation*. This history may properly be divided into Three Periods: the First containing the laws made from the earliest appearance of any such, down to and including

INTRODUCTION.

the Act of Navigation made in 1651, during the time of the Commonwealth. The Second will commence with the famous Act of Navigation passed in the 12th year of Charles II. and will contain all the laws passed down to the time of making the peace in 1783. The Third will commence after the peace, and contain all the laws which have been made down to the present year 1792.

AFTER we possess the text of the law, we become curious to learn what construction it has received, and what practice has been founded upon it. It is intended, therefore, to intersperse such information relative to the construction and usage, that has obtained in consequence of the passing of the different Acts of Navigation, as the best search has been able to discover. The place where a lawyer would naturally look for materials of this sort, is the books of reports, containing decisions and opinions of the courts. This search has been made, but it has not answered the expectations that might be entertained either from the importance of the subject or the lapse of time, which promised many occasions for judicial discussion on these laws. All the cases to
be

be found in the printed books, from the time of passing the Act of Navigation to the present moment, do not exceed ten ; nor has repeated inquiry been able to draw forth any information of this kind from manuscripts. One great source therefore of illustration, and that which principally commands the attention of the professors of the law, is extremely deficient in this branch of jurisprudence.

THIS dearth of recorded judgments must surely be ascribed to no other cause than that there were very few worth recording : for it is not to be believed that, among the variety of matter collected from term to term in Westminster-hall, *that* furnished by the laws of navigation should have escaped without receiving its due portion of attention : and this appears the less likely, when it is considered that such causes belong to the jurisdiction of a particular court, that they are instituted by a board of revenue, and are advised and conducted by the law-officers of the crown. The circumstances attending these suits give them a very special appearance. There are officers of an established board, promoting and watching the progress of them in every

INTRODUCTION.

stage, whose situation makes it their interest to pick up every suggestion that can be added to the stock of official information; and it is not very likely, that any decision worth remembering should have escaped both the general reporters and those who collect for the use of the custom-house: if the latter will not supply the deficiency of the former, we may rest satisfied that it can be supplied from no other source.

It is in the memory of many persons, who are officially bound to know it, that for twenty or thirty years back, very few points of law have been argued in the court of exchequer upon any of the Acts of Navigation. From the experience of this period we are enabled to form some judgment of the preceding; and we may readily believe, that in former times, as we know it is in our own, the generality of suits grounded upon these statutes, turned upon some point of fact, without any dispute about the meaning of the law; and from such suits no legal materials were to be derived for the information of posterity.

It might be inferred from this, that the laws of navigation are penned with great clearness,

INTRODUCTION.

clearness, and are happily exempt from those ambiguities, which have been seen to cloud the construction of other laws, framed by persons of the best learning and experience. But in truth a want of clearness is not the only nor the most common cause of doubt and difficulty in the interpretation of laws: they originate from other defects than those in the laws themselves; from the conceit of the parties interested, and the weak judgments of their first advisers. Such dispositions and such intellects will easily persuade themselves, that the law speaks the language they wish it should speak; and at any rate they will think it worth trying, whether they cannot prevail with a court to confirm their opinion. These considerations have generally had their full effect to plunge the parties into a suit, before the matter comes into the hands of those, who are best able to distinguish, but who are then obliged to exercise their ingenuity instead of their judgement, and to torture and confound every thing, in order to support what in their closets they would pronounce untenable. Yet it is to such occasions as this, that we are indebted for two-thirds of the legal argument to be found in the Report-books; and out of such attempts to

INTRODUCTION.

mislead and misrepresent, grow the true exposition and the real learning of the law.

BUT the king's suits are brought into court in a different manner: they are, in the first instance, well considered by the solicitor of the board of customs, who is qualified by his daily practice to form a sufficient opinion upon the point of law; they are usually submitted to the opinion of the attorney and solicitor general, whose judgment and discretion are looked to for advice and direction. These officers feel themselves responsible in their professional character for that which they advise and promote; and they will always have in view; that the opinion given in their chambers is such as they need not scruple to support in public argument. In addition to their own reputation, they consult likewise the honour of the crown, whose rights should never be brought judicially in question without a reasonable confidence of success. While such considerations have their influence, no points of law will be hazarded, that do not appear really and substantially to contain doubt and difficulty.

INTRODUCTION.

IF few determinations of courts are to be found on this subject of Shipping and Navigation, there is not wanting information of another kind. This is from the opinions of law-officers, which have been taken from time to time ever since the reign of Charles the Second, by the board of customs, for the direction of themselves and their officers in points of practice as they arose. Wherever this can be obtained, I shall endeavour to make it supply the deficiency of judicial matter, in expounding and illustrating the laws made by the Legislature.

I AM aware that the scrupulous dignity of the law of England has not been accustomed to receive, as authorities, any thing less than the opinions delivered by judges upon the bench; the arguments of counsel in court, and their opinions at chambers, are placed among those extrajudicial and private matters that are wanting in the essential quality which should constitute a juridical authority. But it may be said, with due deference to the oracles which speak in our courts, that the opinions of lawyers have an advantage which *those* have not; they come down to us in the writing of the
author,

INTRODUCTION.

author—his own meaning conveyed in his own words; the opinions of courts, on the other hand, are usually conveyed by standers-by; and the clearest judgement may, in after-time, be brought in question from the inaccuracy of contradictory reports. Indeed I can entertain no doubt but an opinion ascertained to be really given by a person filling the office of king's attorney or solicitor upon points of revenue and rights of the crown, will be received by lawyers as a very high authority; and I shall think myself very fortunate in having had an opportunity to bring together a considerable degree of information from materials of that sort.

With these helps from the decisions of courts, and the opinions of law-officers of the crown, it is hoped some light may be thrown on the acts of parliament, which are the object of this History.

PART

P A R T I.

First Act of Navigation—Petition of the Commons on the Carrying Trade—An Easement in Duty for English Ships—Stat. 5. Eliz.—The Fisheries encouraged—The Coasting Trade—The Plantation Trade—Act of Navigation 1651.

THE first provision made by parliament that can be classed under the denomination of a *Navigation-Act*, is stat. 42. Ed. 3. c. 8. which enacted, that all ships of England and Gascoigne which came into Gascoigne, should be first freighted to bring wines into England before all other. But this preference (such as it is) being enjoyed in common with the people of Gascony, who were then the king's subjects equally with the English; and the English being actually restrained by another part of the act from going to Gascony to buy wines, which were to be brought only by the Gascons and other

PART

42. ED. III
A. D. 16

PART I.
 42. ED. III. TO
 A. D. 1651.

other Aliens, this has not been considered sufficiently favourable to English shipping to be ranked among the Acts of Navigation.

First Act of
 Navigation.

THAT which has usually been deemed the first Act of Navigation, is stat. 5. *Rich.* 2. ft. 1. c. 3. which is expressed in the beginning of it to be made *for the increase of the navy of England, which was then greatly diminished.*

It was thereby ordained, that none of the king's liege people should from thenceforth ship any merchandize in going out, or coming within the realm of England in any port, but only in ships of the king's liegeance, under the penalty of forfeiting all the merchandize shipped in other vessels, or the value thereof; a third part to go to the informer, or, as it is expressed, "the person who *duly espieth and duly proveth* any offence against that statute."

BUT this attempt to encourage English shipping seems to have been made before the actual state of our navigation would quite warrant it; for in the very next session of parliament it was enacted, by stat. 6. *Rich.*

6. *Rich. 2. c. 8.* that the said law should only take place “as long as ships of the said liegeance were to be found *able and sufficient* in the parts where the merchants “happened to dwell.” Again, in the 14th year of that king, the same regulation was repeated by parliament; but it was on that occasion accompanied with a qualification which suggests an important observation upon these laws of navigation; for when it was enacted by stat. 14. *Rich. 2. c. 6.* “that “merchants of the realm of England should “freight in the said realm the ships of the “said realm, and not strange ships,” this proviso was added, *so that the owners of the said ships take reasonable gains for the freight of the same.* If, therefore, English ships could not be got, or if the owners demanded an unreasonable freight, foreign ships might still by law be employed.

FROM these concessions and qualifications it is seen how early our ancestors felt, that these beneficial regulations, with all their advantages, contained in them the inconveniences and mischiefs of a monopoly; and that the navigation and shipping of the country could not be favoured without exposing its trade to some degree of burden
and

PART I.

4s. ED. III. TO
A. D. 1651.

and restraint. Indeed it will be found, from the wording and tenor of various statutes made on this subject, that the Acts of Navigation were regulations more of a political than commercial nature; and that the whole advantage to be derived therefrom was intended to center in the navy of England. We shall find, in all subsequent regulations, that the object in view is the increase of ships and not of commerce, and that the interest of the latter is made frequently to give way to that of the former.

THERE appears to have been no statute on this subject from the reign of Richard II. till the reign of Edward IV. when it was enacted by stat. 3. *Edw.* 4. c. 1. among other regulations respecting the trade of wool, that no person inhabiting within the realm of England, other than merchant strangers, should freight nor charge within the realm any ship or other vessel of any alien or stranger with merchandize to be carried out of the realm, nor should bring any into it, if he could have sufficient freight in the ships or vessels of denizens, on pain of forfeiting the merchandize, half to the king and half to the person seizing. But this provision in favour of English shipping

was

was to last no more than three years; and we find no other statute on this subject till the reign of Henry VII.

PART I.

42. ED. III. 10

A. D. 1358.

BUT in the mean time a petition made by the commons in parliament in the 18th year of *Henry 6.* is well worthy of notice. It was there prayed, that thenceforward no Italian, or other merchant of the countries beyond the Straits of Morocco, should sell in this realm any other merchandize than that of the countries beyond the Straits, on pain of forfeiture thereof. And the reason there alledged for such a regulation is, that since the Italian merchants had become carriers of the commodities of Spain, Portugal, and other countries without the Straits, in addition to the productions of the countries within the Straits, those articles were not brought in such abundance, nor were they sold so cheap as when they were brought by the merchants of those countries respectively, or were fetched by the merchants of this country in their own ships; the consequence of which was, not only the decrease of the king's customs, and the depreciation of the merchandize of this realm, but also a great hurt to all the navy of the realm.

Petition of the
Commons on
the Carrying
Trade.

SUCH

A HISTORY OF THE LAW OF

PART I.

42. ED. III. TO

A. D. 1351.

SUCH are the mischiefs which were meant to be remedied; and the benefits the commons proposed by the regulation thus prayed were stated to be, that the countries without the Straits would be more desirous of peace and friendship with England, in order that their merchants might have safe-conduct to bring their goods hither; and that our merchants carrying the goods of this country themselves might sell them at the first hand, and so make greater profits. They prayed this might pass into a law for ten years; but the king did not assent to it (*a*). In this parliamentary document we discover a branch of the navigation-system begin to disclose itself; namely, the confining of foreign ships to carrying the productions of the country to which they belong.

It is another branch of the navigation-system to give some favour or preference to articles of merchandize, if imported in ships of this kingdom. An experiment of this sort likewise made its appearance in the be-

(*a*) Rolls Parl. 18. Hen. 6. 59. The great increase of Italian merchants at this time led to stat. 1. Rich. 3. c. 9. for restraining them and their trade.

ginning of the reign of Henry VII.; and the liament, in adopting this principle, carried it at once to the extremest length by prohibiting all commodities of a certain description, that were not so imported; for it was enacted by stat. 1. Hen. 7. c. 8. that no one should buy or sell within this realm, Ireland, Wales, Calais, or the Marches thereof, or Berwick, any manner of wine of the growth of the Duchy of Guienne or Gascony, but such as should be adventured and brought in an English, Irish, or Welshman's ship, the mariners of which were English, Irish, or Welshmen, for the most part, or men of Calais, or of the Marches of the same, on forfeiture of such wine; half to the finder of the forfeiture, the other half to the king.

PART I.
42. FD. III. T.
A. D. 1651.

THIS statute is introduced by a preamble expressing the decay of the navy and *the idleness of the mariners*, and that if the same were not reformed, the realm would not be of ability and power to defend itself. Conformably with the solicitude there expressed concerning the employment of mariners, this act required,* for the first time, that *the mariners*, as well as the ship, *should be of this country*.

C.

THIS

PART I.

2. ED. III. TO
A. D. 1651.

THIS statute, which deserves remembrance for having brought forward two principles of our navigation-system that have been applied, with some variation, on numberless occasions in later times, was an experimental regulation, and to endure only to the next parliament. In the next parliament it was revived by stat. 4. *Hen.* 7. c. 10. with some alterations; namely, it was extended to the article of *woad* called *Thoulouse woad*. The forfeiture was laid not only on the article when bought and sold, but when conveyed or brought in. The ship was to belong to the king, or some of his subjects of England, Ireland, Wales, *Calais*, or *Berwick*, as owners, possessors, or proprietaries; and instead of requiring the *mariners* for the most part, it requires the *master* (a) and mariners, for the most part, to be men of those places.

THIS statute contains a provision of the same nature with the statutes of Richard II. and the temporary act stat. 3. *Edw.* 4. c. 1.
“No person inhabiting within this realm,

(a) The expression in the statute is, “The master “*under God*, and the mariners,” &c. Bills of lading usually begin, “*Shipped by the grace of God*.”

“other

“ other than merchant strangers, shall
 “ freight or charge within this realm, or
 “ Wales, any ship or other vessel of any
 “ alien or stranger with merchandize, to
 “ be carried out of, or brought into, this
 “ realm or Wales, if he may have sufficient
 “ freight in ships of denizens at the port
 “ where he makes his freight, on forfeiture
 “ of the merchandize, half to the king,
 “ and half to the person seizing the same.”

PART I.
 42. ED. III. T.
 A. D. 1351.

There was a *proviso* that merchandize brought in contrary to this act, in cases of stress of weather, or enemies, should not be liable to forfeiture, so as the owners made no sale thereof, otherwise than for victuals and necessary repairs of the ship.

THE stat. 1. *Hen. 7.* had, at the close of it, a saving of the king's prerogative. No such reservation was made in stat. 4. *Hen. 7.* But, notwithstanding, we find that many licences were obtained, both by aliens and denizens, in the reign of Henry VIII. for bringing in wine of Gascony and Guienne, and Thoulouse woad, contrary to statute; and these licences were expressly declared void by stat. 7. *Hen. 8. c. 2.*; with a saving, however, in favour of such as should be

PART I.

42. ED. III. TO
A. D. 1651.

executed before a certain short day then to come.

THE decrease of shipping and mariners was again made a subject of complaint by parliament in stat. 23. Hen. 8. c. 7.; by which statute the parliament made no new regulation, but contented themselves with reciting stat. 5. Rich. 2. stat 6. Rich. 2. and stat. 4. Hen. 7. which they declared should stand in full force and effect. This act being made to continue only to the last day of the next parliament, it was thought proper by stat. 32. Hen. 8. c. 14. intituled, *An Act for the Maintenance of the Navy of England, and for certain Rates of Freight,* again to confirm the said statutes, in the same manner as had been done by stat. 23. Hen. 8. c. 7. In order better to insure the employment of English shipping, this act further ordains a certain price of freight between London and the principal trading towns of Europe; which price was not to be exceeded, except in times of war.

An easement in
duty for En-
glish ships.

It seems, a proclamation had been obtained from the Crown, granting to merchant strangers, for a certain time, the privilege of im-
porting

IMP 78556 Dt. 18/10/2010

राष्ट्रीय पुस्तकालय, कोलकाता
National Library, Kolkata

porting and exporting merchandize, on paying the same custom and subsidy as natural-born subjects. This liberality of the Crown was qualified by the present statute, which confined it to such articles as were imported or exported in any *ship, bottom, or vessel of this realm of England, commonly called an English ship, bottom, or vessel*; which is the first instance of an easement in duty made in favour of English ships. But to this was subjoined a proviso, That should no such English ship be at the port, and the merchant gave notice thereof to the Lord Admiral, or his deputy, or if none such were resident at the port, then to the customer or comptroller, and obtained from him a certificate, under his seal, of such lack of English ships, he might then freight any foreign ship in the port, and have the benefit of the proclamation.

To facilitate the execution of this act, owners of English ships were directed to affix a notice in some public place in Lombard-street, for the space of seven days, of their intention to sail, and the voyage they meant to make. Provisions were made for the speedy departure of ships, safe custody of goods committed to their care, and the

PART I.
 42. ED. III. TO
 A. D. 1651.

due performance of their engagement, by a complaint and hearing, in a summary way, before the admiral, his lieutenant, or deputy.

SUCH were the endeavours used by this parliament to recommend, and gain a preference for English shipping. But the competition between commerce and navigation had various successs; and we shall see in the next reign that a turn was given to the former in prejudice of the latter. In stat. 5. & 6. *Edw.* 6. c. 18. we are told, that stat. 4. *Hen.* 7. was supposed to be made for the maintenance of the navy, and in good hope that the articles there mentioned would be obtained cheaper; but, on the contrary, those articles daily sold dearer, “and the “navy was thereby never the better maintained.” The present statute accordingly provides, that in future, between the first day of *February* and the first day of *October*, any person, being of the parts or countries in amity with our sovereign, might bring in those wines, or *wines of any other parts of France, or Thoulouse woad*, in whatsoever ships, crayers, or boats, whoever might be owner (being of parts in amity with our
 sove-

sovereign), and whoever might be the master or mariners (*a*).

PART I.
42. ED. III. TO
A. D. 1651.

THE expectation expressed in this statute to obtain foreign goods cheaper when the carrying of them was granted as a monopoly in favour of English shipping, was rather such as would be held out by interested persons who seek a privilege, than entertained by wise men who look on, unless in times when the nature of commerce is very little understood.

THE cause of commerce was backed by the jealousy of foreign states, who retaliated our prohibitions to freight foreign ships, by making penal laws against such as should ship goods out of their countries in any other than the vessels of the country. This point was taken into consideration by the parliament at the beginning of the reign of

(*a*) By stat. 23. *Hen. 8.* c. 7. sect. 1: no wines of *Gascony* or *Guiane*, or any manner of *French* wines, were to be landed between the Feast of *St. Michael* the Archangel and the Purification of Our Lady. This act was expired when the stat. 5. & 6. *Edw. 6.* was passed, otherwise the time here limited for importing would in effect have been no limitation at all, but an entire permission. *Quære*, If that prohibition of stat. 23. *Hen. 8.* was continued by any other statute?

PART I.

42. ED. III. TO
A. D. 1651.

queen Elizabeth, and by stat. 1. *Eliz.* c. 13. a formal repeal was made of stat. 5. *Rich.* 2. and stat. 4. *Hen.* 7.; and thereby it was hoped to conciliate the friendship of our neighbours, who were running the same race with us in navigation and commerce. But that the interest of navigation might not be wholly abandoned, another mode was attempted, by which it was intended, with less envy and more appearance of equity, to accomplish a like end. To prevent a fraudulent practice, which then had obtained, of subjects entering the goods of strangers in their own names, and so defrauding the Crown of the aliens' duties, the following regulation was made; which, under the mask of revenue, seems to have nothing in view but re-establishing the spirit of the Navigation-Acts repealed in the foregoing clause. It was enacted, that all owners of merchandize, who in time of peace, and when there was no restraint made of English ships, should embark, ship, lade, or discharge, by way of merchandize, any wares or merchandize (malt, raffe, pitch, tar, and corn only excepted) out of, or into any ship, bark, hoy, vessel, or bottom, whereof the queen, or some of her subjects of this realm, were not possessors and

pro-

proprietors, and the masters and the mariners for the most part subjects of the queen, should pay the subsidy and custom for the same, as strangers and aliens born.

PART I.
42. ED. III. TO
A. D. 1651.

Thus, by the laws repealed, all subjects were required to import and export in English ships; by the present law, all subjects, who imported or exported in foreign ships, were liable to pay the aliens' duties. It is true, the former acts were enforced by forfeiture; but the aliens' duties, though a less sanction, were motives sufficient with men, whose occupation in commerce habituated them to the comparison of every rise or fall in their profits. The design and expectation of the parliament was fairly discovered in the title they gave to this act, *An Act for the Shipping in English Bottoms*.

THE act goes on to ordain, that no hoy or plate owned by an English subject should carry merchandize from this kingdom to parts beyond the seas, on pain of forfeiting such hoy or plate, with all the munition, tackling, and other necessities pertaining thereto; a provision, that probably was designed to promote the building of larger ships.

AN

PART I.

22. ED. III. TO
A. D. 1651.

AN exception, similar to what we have before seen, was made to the regulation in favour of English ships; namely, that the merchants adventurers, and merchants of the staple, might, at the time of their shipping cloth and wool, twice in one year at the most, from and out of the river Thames, ship merchandize in a ship belonging to a stranger, or alien, at such times as ships belonging to subjects were not to be had, sufficient in number and goodness for the safe conveyance of goods to Flanders, Holland, Zealand, or Brabant. The merchants of Bristol also, who had suffered greatly in their shipping by enemies at sea, were allowed to ship, within forty miles of their city, merchandize on board strangers' bottoms, without paying other customs than for merchandize in English bottoms.

THE whole of this act was only of temporary duration; namely, for five years; and so to the end of the parliament next following. But, before it expired, the regulation about hoys was repealed by the Navigation-Act passed in 5. *Eliz.* which ordained, that English hoys and plates might cross the seas as far as Caen in Normandy, and eastward as far as Norway. This partial

tial indulgence was taken away by stat. 13. *Eliz.* c. 15.; but this last act being to continue only to the end of the next parliament, when that period arrived, the provision of stat. 5. *Eliz.* again revived.

PART I.
42. ED. III. 120
A. D. 1354.

THE stat. 5. *Eliz.* c. 5. is intitled *An act touching politic Constitutions for the Maintenance of the Navy.* In this act were brought forward two principles of our system of navigation, that have been steadily adhered to, under different modifications, ever since. One was the encouraging of the fisheries, as the means of increasing our shipping and navigation; the other was, the confining the coasting-trade to English shipping.

MANY provisions had, before this statute, been made respecting the fisheries; but in none of them had this subject been taken up with a view to shipping and navigation. The laws made till towards the latter end of Edward III. related to the inland fisheries of salmon and other river-fish; as stat. Westm. 2. 13. *Edw.* 1. c. 47: But in 31. *Edw.* 3. provisions were made about the sale in market of herrings, of which Great Yarmouth was then, as now, the principal market (a). These

The Fisheries encouraged.

(a) Stat. 31. *Ed.* 3. ft. 2. c. 1. Stat. 31. *Ed.* 3. ft. 3.

were

PART I.

42. ED. III. TO
A. D. 1651.

were followed by several others in the subsequent reigns; in all of which fish was considered in the light of victual merely; was often joined with corn, butter, cheese, and the like; and the great anxiety seemed to be, to obtain a regular supply, to prevent forestalling or regrating, either by buying it at sea, or taking any undue advantage of the fishermen when they came to shore, so as to prevent a fair and open sale in market, for the supply of the public on the best terms; such are stat. 31. *Ed.* 3. ft. 2. c. 2. stat. 31. *Ed.* 3. ft. 3. stat. 35. *Ed.* 3. ft. 1. stat. 6. *Rich.* 2. c. 11. stat. 25. *Hen.* 8. c. 4. among many others. To attain this object, encouragement was given by stat. 6. *Rich.* 2. c. 10. (which was enforced by several statutes passed in after-times, as stat. 1. *Hen.* 4. c. 17. stat. 14. *Hen.* 4. c. 6.) to aliens, being friends, to bring in fish and sell it in market, notwithstanding any privileges or charters granted to others.

IN the time of Henry VIII. the parliament, for the first time, expressed an opinion, that the fisheries had a connection with the state of our navigation and maritime force. In stat. 33. *Hen.* 8. c. 2. which was made for preventing the old practice of
buy-

buying fish on the high sea, it is stated in the preamble, that many towns on the coast of Kent and Suffex had, in former times, possessed wealth and great population, owing to their fisheries; that there was in consequence a building of boats and ships in those parts, and mariners always to be found for the navy; lastly, that the markets were well supplied with fish, many grew rich, and the poor were employed. It then complains, that the fishermen of those parts had of late thought it more advantageous to go over to the coasts of Picardy and Flanders, or to meet the fishermen of those countries at sea and buy of them with the coin of the realm their fish; whereas if they did not so regrade these supplies (which seems to have been the principal grievance), these Picards and Flemings would bring their own caught fish, and sell it here at a *cheaper rate*. A penalty was, by this act, imposed on those who bought such fish, and brought it here to market.

ANOTHER statute may be mentioned as bearing a semblance of encouraging the fisheries. By stat. 2. & 3. Edw. 6. c. 6. no toll was any longer to be taken by the officers of the admiralty from any merchant

or

PART I.
 42. ED. III. TO
 A. D. 1651.

or fisherman for a licence to pass out on voyages to Iceland, Newfoundland, Ireland, or other places commodious for fishing upon the seas.

It remained for the reign of queen Elizabeth to make some regulations that would plainly and materially contribute to render the fisheries subservient to the end of shipping and navigation. This was done by the abovementioned stat. 5. *Eliz.* c. 5.

By this statute it was enacted, that, for four years to come, the queen's subjects might export, in ships and vessels of subjects, herrings and other sea fish taken upon the seas by subjects to any place out of the queen's dominions, without paying any custom, subsidy, or poundage-money for the same. In ports, cities, markets, and other places, none were to set a price on, or make any restraint, or take a toll or tax of sea fish taken by subjects in ships or vessels of the same subjects; nor was any purveyor to take the same but on agreement with the owner or seller (a). None were to buy of any stranger, or out of a stranger's bottom, any herring not being sufficiently salted, packed, and casked,

(a) Sect. 1, 2, 4.

on

on pain of forfeiture, except such herrings came in by shipwreck (a). To promote the consumption of fish, various regulations were made concerning the due keeping of fish-days (b), with other matters conducing to encourage and recommend the great object of the fishery.

IN the course of this reign several other regulations were made upon this head. In stat. 13. *Eliz.* c. 11. which also is intituled, *An Act for the Maintenance of Navigation*, it was enacted, that no fish taken or brought into the realm by a stranger, nor fish commonly called Scottish fish, or Flemish fish, should be dried within England, to be sold, on pain of forfeiture thereof (c). Again, in stat. 23. *Eliz.* c. 7. intituled, *An Act for the Increase of Mariners, and for Maintenance of the Navigation*, provision was made against the merchants and fishmongers sending into foreign parts, and ingrossing salted fish, and salted herrings, instead of employing our own fishermen; owing to which, the preamble of the act says, two hundred sail and more of good and serviceable ships, which used to trade yearly to

(a) Sect. 6, 7.

(b) Sect. 14, 15, 16, to 23.

(c) Sect. 4.

Iceland,

PART I.

P. ED. III. TO

A. D. 1651.

Iceland, had now decayed; and also a great number of mariners and seamen fit for her majesty's service: however, salted fish might, by this act, be brought by aliens, being the real owners thereof. This provision was relaxed by stat. 27. *Eliz.* c. 15. so as to allow such salted fish to be imported by English subjects, for the use of some of the northern ports of England, which, it seems from the preamble of the act, used to be supplied with herrings and other fish from the coast towns of Norfolk and Suffolk, till the exportation of them had been encouraged by taking off the export duty by stat. 5. *Eliz.*; since which, so much of that article was sent to Zealand, France, and Portugal, and up the Streights for Italy, that the northern parts of this kingdom suffered greatly from scarcity. The act of 23. *Eliz.* was afterwards wholly repealed by stat. 39. *Eliz.* c. 10.; and the reason given is, that the navigation of this kingdom was not bettered, nor the number of mariners increased by the prohibition on the importation of foreign salt fish by our own merchants, and that the natural subjects were not able to furnish a tenth part of the realm with salted fish of their own taking; while, in the mean time, the foreign merchants only

only enhanced their prices since the late act of parliament. Further, it alledged, that considering the subjects of this country might carry out salted fish, it was unequal not to allow them also to bring it in, but rather to entrust this branch of trade wholly to foreigners.

PART I.
42. ED. III. TO
A. D. 1651.

By stat. 1. Jac. 1. c. 23. and stat. 3. Jac. 1. c. 12. provision was made for encouraging the fishery of pilchards and sea fish on the coasts of Somerset, Devon, and Cornwall. And this may be considered as the whole of what was done by parliament, till the Act of Navigation, for promoting this branch of employment for ships and mariners, which has been deemed in later times so necessary for increasing and advancing both.

With regard to the second principle of the navigation-system brought forward by stat. 5. Eliz. it was enacted, that no person should cause to be laden or carried in any bottom whereof a stranger born was owner, ship-master, or part owner, any kind of fish, victual, wares, or things of what kind or nature soever, from one port or creek of this realm to another port or creek of the same, on pain of forfeiting the goods so laden or carried (a).

The Coasting
Trade.

(a) Sect. 8.

D

IN

PART I.

42. ED. III. TO
A. D. 1651.

IN addition to this, the antient regulation concerning French wines and Thoulouse woad, that had lately been repealed, was revived. No wine coming out of the dominions of France, nor Thoulouse woad, was to come into this realm of England, but in vessels of which some subject of the queen was only owner, or part owner, on pain of forfeiting such wine or woad (*a*); with an exception in favour of Wales, the county of Monmouth, and the Isle of Man, where strangers might bring, in ships owned by strangers, any quantity of Rochelle wine, and not exceeding a certain quantity of other French wines, in one year (*b*). A permission was given to all persons, being subjects, to export wheat, rye, barley, malt, peas, or beans, when they did not exceed certain prices, into any parts beyond sea in ships, crayers, or other vessels, whereof English subjects should be the only owners.

THIS act was temporary: the part of it that allowed the exportation of herrings and other fish free of duty, was continued by stat. 13. *Eliz.* c. 11. for six years, but was at length left to expire: the other provisions above-mentioned were kept on foot by the

(*a*) Sect. 11.

(*b*) Sect. 11, 46, 47, 48.

continuing acts, stat. 39. *Eliz.* c. 18.
 stat. 1. *Jac.* 1. c. 25. stat. 21. *Jac.* 1. c. 28.
 stat. 3. *Car.* 1. c. 4. stat. 16. *Car.* 1. c. 4.

PART I.
 42. ED. III. TO
 A. D. 1651.

BEFORE we leave this stat. 5. *Eliz.* c. 5. it should be remarked, that the description which prevailed in the former statutes of the ownership of the vessel, whether English or foreign, was varied by this act, which introduced the alternative of *only owner*, or *part owner*, as well with regard to one as the other; and in both cases it had the effect of rendering the regulation in favour of English ships more strict.

IN another act (*a*) made in the same sessions of parliament, for regulating the exportation of corn, the encouragement of shipping was still kept in view. The act is intituled, *For the Increase of Tillage, and Maintenance of the Navy*. The exportation of corn is required to be in English ships; and this is done in the same words as had been before used in stat. 5. *Eliz.* c. 5. before noticed.

It was upon the regulations of stat. 5. *Eliz.* c. 5. that the shipping and navigation of this country depended for support

(*a*) C. 13.

D 2

and

PART I.

42. ED. III. TO
A. D. 1651.

and encouragement till the middle of the last century; when a set of men who had violated all scruples and rights to possess themselves of the government, manifested a more laudable courage in despising the delicacy hitherto observed towards the rival maritime powers, and resolved, by one legislative act, to advance the interest of English navigation, in opposition to all competition from foreigners of every description.

The Plantation
Trade.

THE first law made at this time for the advancement of navigation, was one for promoting the interest of our foreign plantations, which we shall from this time perceive to be intimately connected with the interests of navigation and of shipping.

THE plan of colonization, which had been begun in the reign of James I. had, all along, been conducted under the immediate administration of the crown. The adventurers engaged in the enterprize under the sanction of royal charters; and every thing relating to their settlement and trade had been ordered by the king and the privy council, without any participation of the Legislature. In these regulations we discover

ver

ver some traces of the policy then conceived, and since more particularly pursued, with regard to the trade of these distant possessions; the striking features of which were, to give encouragement to their productions, in preference to the like articles from other countries; and in return for that preference to require of them, that they should send all their productions to this country, and employ only English shipping.

PART I.
42. ED. III. TO
A. D. 1651.

JAMES I. had unfortunately conceived a capricious dislike of tobacco, the only production of Virginia, which he himself was so proud of having settled. This novel plant was prohibited by proclamation, and the Virginia Company were driven to establish houses in Holland and Zealand, for the import and sale of their consignments. But the customs which used to be received upon tobacco in this kingdom failing, the king was willing to come to an understanding with the Company; and after this question had been agitated between them and the crown for some time, a compromise was at length agreed upon in 1623, by which James consented to receive a duty of 9d. *per* pound in lieu of all charges, and the Company were to have the sole importation,

PART I.

45. ED. III. T. 9

A. D. 1651.

upon the exprefs condition, that the whole production of the colony ſhould be brought to England (*a*). Again, in 1624 the king prohibited by proclamation the importation of tobacco into England or Ireland, except from Virginia or the Somer Iſlands, and except in ſhips belonging to his ſubjects. He prohibited alſo the planting of it in England or Ireland, or in the iſles to the ſame belonging. As a compenſation for the loſs of duties on Spaniſh and other foreign tobacco, the merchandize was to be received by royal agents, at a ſtipulated price, and to be ſold by them for the benefit of the king (*b*).

In the following reign a like policy was maintained under the authority of royal proclamations. In 1639, in the inſtructions given to ſir William Berkeley, then appointed governor of Virginia; we find it alledged, that many ſhips laden with tobacco and other merchandize had carried the ſame from thence directly to foreign countries, whereby the king loſt the duties due thereon, as nothing was answered upon the exportation in Virginia; the governor is therefore directed to be very careful that no veſſel depart thence, loaded with thoſe commodities,

(*a*) Chalmers Pol. Ann. pa. 52 to 57. (*b*) Ibid. 67.
before

before bond, with sufficient sureties, should be taken to his majesty's use, to bring the same into his majesty's dominions, and to carry a lading from thence, in order that the staple of these commodities might be made here; whereby his majesty, after so great an expence upon that plantation, and so many of his subjects transported thither, might not be defrauded of what was justly due for customs on the goods. The bonds were to be transmitted, so that delinquents might be proceeded against. It was at the same time given in charge to the governor, to forbid all trade with any foreign vessels, except upon necessity. The governor was also to take bonds of the owners of tobacco, that it should be brought to the port of London, there to pay such duties as were due (a). A custom-house regulation that we shall see was afterwards adopted by parliament, and carried into full execution.

Thus far had the king proceeded, with the advice of his privy council, to settle and arrange the trade between the mother-country and the plantations. Some few years after, the parliament, which had then assumed the sovereign power, took up this

(a) Chalm. Pol. Ann. pa. 132.

PART I.
 42. ED. III. TO
 A. D. 1651.

subject; and on 23 January 1646 they passed an ordinance, intituled, *Privileges granted to several foreign Plantations.*

THIS ordinance begins by reciting, *that the plantations in Virginia, Bermuda, Barbadoes, and other places of America, had been much beneficial to this kingdom, by the increase of navigation, and the customs arising from the commodities of the growth of those plantations imported into this kingdom; and it recites, that persons trading there had been permitted, for their better encouragement, to transport thither merchandizes and necessaries for carrying on such plantations, without paying any custom for them: for continuing this encouragement it was now enacted, that all goods exported to such plantations, for their use and support, should be exported free of all custom or duty whatsoever, except that they were, for the next three years, to be subject to the excise (a). This privilege, however, was not to apply to exports made to the plantations in new-found lands.*

(a) There is an ambiguity in the wording of the ordinance in this place; it might be read, "that they were to be exempt from the excise for the three years."

A CUSTOM-HOUSE

PART I.
 42. ED. III. T.
 A. D. 1351.

A CUSTOM-HOUSE regulation was sub-joined, of a sort that will frequently be met with in other laws relating to the plantations. Security was to be given to the commissioners of the customs for really exporting such merchandize to the plantations, there to be used; and a certificate was to be returned from thence, within one year after the lading, of the ship's arrival and discharge in the plantations. Permission was given to entertain and transport to the plantations, persons, subjects of this kingdom, who were willing to serve and be employed in them, provided the names of such persons were registered in the custom-house, and no force were used to take up such servants, nor any apprentices were enticed to desert their masters, or children under age admitted without express consent of their parents; and provided a certificate, within one year of the arrival, should be returned from the governor, or other chief officer, that no fraud was used to carry such person to any other place.

AFTER these provisions another was added, which more particularly belongs to our subject, and which is added in the form of a *proviso*, and was meant as a condition to be performed

PART I.

42. ED. III. TO

A. D. 1651.

performed on the part of the plantations, to intitle them to the benefits intended them by this ordinance. “ Provided, That none
 “ of the said plantations do suffer or permit
 “ any ship, bark, or vessel, to take in any
 “ goods of the growth of the said plantations, from any of their ports, and carry
 “ them to any foreign parts and places,
 “ except in English bottoms. And in case
 “ any of the said plantations shall offend
 “ herein, then the plantation so offending
 “ shall be excluded from the benefit of the
 “ ordinance, and shall pay custom, as other
 “ merchants do to France, Spain, Holland,
 “ and other foreign parts.”

IN this manner was brought forward another principle of our system of navigation, that of confining to the mother-country the trade of its colonies and plantations ; which we shall see adopted and completely secured in the more permanent and extensive policy that was soon to be established.

BEFORE we come to that, we find some of the foreign plantations, having attached themselves to the cause of the exiled family, had incurred the displeasure of the ruling authority in this kingdom ; and an ordinance

nance was passed by the parliament, 3d October 1650, for discontinuing any further intercourse with them, and for declaring them in a state of rebellion. This ordinance is intituled, *Trade with the BARBADA, VIRGINIA, BERMUDA'S, and ANTEGO, prohibited.* This ordinance declares those colonies and plantations to have been planted at the cost, and settled by the people and the authority, of this nation; and that they were, and ought to be, subordinate to, and dependent upon, England; and had ever since the planting thereof been, and ought to be, subject to such laws, orders, and regulations, as were and should be made by the parliament of England. It then alledges, that divers persons inhabiting therein had usurped a power of government, seized the estates of many, banished others, and set themselves up in opposition to, and distinct from, this state and commonwealth; they were therefore declared robbers, rebels, and traitors; and the parliament forbade to all manner of persons, foreigners and others, all manner of commerce, traffic, and correspondence, whatsoever, to be held with those rebels. Power was accordingly thereby given to seize and take all ships and goods of persons trading, or going to trade,

PART I.

42. ED III. 70
A. D. 1651.

or

PART I.

42. ED. III. TO
A. D. 1651.

or coming from trading, with them, or holding correspondence with, or yielding them any assistance. Ships and goods were not to be embezzled, but to be proceeded against in the court of admiralty.

At the same time the parliament laid a restriction upon all the plantations in general ; which has continued, in some degree, to the present time. “ To prevent for the
“ time to come, and to hinder the carrying
“ over of any such persons as are enemies
“ to this commonwealth, or that may prove
“ dangerous to any of the English planta-
“ tions in America, the parliament doth
“ forbid and prohibit all ships of any foreign
“ nation whatsoever to come to, or trade
“ in, or traffic with, any of the English
“ plantations in America, or any islands,
“ ports, or places thereof, which are planted
“ by, and in possession of, the people of
“ this commonwealth, without licence first
“ had and obtained from the parliament or
“ council of state.” And power was given to seize all foreign ships so circumstanced, and not having such licence ; and they, with their goods, were declared to be prize.

WITH

WITH respect to the plantations in actual rebellion, power was delegated to the council of state to grant licence and leave to any ship of this nation to trade thither, notwithstanding this act. The council of state were also authorised to send a naval force thither, and to grant commissions to enforce obedience ; and also to grant pardons, and appoint governors, and to do and use all lawful means to settle and preserve them in peace, till the parliament took further order therein.

PART I.
42. ED. III. T.
A. D. 1651.

SUCH was the nature of the prohibitory law passed on that occasion ; and so early in the parliamentary history of our colonies was a model afforded to be followed in after-times, when it was judged that the like remedy should be applied for correcting disorders of a similar sort.

BUT the grand scheme for establishing English shipping and navigation on a footing of distinction that had never been before attempted, was brought forward in the following year.

THIS was the famous Act of Navigation passed by the parliament 9th October 1651.

Act of Navigation 1651.

In

PART I.
 42. ED. III. TO
 A. D. 1651.

In this act we shall see the principles, which had been gradually developing in former laws, and which had been enforced, repealed, or qualified, according as different opinions prevailed, and circumstances allowed, now adopted, and expanded to their full extent, in one system of regulation, that has subsisted, without any very material change in its substance, to the present day.

THE great object of jealousy at the time of passing this act was the immense carrying trade possessed by the Dutch; and the title of the act is suited to this leading idea, *Goods from foreign parts by whom to be imported (a)*. The portion of the carrying-trade with our colonies, which the Dutch had obtained, was the most serious grievance, and that which the nation bore with least patience. Notwithstanding the engagements, stipulations, and regulations, made for confining that branch of navigation to the mother-country, it is said, that in the West-India Islands there used, at this time, out of forty ships to be thirty-eight ships Dutch bottoms. The ordinance sets out with a regulation that was to strike at this abuse; it enacts, That no goods or commodities whatsoever, of

(a) Vide Scob. Acts, ann. 1651. cap. 22.

the growth, production, or manufacture, of *Asia*, *Africa*, or *America*, or of any part thereof, or of any islands belonging to them, or any of them, or which are described or laid down in the usual charts or maps of those places, as well of the English plantations as others, shall be imported or brought into this commonwealth of England, or into Ireland, or any other lands, islands, plantations, or territories, to this commonwealth belonging, or in their possession, in any other ship or vessel whatsoever, but only in such as do truly, and without fraud, belong only to the people of this commonwealth, or the plantations thereof, as the proprietors or right owners thereof, and whereof the master and mariners are also, for the most part of them, of the people of this commonwealth, under the penalty of the forfeiture of the goods, as also of the ship (with all her tackle, guns, and apparel) in which the goods shall be so brought in and imported, half to the commonwealth, and half to the person seizing the goods and prosecuting them.

PART I.
42. ED. III. TO
A. D. 1051.

HAVING thus secured the whole import of the productions of three quarters of the globe

PART I.

2: ED. III. TO
A: D. 1551.

globe to English ships, it goes on to enact, That no goods, the growth, production, or manufacture, of *Europe*, or of any part thereof, shall be imported or brought into this commonwealth of England, or into Ireland, or any other lands, islands, plantations, or territories, to this commonwealth belonging, or in their possession, in any ship or vessel whatsoever, but in such as do truly, and without fraud, belong only to the people of this commonwealth, as the true owners and proprietors thereof, and in no other, except only such foreign ships and vessels as do truly and properly belong to the people of that country or place of which the said goods are the growth, production, or manufacture, or to such ports where such goods can only be, or most usually are, first shipped for transportation, under the same penalty as in the former case; and no goods or commodities that are of foreign growth, production, or manufacture, and which are to be brought into this commonwealth, in shipping belonging to the people thereof, shall be by them shipped or brought from any other place or country, but only those of their growth, production, or manufacture,

or

or from those ports where the said goods and commodities can only, or are, or usually have been, first shipped for transportation, and from none other place or country, under the like penalty of forfeiture. By these two prohibitions the Dutch were cut off from the carrying-trade of Europe, and our merchants were obliged to fetch the productions of the rest of the world from the place of their growth, instead of buying them in Holland. In the second of these three provisions we see that idea carried into execution which had been pressed on the parliament by the commons in 18. *Hen. 6. (a)*, and which was afterwards actually followed in the case of Thoulouse woad, and French wines.

PART I.
42. ED. III. 10
A. D. 1651.

To these great lines of this act were added the following provisos :

FIRST, This was not to restrain the importation of the commodities of the Straits, or Levant seas, laden in the shipping of this nation, at the usual ports, or places for lading them theretofore, within the Straits or Levant seas; nor East-India commodities laden in the shipping of this nation, at the usual place for lading in any part of those seas, to the southward and

(a) Vid. ant. pa. 16.

PART I.

ED. III. TO
A. D. 1651.

eastward of the Cape of Good Hope, although they were not of the growth of those places.

SECONDLY, The people of this commonwealth might bring, in vessels or ships to them belonging, and whereof the master and mariners were of this nation, from any of the ports of Spain, or Portugal, goods or commodities that came from, or anyway belonged to, the plantations or dominions of either of them respectively.

THIRDLY, It was not to apply to silk, or silk wares brought by land from Italy, and there bought with the proceeds of English commodities sold for money, or in barter; but the people of this commonwealth might ship them in English vessels from Ostend, Nieuport, Rotterdam, Middleburgh, Amsterdam, or any ports thereabouts, the owner making oath before the comptrollers of the customs, or one of the barons of the exchequer, that the goods were so bought for his account in Italy.

FOURTHLY, It was not to extend to bullion, nor to goods taken by way of reprisals, by ships having commission from the commonwealth.

THESE

PART I.
 42. ED. III. T. 8
 A. D. 1651.

THUS far of foreign trade. The next object was the *fisheries*, in which the rivalry and success of the Dutch had been long regarded as a national loss and disgrace. It was now resolved to give an advantage and preference to the exertions of our own fishermen; and it was enacted, that no sort of cod-fish, ling, herring, pilchard, or any other kind of salted fish usually fished for and caught by the people of this nation, nor any oil made of any kind of fish whatsoever, nor any whale-fins or whale-bones, should be imported into this commonwealth, or into Ireland, or any other lands, islands, plantations, or territories, thereto belonging, or in their possession, but only such as should be caught in vessels that truly and properly belonged to the people of this nation; as proprietors and right owners. And the fish was to be cured, and the oil made, by the people of this commonwealth, under the penalty before-mentioned. Nor was such fish, when caught and cured by the people of this commonwealth, to be exported from any place belonging to this commonwealth in any other ship or vessel than such as truly and properly appertained to the people of this commonwealth, as right owners, and whereof the master and

PART I.

42. ED III. TO
A. D. 1651.

mariners were, for the most part of them, English, under the like forfeiture.

THE last object was *the coasting trade*, in which the act follows the very words of stat. 5. *Eliz.* It enacts, that no person whatever should load, or cause to be loaded, and carried, in any bottom, ship, or vessel, whereof any stranger born (unless such as were denizen or naturalized) were owner, part owner, or master, any fish, victual, wares, or things, of what kind or nature soever, from one port or creek of this commonwealth to another, under pain of forfeiting the goods and ship.

SUCH was the scheme of navigation, which the bold reformers of that day designed for increasing the naval strength and consideration of this country. It may be said to have originated in jealousy, and to have caused the decline and diminution of a neighbouring nation ; but it was founded in a policy, which the necessities and the advantages of an insular situation suggested ; and the nation having, from supineness or ignorance, permitted an active neighbour so long to take a share in the fisheries and foreign trade which belonged to us, thought itself justified in

in asserting, at length, its rights, and carrying them into full effect by this legislative act. And although this measure brought upon the country an obstinate and bloody war ; and though the authority on which it was founded was unconstitutional and usurped, yet a plan so wise and solid was strenuously maintained by those who formed it ; and it was not suffered to pass away with the transient government from which it derived its origin : the great features of it were adopted, by the lawful government, at the restoration of Charles II. when a new Act of Navigation rose out of the ashes of this, and became the basis of all those laws that have since been made for the increase of shipping and navigation,

P A R T II.

INTRODUCTION.

PART II.
 12. CAR. II. TO
 A. D. 1783.

THE second period in the history of shipping and navigation begins with the restoration of Charles II. In the statute for laying new duties of tonnage and poundage on the import and export of merchandize, provision was made, in certain cases, to give an abatement in the duty, where shipping of English-built was employed (*a*). But the great regulation in favour of English shipping was, THE *Act of Navigation*, as it is usually called, to distinguish it from others of the same policy and nature. This is stat. 12. Car. 2. c. 18. intituled, *An Act for the Encouraging and Increasing of Shipping and Navigation*.

THIS act pursues the policy and detail of the one made in 1651, using sometimes its

(*a*) Stat. 12. Car. 2. c. 4.

very

PART II.
 12. CAR. II. TO
 A. D. 1783.

very words. It has made however some alterations, and has added considerably to the scope of the former act. In order to present the regulations of this law in a clear view, it will be proper to class them under heads. The obvious way to promote the increase of shipping is to facilitate its employment. The laws of shipping become therefore the laws of trade ; and the heads under which they most naturally arrange themselves, are the *trades* in which ships are employed between the different quarters of the globe. The late act begun by defining what ships should be employed in carrying the productions of Asia, Africa, and America ; which might very properly be called *the Plantation trade*. It then proceeded to *the European trade*. Then it regulated ships as far as regarded *the Fisheries*; and concluded with the carrying from port to port in this kingdom, which might be called *the Coasting trade*,

THE new act has considered shipping and navigation as they relate to these same branches of employment. But it has made two divisions that are important. *The Plantation trade*, as I have ventured to call it, is considered somewhat differently, when

PART II.
 12, CAR. II TO
 A. D. 1783.

carried on with our own plantations, and when with those parts of Asia, Africa, or America, that belong to other sovereigns. Again, in *the European trade* a great distinction is made as to the productions of Russia and Turkey, and certain enumerated articles, and as to articles of trade in the rest of Europe. These are the principal alterations made in the heads of regulation contained in the old act. The new act contains a head of regulation that had not been entered into by the old act; namely, for preventing foreign ships passing as English, and for ascertaining the ownership and built of English ships. Other differences in the detail and execution of this scheme will be discovered on a closer comparison of these two acts; but the leading ones just mentioned are as much as need be noticed at present.

THIS Act of Navigation passed after the Restoration being looked back to as the origin and great charter of our navigation-system, upon which all subsequent laws may be considered as comments, it seems most natural to pursue our further enquiries in the course directed by this act, and to class the matter of our work under the heads
 into

into which this act is divided. These are, *the Plantation trade—the trade with Asia, Africa, and America—the European trade—the Coasting trade—the Fisheries—and, lastly, of British ships.*

PART II.
12. CAR. II. 17.
A. D. 1783.

MAKING these divisions of the enquiry, I shall begin each with stating the ground-work laid by the Act of Navigation, and then follow the changes and improvements made by subsequent laws (a).

(a) An act was passed in the Scotch parliament for a similar purpose in 1661, intituled, *An Act for Encouraging Shipping and Navigation*. By this act goods and commodities are to be imported by Scotch ships, or ships of the countries where the commodities are produced, with an exception of the commodities of *Asia, Africa, and America*, and those of *Musco and Italy*, until Scots merchants had actual trade to those places. A double custom was laid on goods imported in foreign ships, except ships of England or Ireland; but that exception was to endure no longer than while Scotch vessels enjoyed the like benefit of trade within England and Ireland. A scheme of registry and certificate for Scots ships is also sketched out in the act *. The policy and wording of this act plainly shew, that the parliament had our statute in view.

C. 44.

CHAPTER

CHAPTER I.

Import and Export in English Ships—Enumerated Goods—European Goods sent to the Plantations—Plantation Bonds—Acts of Navigation enforced—Relaxed and dispensed with—Stat. 7. & 8. Will. 3.—Navigation Act relaxed—Irish Linens—Rice—Sugar—American Acts Stat. 4. Geo. 3. and Stat. 5. Geo. 3. Stat. 6. Geo. 3.—Free Ports established—The Export Trade from Ireland—Import and Export Trade granted more fully—The Restraining and Prohibitory Acts—Newfoundland—Honduras—Surat,

PART II.
 12. CAR. II. TO
 A. D. 1783.
 PLANTATION
 TRADE.

THE first and grand object in the Act of Navigation seems to have been *the Plantation trade*. For securing this to the Mother-country, it was ordained, that no goods or commodities shall be imported into, or exported out of any lands, islands, plantations, or territories, to his majesty belonging, or in his possession, or which may hereafter belong unto, or be in the possession of his majesty, his heirs, and successors,

successors, in Asia, Africa, or America, in any other ship or vessel but in such ships or vessels as do truly, and without fraud, belong only to the people of England or Ireland, the dominion of Wales, or town of Berwick-upon-Tweed, or are of the built of, and belonging to, any of the said lands, islands, plantations, or territories, as proprietors and right ownersthereof, and whereof the master, and three-fourths of the mariners, at least, are English, under pain of forfeiting the goods, and also the ship or vessel, with all its guns, furniture, tackle, ammunition, and apparel, one third to the king, one third to the governor of the land, island, plantation, or territory, where the default was committed, in case the ship be there seized, or otherwise such third part to the king, and the other third part to the person seizing, informing, or suing for the same. Further, all admirals and commanders of king's ships are authorised to seize, and bring in as prize, ships so offending, and, to deliver them to the court of admiralty. And in case of condemnation, one moiety of such forfeiture is to go to such admiral or commander, and his company, to be divided as prizes are; the other moiety to the king (a).

PART II.

12. CAR. II. TO

A. D. 1783.

PLANTATION

TRADE.

Import and
Export in
English ships.

(a) Sect. 1.

PART II.

EX. CAR. II. TO

A. D. 1783.

PLANTATION

TRADE.

IN pursuance of the like policy, it was moreover ordained, that no alien, or person not born within the king's allegiance, or naturalized, or made a free denizen, shall exercise the trade or occupation of a merchant or factor in any of the said places, on pain of forfeiting all his goods and chattels; one third to the king, another third to the governor, and the other to the person informing and suing for the same. And to secure, as much as possible, the execution of these laws, it is required, that all governors, before they enter into their government, shall take a solemn oath to do their utmost, that the before-mentioned regulations should be punctually and *bona fide* observed; and a governor wittingly or willingly negligent in doing this duty is to be removed from his government (a).

HAVING provided that none but English ships should carry the plantation-commodities, it was thought proper, that the principal articles of them, which are named in the act, and are therefore called *enumerated*, should be carried only to the mother-country, that so the profit of bringing them home, and that of carrying them to other parts of

Enumerated
Goods.

(a) Sect. 2.

Europe,

Europe, if they were to be carried, should center in the mother-country.

PART II.
 12. CAR. II. TO
 A. D. 1733.
 PLANTATION
 TRADE.

THUS no fugar, tobacco, cotton, wool, indigoes, ginger, fustick, or other dyeing wood, of the growth, production, or manufacture of any English plantations in America, Asia, or Africa, shall be shipped, carried, conveyed, or transported, from any of the said plantations, to any land, island, territory, dominion, port, or place, whatsoever, other than to such other English plantations as belong to his majesty, or to the kingdom of England or Ireland, or principality of Wales, or town of Berwick-upon-Tweed, there to be laid on shore, under pain of forfeiting the goods, or the value thereof, and also the ship, with all her guns, tackle, apparel, ammunition, and furniture; one moiety to the king, the other to the person seizing and suing for the same (a).

AND to secure the execution of this restriction, for every ship or vessel sailing from England, Ireland, Wales, or town of Berwick-upon-Tweed, for any English plantation in America, Asia, or Africa, sufficient bond shall be given, with one surety, to the

(a) Sect. 18.

chief

PART II.

12. CAR. II TO
A. D. 1783.
PLANTATION
TRADE.

chief officer of the customs at the port from whence the ship shall sail, in a certain penalty, for bringing such commodities to some port of England, Ireland, Wales, or to the port of Berwick-upon-Tweed, and there unload and put on shore the same, the danger of the seas excepted. And in the case of all ships permitted to come to the plantations from any other place, the governor is, in like manner, to take a bond, that the ship shall carry her goods to some other of his majesty's English plantations, or to England, Ireland, Wales, or the town of Berwick-upon-Tweed. And if any of the enumerated goods are taken on board before such bond in the latter case is made to the governor, or before a certificate in the former case is produced from the officers of the customs that such bond has been duly given here, the ship is forfeited, with all her guns, tackle, apparel, and furniture, to be recovered as before-mentioned. The governors are twice a-year to return copies of such bonds to the chief officers of the customs in London (a).

THE parliament shewed how much they considered the trade of the nation as interested in preserving this policy with regard

(a) Sect. 19.

SHIPPING AND NAVIGATION.

to the plantations, by soon after passing an act which still more confined their trade to the mother-country.

By stat. 15. Car. 2. c. 7. which is intitled *An Act for the Encouraging of Trade*, the supplying the plantations with European goods was meant wholly to be confined to the mother-country. In the preamble to this regulation, it is stated to be with a view of maintaining a greater correspondence and kindness between them and the mother-country, and keeping the former in a firmer dependence upon the latter; for increasing shipping and seamen, promoting the vent of English woollen manufactures, making this kingdom the staple both of the commodities of the plantations and of other countries, in order to supply them; and, lastly, that it was the usage of other nations to keep their plantation-trade to themselves. After alledging these motives, it ordains, that no commodity of the growth, production, or manufacture, of Europe shall be imported into any land, island, plantation, colony, territory, or place, to his majesty belonging, or in his possession in Asia, Africa, or America (Tangier only excepted), but what shall be, *'bond fide*, and without

PART II.

12. CAR. II. 10.
A. D. 1781.
PLANTATION
TRADE.

European
Goods sent to
the Plantations.

out fraud, laden and shipped in England, Wales, or the town of Berwick-upon-Tweed, and in English-built shipping, or which were, *bond fide*, bought before a certain day then past, and had such certificate thereof as is required by stat. 13. & 14. Car. 2. c. 11. (an act that will be noticed hereafter), and whereof the master and three-fourths of the mariners at least are English; and which shall be carried directly to the said lands, islands, plantations, colonies, territories, or places, and from no other place whatever, under pain of forfeiting such commodities, as shall be imported from any other place whatever, by land (*a*) or water; and if by water, of the ship importing them; one third to the king, another to the governor where seized, and another to the informer (*b*).

THERE is a proviso allowing salt to be carried from any part of Europe for the fisheries of New England, and Newfoundland; and wines from the Madeiras, being the growth thereof; and from the western islands of Azores, wines of the growth

(*a*) Importing by land, is an expression to be found in other acts of parliament:

(*b*) Sect. 6.

thereof;

thereof; and servants or horses from Scotland or Ireland; and from Scotland and Ireland all sorts of victual of the growth or production of those countries respectively (a).

PART II.
 12. CAR. II. T.
 A. D. 1783.
 PLANTATION
 TRADE.

To secure the due execution of this act, strict rules are laid down to be carried into execution by the governors in the plantations, both with regard to importations by land and by water. They are to take a solemn oath for the special performance of this duty, and if they offend therein, they are to be deprived of their government, and be incapable of that or any other, and moreover forfeit 1000*l.*; a moiety to the king, the other to the informer (b).

AGAIN, by the same act, a penalty of losing his place, and forfeiting the value of the goods in question, is imposed on any officer of the customs, who suffers any sugar, tobacco, ginger, cotton, wool, indigo, speckle wood, or Jamaica wood, fustic or other dyeing wood (being in effect the articles enumerated in stat. 12. Car. 2. c. 18.), of the growth of any of the said lands, islands,

(a) Sect. 7.

(b) Sect. 8.

F

colonies,

PART II.
 12. CAR. II. TO
 A. D. 1783.
 PLANTATION
 TRADE.

colonies, plantations, territories, or places, to be carried into any other country or place whatsoever, until they have been first unladen, *bona fide*, and put on shore in some port or haven in England, Wales, or Berwick; a regulation which at once cut off the direct trade with Ireland, and indeed any intercourse between the colonies themselves in those articles (*a*): though, as to the latter, that does not seem to have been the construction the act received, as will be seen presently.

BUT this indirect way of depriving Ireland of the benefit given her by stat. 12. Car. 2. c. 18. without expressly repealing the provision respecting bonds therein made, seems not to have been regarded as an express law would have been. Persons had refused to give bond for landing goods only in England; or had, notwithstanding such bonds, carried the goods to Ireland. This practice went on till stat. 22. & 23. Car. 2. c. 26. was made to set things right, by an express declaration of the law. This act directs, that the word *Ireland* shall be left out of all bonds taken for any ship sailing

(*a*) Sect. 9.

from

from England, Ireland, Wales, or Berwick upon Tweed, for any English plantation in Asia, Africa, or America; and in case such ship shall load any of those commodities, they are to be brought to some port in England or Wales, or to the town of Berwick, and be there unloaded and put on shore: and so of all other ships coming from any other port or place, and permitted by the Act of Navigation to trade thither; namely, ships of the plantations themselves. The reason given in the act for thus excluding Ireland, is, that it was England which suffered by numbers transporting themselves from hence to people the plantations.

PART II.
12. CAR. II. 20
A. D. 1783.
PLANTATION
TRADE.

THE governors of the plantations are directed, before any such goods are permitted to be laden on board, to take bond to the value mentioned in the Act of Navigation, that the ship shall carry the goods to some other of his majesty's English plantations, or to England, Wales, or the town of Berwick upon Tweed; and the penalty of forfeiture of the ship is inflicted, if the goods are loaded without such bond, or without a certificate from England of such bond

Plantation
Bonds.

PART II.
 12. CAR. II. TO
 A. D. 1783.
 PLANTATION
 TRADE.

having there been given, or if the bond is not complied with (*a*).

BECAUSE many ships belonging to the plantations used to carry goods to several parts of Europe, and there unload them, the act directs all governors to make a return once a year at least to the officers of the customs in London, or to some person that shall be appointed to receive the same, of a list of all ships lading such commodities, and also of all bonds so taken. And in case any ship belonging to his majesty's plantations having on board any sugars, tobacco, cotton, wool, indigo, ginger, fustic, or other dyeing-wood, shall be found to have unladen in any port, or place of Europe, other than England, Wales, or town of Berwick, it is to be forfeited (*b*).

THE territory of *Tangier*, which came to his majesty by marriage with a daughter of Portugal, was declared not to be a plantation belonging to his majesty in Asia, Africa, or America, within the meaning of this and the former acts (*c*).

(*a*) Sect. 11. (*b*) Sect. 12. (*c*) Sect. 14.

THE

THE contraband trade carried on by plantation-ships in defiance of the Act of Navigation, was a subject of repeated complaint: it seems, they not only carried goods to Europe, but vended them at sea to the shipping of other nations, which brought them to Europe. The act states this to be a great grievance, considering the free trade they enjoyed at home from one plantation to another, lading and unlading these commodities without paying any custom; while in this kingdom those articles could not be consumed, but after paying heavy customs and impositions: it was alleged, that the case of supplying themselves, and the great increase of their trade and navigation, ought to content them without engaging in this illicit traffick with Europe.

PART II.
 12. CAR. II. TO
 A. D. 1783.
 PLANTATION
 TRADE.

To prevent this in future, it was ordained, by stat. 25. Car. 2. c. 7. that if any ship should come to take on board those commodities, and bond was not first given with one sufficient surety for bringing them to England, Wales, or the town of Berwick, and to no other place, those commodities should, before the lading of them, be subject to certain duties of custom therein mentioned; and if the party had not ready money, the

PART II.

12. CAR. II. TO

A. D. 1783.

PLANTATION
TRADE.

officer might take a portion of the commodities in lieu thereof (*a*). Thus was the parliament of England induced to lay duties on the export-trade from one plantation to another, in order to prevent an unlawful export to Europe of the enumerated articles.

As the plantations were combined with the interests of shipping and navigation, so was that grand article of produce, tobacco; and in the same manner as they had been coupled in the proclamations of king James, and king Charles, they were now united in several provisions made by the Legislature (*b*). In the same sessions in which the Act of Navigation was passed, it was enacted by stat. 12. *Car.* 2. c. 34. that no one should plant tobacco in England, Wales, Guernsey, Jersey, Berwick, or in Ireland, on pain of forfeiting it, or 40s. for every rod of ground so planted. This penalty was increased to 10l. by stat. 15. *Car.* 2. c. 7. f. 18. And because this was not found sufficient to restrain the cultivation, it was

(*a*) Sect. 2.

(*b*) For the many proclamations about tobacco, whether importing or planting it, see Chalm. Pol. Ann. p. 129.

further

further provided by stat. 22. & 23. *Car.* 2. c. 26. sect. 2. that constables should search out and make presentment at the sessions, of all persons who had planted tobacco, or were the immediate tenants of lands so planted: such presentment was, after filing, to be considered as a conviction, unless upon notice thereof the party traversed it at the next sessions. Constables are authorised, by warrant from a justice, to pluck up and destroy all tobacco; and there is a penalty on constables neglecting to do this duty (a). This act is continued by stat. 5. *Geo.* 1. c. 11. during such time as the act of tonnage and poundage, stat. 12. *Car.* 2. c. 4. is continued, and no longer.

PART II.
 12. CAR II. TO
 A. D. 1783.
 PLANTATION
 TRADE.

IN such manner was the trade to and from the plantations tied up, almost for the sole and exclusive benefit of the mother-country. But laws which made the interest of a whole people subordinate to that of another residing at the distance of three thousand miles, were not likely to execute themselves very readily; nor was it easy to find many upon the spot, who could be depended upon for carrying them into execution.

(a) Sect. 3, 4:

PART II.

12. CAR. II. TO
A. D. 1783.
PLANTATION
TRADE.

THE government was not slack in employing those whose service they could readily command.

Acts of Navigation enforced.

IMMEDIATELY after passing the Act of Navigation, the lord admiral was ordered to give in charge to all the commanders of the king's ships specially to attend to the execution of this act. As occasions called for it, similar orders were made upon the rest of the king's officers. It having been suggested, that divers ships laden at Barbadoes were gone to Holland, and that it was common for the ships of Holland to bring to the port of London, and other ports, goods *prohibited by the act in Holland-vessels*, it was ordered, the 15th of August 1662 (a), by the privy council, that the lord treasurer should direct the commissioners and farmers of the customs to take care to see the execution of that part of the act which is to prevent ships loading in the plantations going to foreign parts without first touching in England.

WE find the lords of the committee of council for the plantations wrote a circular letter on the 24th of June 1663 to the governors of the plantations, calling upon them

(a) Counc. Regist.

in

in very strong terms to do their part in enforcing the regulations of this law. It is there alledged, that persons traded from *Virginia, Maryland, and other plantations, both by sea and land, as well into the Monadoes* (so *New-York* was then called) and other plantations of the *Hollanders, as into Spain, Venice, and Holland*; which was occasioned by the neglects of governors, in not taking a view of foreign-built ships coming in, to see if they had a certificate of their being made free; as also in not duly taking bond for carrying goods to *England or Ireland, or to another English plantation*. These bonds had not been regularly taken and transmitted; and the governors were now commanded to transmit twice a-year a perfect account of all ships that loaded, and copies of all such bonds, on pain of the penalties inflicted by the act being enforced against them; "it being," as the letter concludes, "his majesty's pleasure, that this said law be very strictly observed, in regard it much concerneth the trade of his kingdom (a)."

BUT the laws of navigation were nowhere disobeyed and contemned so openly

(a) Chalm. Pol. An. 260.

PART II.
12. CAR. II. TO
A. D. 1783.
PLANTATION
TRADE.

PART II.

12. CAR. II. TO

A. D. 1783.

PLANTATION

TRADE.

as in New England. The people of Massachusetts Bay were from the first disposed to act, as if independent of the mother-country; and having a governor and magistrates of their own choice, it was very difficult to enforce any regulations which came from the English parliament, and were adverse to their colonial interests. Their agents however, who were sent over to negotiate their affairs with king Charles's ministers, knew too well the necessity of temporising, not to submit themselves in every thing to the order of the privy council. When the Bostoners were charged with refusing to publish the statute of frauds of the stat. 13. & 14. *Car.* 2. and stat. 25. *Car.* 2. and the king's different proclamations for better observing the acts of trade; and with imprisoning the officers of the king's customs, and not suffering them to plead the general issue in actions brought against them for what was done in the execution of their duty; they denied the charges, and maintained the disposition of their principals to obey the laws, in the same manner as the rest of his majesty's subjects. They alledged as an instance, an act passed by the general court of Boston in the year 1676, in pursuance of one of his majesty's proclamations for enforcing

forcing these very Acts of Navigation; in the preamble of which act it was declared, that they had not before been advertised of his majesty's pleasure. But to this it was replied, that they had long before been advertised of his majesty's pleasure herein from the circular letter of 1663, the receipt of which circular letter was acknowledged in an act passed by the general court in 1663, and printed in 1672, and publicly known, and in every one's hands at the time of the declaration made in the act of 1676. In minds so tempered, obedience and disobedience were much the same thing, as to the interests of the mother-country (a).

PART II.
 12. CAR. II. T. 6
 A. D. 1783.
 PLANTATIONS
 TRADE.

BUT the regulations of these laws were received even by those colonists who were attached to the sovereignty of the mother-country, with grudging and discontent. The complaint made by Sir William Berkeley, the governor of Virginia, in a letter of the 20th of June 1671, is conveyed in words very expressive, and significant: "Mighty and destructive have been the obstructions to our trade and navigation by that severe act of parliament, which excludes us from having any commerce

(a) Journ. Comm. for Trade.

" with

PART II.

2. CAR II. TO

A. D. 1783.

PLANTATION

TRADE.

“ with any nation in Europe but our own,
 “ so that we cannot add to our plantation
 “ any commodity that grows out of it, as
 “ olive-trees, cotton, or vines: besides this,
 “ we cannot procure any skilful men for
 “ our own hopeful commodity of silk; and
 “ it is not lawful for us to carry a pipe stove,
 “ or a bushel of corn, to any place in Eu-
 “ rope out of the king’s dominions. If this
 “ were for his majesty’s service, or the good
 “ of the subject, we should not repine, what-
 “ ever were our sufferings; but, on my soul,
 “ it is the contrary for both; and this is the
 “ cause, why no small or great vessels are
 “ built here. For *we* are most obedient to
 “ all laws, whilst the New-England-men
 “ break through them, and trade to any
 “ place that their interest leads them to. I
 “ know of no improvement that can be
 “ made in trade, unless we had liberty to
 “ transport our pipe stoves, timber, and
 “ corn, to other places besides the king’s
 “ dominions (a).”

AGAIN, in 1676 the island of Barbadoes
 complained to the committee of plantations
 of the acts of trade as grievances, inas-

(a) Chalm. Pol. An. 327.

much