

stances in his own favour—for such he conceives to exist.

That the resolution against your memorialist he humbly hopes may and ought to be rescinded, because there is a material and obvious difference between an order issuing from your lordships on your own persuasion of the unfitness of a person to serve in the navy; and an order you may ground on construction of the proceedings of a court martial—in the one case your conviction decides the fact, and in the other you render to the court martial an act the court has not done, nor had in contemplation to do; and this, a short review of the case of your memorialist, will make evident.

For the sentence of the court martial expressly declares your memorialist *free of all criminal intention*, and the public *service not damnified* by any of his acts; but, that the charge fixing upon him the imputation of making false Musters is proved, and therefore he is adjudged to be dismissed the command of his majesty's frigate. Your memorialist complains of the severity and injustice of this sentence.

- 1st. Because the court had no authority to inflict such punishment.
- 2d. Because the sentence ought to have declared what the fact is, A full and explicit acquittal of your memorialist having acted in breach of the 31st article of the Articles of War, otherwise the court could not have dispensed with carrying the law on that article into execution.

3d. Because