40336 — 47 Osborne Markham to Wm Marsden

Navy Office December 29th 1804

Sir

I am honored with your letter of 18th Instant, informing me that it was the Direction of the Right Honorable The Lords Commissioners of the Admiralty, that I should transmit to you, what I may have to offer in Justification of the Conduct imputed to me by the Navy Boards letter of 29th October ultimo

Before I enter upon a Reply to the Letter of my Colleagues, it may not be improper that I should represent to their Lordships, that during the Time I have been a Commissioner of the Navy, I have sedulously attended the Duties of my Office without one days Intermission excepting when prevented by Illness or on His Majesty's Service; and upon every Occasion have, as I conceive to be my

William Marsden Esq.

my Duty, fully, fairly, and conscientiously stated my Opinion to the Board, on the Subjects which have been in Discussion, and although I may at times have differed in Opinion, with a Majority, upon points of publick Service, in common with other Members, when they felt it their duty to do so, such Difference was ever confined to the Matter immediately in Discussion, and appeared to me to be essential to the forwarding of His Majesty's Service —

In addition to the principle on which the Book in Question has been kept, (as stated in the Minute delivered by me to the Navy Board on 26th October Ultimo) a copy of which I herewith enclose, and independent of its having been the practice for Members to take Memoranda for many Years past, the proof of which, if necessary, I could adduce, I beg leave to acquaint Their Lordships, that when I was appointed a Commissioner of the Navy, the then first Lord of the Admiralty, in explaining to me the important Duties of my Office, and the personal Responsibility attached to the Situation; informed me that he considered it as the Duty of every

Member

Member of that Board, when he had the Misfortune to differ in Opinion with the Majority, to make such Memoranda, as would enable him to justify his Conduct, if at any future period he should be called upon so to do.

Having thus shewn their Lordships, that I have kept this Book upon Principle, upon Precedent, and at the Recommendation of the first Lord of the Admiralty; I have only to add that no person whatever, has looked into, or received any Information from it - excepting the Members at the Board, and Lord Melville; nor was it ever out of the Board Room until at his Lordships Request, it was privately, and confidentially communicated to him; and since that time I have discontinued making Memoranda in it.

I have most sincerely to lament, that the Time of the Navy Board (much against my Inclination) and of their Lordships, should be taken up with a base of so little intrinsic Importance, and that my Conduct should have been brought in Question before their Lordships, on such an Occasion -

Nevertheless I shall endeavour

to

"upon a particular Occasion"

I certainly did State to the Board the Words of the Comptroller which I had taken down upon a particular Occasion, and as the Circumstances of the case are not set forth by my Colleagues, I am under the Necessity of explaining them. In June last, when the Board was writing a letter to the first Lord of the Admiralty in answer to a letter addressed to the Comptroller, which had never before been done by the Board, I did on that (as I had done on former Occasions, and as I thought my Duty required me so to do) request that the letter which the Board was to answer, might be produced to the Board. This was refused by the Comptroller. The Words which I took down (with Notice that I was doing so) were spoken personally to myself, and were these "a Member not seconded "called for the paper (meaning

the

"The Gentleman having during the Comptroller's late absence, been indulged upon the Discussion of some public Matter, to read from this Book, Words which he stated to have been uttered by the Comptroller, upon a particular Occasion, and it being manifest to the Members present, that the words in question, were not those made

"the Letter the Board was then "answering, and therefore it "was not produced"

I must own it seemed to me extraordinary, that a public Letter, which the Board was required to answer, and which consequently, I thought, ought to have been previously laid before the Board, should be refused to any Member, desiring to see it. That I did take down the Terms the Refusal was made

As the Matter is again agitated, I must further remark, that the Letter in Question has not to this Hour, as far as I am informed, been produced to the Board —

"made use of by the Comptroller, and that he had uttered no Sentiments similar to what those words conveyed, It was deemed a Matter of so important and serious a Nature, as to give the Comptroller, immediate Information of what had passed"

I am sorry to be again obliged to supply, the omission in my Colleagues letter, and to state the Fact upon which the discussion took place, The Board had under Consideration, the false Musters in the Duke of Kent hired armed Cutter, for which they were proceeding to discharge her from the Service; whereby the owner would incur an heavy loss, having newly fitted her at a great Expense.- Upon this occasion, I called to their Recollection the Recommendation to their Lordships to stop the Prosecution, which was going on against Mr Lindegren's Clerk for false Musters in the Speder Cutter, notwithstanding it was the strongest Case of false Musters ever brought

forward

forward with the clearest Evidence to a moral Certainty of Conviction in a Case where it seldom happens that the Law Officer of the Crown can produce satisfactory Evidence for Conviction, even where there is known to exist the greatest Degree of Criminality: and notwithstanding the Evidence would have developed to the Public, a regular System of Fraud in false Musters, supported by established, and customary fees, to the parties personating the Men mustered: The base, the Evidence, all that relates to this Matter can be referred to by their Lordships, which will shew without any assertion of mine, that no other Ground, than that of Policy, such as I have stated, could be taken for the Recommendation to their Lordships, to stop the Prosecution: In the former Measure I had differed in Opinion with the rest of the Board; and I thought it my Duty to withhold my Signature to the Letter. The base

of

the Duke of Kent hired armed Cutter, was infinitely less aggravated, and as such only, was, after what had passed respecting the Spedin Cutter pointed out by me to the Board. The confounding the two Occasions before explained, in one of which I took down the words spoken of, and applied personally to myself, in the other, where I merely took the principle of the Decision, without attending to precise words, manifests a want of candour in the Terms of the Complaint, more especially, as I disclaimed on every occasion, the quoting of the precise words, made use of, in the Instance of the Spedin Cutter.

"On the 23d. Instant soon after the Comptrollers Return, a Subject was agitated, in the Discussion which Mr. Markham made use of Expressions, conveying strong Reflections on the Conduct of the Board"

Here again, the Matter in Discussion, is omitted. It was this, whether one of the Shipwrights, a great Number of whom had been recently

leaving

leaving the Yards, with a View to get higher Wages from the Merchant Builders, employed to repair His Majesty's Ships, should be re-entered in His Majesty's Service. I did dissent in strong Terms from the Measure but without intending to reflect, on the Conduct of the Board, which I instantly stated in Explanation in the clearest, and most unequivocal Terms. The Matter was then dropped, & not revived again, until after the Letter to their Lordships had been determined on, and although otherwise uncommected with the Subject, is now introduced as Matter of Aggravation —

"And this induced the Comptroller to bring forward the Consideration of the Circumstance, which is the Subject of this Letter, which otherwise he would not have done, until all the Members of the Board, should be present, and it appearing to be irregular & dangerous"

As it is sanctioned both by Practice and principle, and Notes so taken can offend no Person but the Maker of them

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"That an individual Member should privately note down the Sentiments and Opinions expressed by any of his Colleagues, we deemed it right, to call upon him to produce the Book, to the Secretary, that each individual might be apprized of what was minuted therein, as words used by him, concluding that they might not have been more correctly set down, than those minuted as having been used by the Comptroller"

"Mr. Markham having declined to comply with this Requisition, we were led into a further Discussion of the Subject, and Copies of the Minutes thereon, are herewith transmitted, for the further Information of Your Lordships"—

I do not see how they can be considered as irregular, or as dangerous. But I forbear in this place, again troubling Your Lordships with a Repetition of the Reasons, I have before given in this Particular

The production of a private Minute Book, kept by a Member of the Board, for

his

"In submitting the Subject to Their Lordships consideration, we beg leave to observe, that we have not the smallest objection to any Member keeping a Memorandum Book either of his own, or the Board's proceedings, provided that it be done fairly and openly, for the Benefit of the Public Service, and for no other purpose —

his own use and Justification; was I believe, never before, exacted upon the Inquisition of his Colleagues. I can therefore have no Difficulty in avowing my Refusal to do, what I am satisfied my Colleagues, could not with any Colour of Right or propriety demand —

In this Paragraph my Colleagues allow, that the keeping of a Memorandum Book of the Board's Proceedings, is not objectionable in itself, how it can be openly done, that is, Subject to general Inspection, I do not well see. It would if so instituted, in a Manner become what is not permitted, a Record of Reasonings and

Objections

"But when words are inserted in such a Book, as the words actually uttered by an individual Member without his having the smallest Intimation, that his words were taken down; or his having an Opportunity of

Knowing

Objections or Measures, and would be held as Authority in such Cases, which no one pretends, private Minutes are.

It is necessary here to observe, that the Board's Minutes do not record Opinions, or the principles of Measures adopted; they are a mere Abstract of the Letters written, in consequence of the Decision of a Majority of the Board; they are compiled from the Letter Books only, by one of the Clerks in the Secretary's Office, and are deemed by the Board of so little real use or Importance, that I never knew any Instance of their being referred to, and on several Occasions, the reading of them has been dispensed with, as a mere form of Office —

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"knowing, whether they are correctly stated, and when in the warmth of argument, some Months afterwards, that Book is brought out as Evidence of words, which in fact, were never spoken, nor any others to the same Effect; to which in the present Instance we can bear the most confident Testimony, the Mischief and Danger of such a practice becomes sufficiently evident."

"nor is it possible with the utmost Degree of Candour that can be exercised in judging of the Transaction herein referred to, and considering the purpose for which these Notes were lately produced, and also the peculiar Circumstances of the Times, when strict, and rigorous Enquiries are making into the proceedings of this Board, and of the Conduct of the Individuals composing it, to suppose, that Mr. Monckham keeps

This

The whole of this is Insinuation founded upon a Distortion of fact as above explained

"this Book solely for," the "purpose of assisting him in "the Discharge of the public "Duties of his Station" more especially, as he has stated as one of his Reasons for so doing, that he keeps the Book for his own Justification"

The purpose for which these Notes were produced on two Occasions, is ~~[illegible]~~ explained before

The whole of this Paragraph imports a mere suspicion of improper Motives, and that their Lordships will give me Credit, for great Moderation, in passing it over, without making those strong Remarks upon it, which I could with great Truth and Justice, and to which it is so obviously obnoxious —

"Under these Circumstances we cannot feel ourselves safe, in the Discharge of our Duty, while our Observations are secretly recorded, and consequently liable to be incorrectly stated, and it will be obvious to their Lordships that the freedom of Debate must necessarily be restrained, and the Execution of the

Public

"Public Service be thereby greatly impeded, for though in any very recent Instance, we might be able to refute an accusation brought against any of us, upon the testimony of Mr Markham's Memorandum Book, it might not be so easily done a few years hence, when it might be justly feared, that a Statement of a particular Fact in a private Minute Book, kept at a public Board, by a Gentleman of Honor and Integrity, might have considerable weight with Judges disposed to criminate an Individual"

This Paragraph is wholly inconsistent - The Board can have nothing to fear from a Man of Honor and Integrity, nor can any Man of Honor and Integrity fear any Inconsequence from his public acts being recorded by such a Man -

It is so established a Principle, and one so universally known, that a Book of this Nature, could not be produced as Evidence (except against the Writer of it)

That

that, it is unnecessary for me, to answer this Observation, or to remove any serious apprehensions, which the Board may appear to entertain -
The general and unapplied Insinuation, conveyed in my Colleagues Observation of "Judges being disposed "to criminate an Individual" is so injurious to the Credit of the Administration of Justice in this Country, as to render it I trust, wholly unnecessary and unbecoming on my part to make any Reply to it -

"We therefore submit, all these Circumstances to their Lordships Consideration, relying that they will see, the Importance of the Subject, and furnish us with their Opinion and Decision thereon as soon as conveniently may be

As I have already so minutely, and I trust satisfactorily, replied to every Part of the Letter, perhaps their Lordships will agree with me in Opinion, that I

have

have Reason to complain, both of the Matter and Manner of the accusation brought forward by my Colleagues; But that which most materially affects my personal Feelings, is the direct attack made upon my Veracity. The Memorandum alluded to, respecting the Spider armed Brig, went to affirm, as I do now affirm, that the question upon the Spiders false Musters was decided on the Ground, that it was known, that false Musters did exist, in the hired armed Cutters, and that if Government carried on prosecutions for the same, that not a Cutter would remain in the Service; and in Confirmation of my not having been deceived in my apprehension of what passed, or on what Ground the Recommendation to put a Stop to the prosecution was sent to their Lordships, I beg you will submit what follows to their attention —

That this Ground of policy was adopted, appears, 1st by the Board being satisfied with hearing the Memorial of the Defendants read, without permitting the Evidence on the part of the prosecution taken on Oath before a Magistrate, to be read to the Board, and which Depositions

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I have reason to believe, though I cannot from the Nature of the Thing, assert with absolute Knowledge of the Fact, had not been read by any one Individual Member, myself excepted, From whence, I could not but think, that the Board had not decided the Question on its legal Merits, or on any supposed preponderance of Evidence in favor of the Defendants, or on any Doubt of the Effect of the Evidence on the part of the Prosecution, but that they must have proceeded on the Ground of Policy, and particular Expediency only —

2 dly. What confirms me in my persuasion that I have rightly understood the Board's Decision, is that when I carried the letter written in Consequence, and expressive of such the Boards Decision into the Committee of Stores, to be signed by Mr Legge, the junior Member of that Committee, and informed him, that having expressed, my most decided Dissent from the Measure I could not in Conscience sign such a recommendation to their Lordships, and therefore desired, that he who had given his Sanction to the Measure at the Board would sign it, he, as in Justification of his Conduct at the Board, in voting

for

for the Measure, told me that he could not help giving Credit to the great Experience of the Comptroller, and Deputy Comptroller in the Service —

3dly The Letter of the Board is carefully silent, on the Grounds and Reasons of its Recommendation, and in further Confirmation of the same, I again submit to their Lordships attention, the opinion given by the same Members as contained in the Minute of 26th October "that he thought the Comptroller's Sentiments "must too Strongly expressed", But as the clearest, and most conclusive Evidence I would point at to the papers themselves which relate to the Spider Cutter, more particularly the Depositions, which are better illustrated, by the Indictment which had been prepared by their Lordships Solicitor. And I cannot do the Board the Injustice to believe, that any other Motive, than that of Policy, as stated in the Memorandum, could have induced them to recommend to their Lordships, to arrest in its Progress, the Prosecution of such a flagrant Instance of plunder on the public, established by the most incontrovertible Evidence

From all the Circumstances above stated,

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it will, I trust, appear to their Lordships, that I have at all times acted under a Persuasion, that I was personally responsible for my individual Conduct as a Commissioner of the Navy, in every Branch of that Department of public Service, which came at any time, and in any Degree, under my Superintendance and Control, jointly with the rest of the Board. — I am well aware, that the Regulations respecting individual Responsibility, for particular Branches as directed to be taken into the consideration of the Navy Board, by Sir Evan Nepeans Letter of 11th August 1803, and proposed by the Navy Board's answer of 20th October 1803, seem to limit this Responsibility — nevertheless, as the proposed Regulations have not as yet received the direct Sanction of their Lordships, I cannot help — considering myself as still responsible in the Extent I have already mentioned But if their Lordships should think otherwise, and should be of Opinion that individual Responsibility does not attach to individual Members under the present Constitution of the Board, the Belief of which formed the principal Inducement, for my keeping the Minutes

on

in question, their Lordships have only to signify their commands, that such Memorandum should be discontinued; and in this, as in every other Matter connected with the Discharge of my public Duty, their Commands shall be faithfully, and implicitly obeyed.