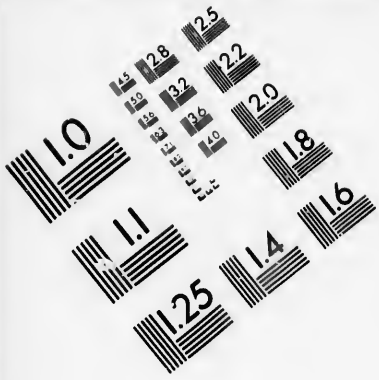

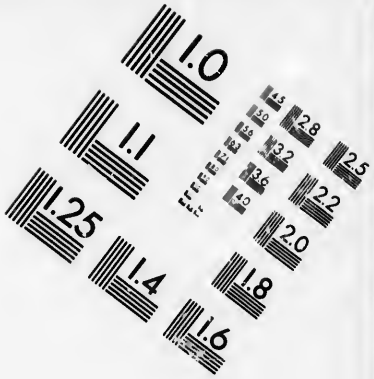

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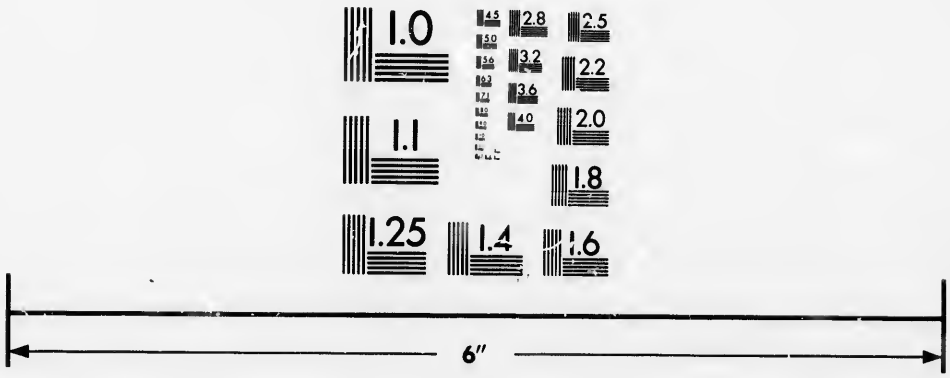

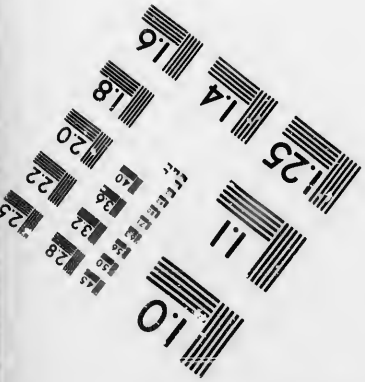

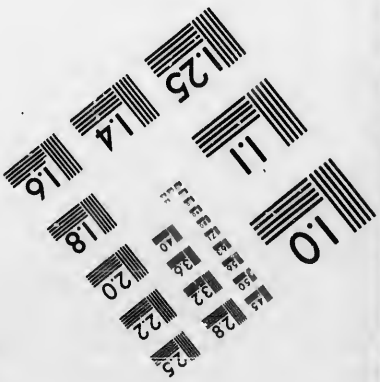

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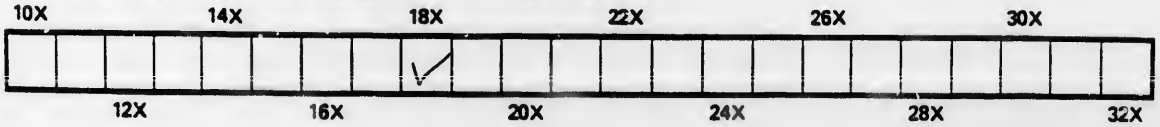

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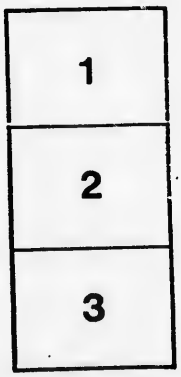
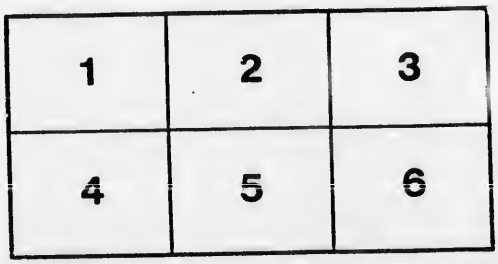




BELLIGERENT RIGHTS

ASSERTED AND VINDICATED

AGAINST

NEUTRAL ENCROACHMENTS.

BEING

AN ANSWER

TO AN

EXAMINATION

OF THE

BRITISH DOCTRINE

WHICH SUBJECTS TO CAPTURE A NEUTRAL TRADE NOT

OPEN IN TIME OF PEACE.

LONDON:

PRINTED FOR J. JOHNSON, ST. PAUL'S CHURCHYARD;

AND W. J. AND J. RICHARDSON, NEAR THE ROYAL EXCHANGE.

1806.

(Price Three Shillings.)

WOOD AND INNES, PRINTERS, POPPIN'S-COURT, FLEET-STREET.

ADVERTISEMENT.

THE attention of the public has lately been called to the injury which the power and prosperity of this country have sustained by the conduct of America, in a most masterly performance under the title of "War in Disguise, or the Frauds of the Neutral Flags." But the very learned and eloquent advocate who wrote this tract, directed his attention, almost exclusively, to detect the fraudulent evasion of the royal instructions, and to lay before the public a very detailed account of the shifts and arts by which the American flag has been enabled to carry on the domestic and colonial commerce of our enemies. This publication has had a powerful effect on the nation; and no one has

yet attempted to question the accuracy of its details, or to controvert the conclusions which its learned author has drawn from them.

Only a short time since, a pamphlet was transmitted from America, and is now re-printed in London, which is ascribed to a gentleman high in the confidence of the American government.

In this tract, the injurious consequences to the prosperity and power of this country, from neutrals covering the commerce of our enemies, is most fully admitted: (P. 3, 78, 134, 137, 189.) but the author contends, that notwithstanding this consequence, the trade, so carried on by neutrals, is one warranted by the law of nations, and sanctioned by the principles upon this subject, which have been recognised in various treaties.

This author seems encumbered with his authorities, and unaccustomed to the right application of principles; and has involved himself

in considerable confusion. Yet the great weight of the gentleman to whom this publication is attributed, has drawn towards it so large a portion of the public attention, that it has been deemed requisite to have its inaccuracies and inconsistencies pointed out, and its unwarranted conclusions combatted.

In order to do this in the most satisfactory manner, no reference is made to any fact, or to a quotation from any authority, but such as are found in this reprint of the American tract itself, and to which correct reference is made.

While the present pamphlet was writing, the resolutions from the committee of congress (to whom that part of the president's message was referred which relates to the disputes between this country and America) has been received, with their subsequent confirmation, and are as follows: —

FIRST,

Resolved — That the capture and condemnation, under the orders of the British government, and adjudication of their courts of admiralty, of American vessels and their

cargoes, on the pretext of their being employed in a trade with the enemies of Great Britain, prohibited in the time of peace, is an unprovoked aggression upon the property of the citizens of these United States, a violation of their neutral rights, and an encroachment upon their national independence.

SECOND,

RESOLVED — That the President of the United States be requested to demand *and insist upon** the restoration of the property of their citizens captured and condemned, on the pretext of its being employed in a trade with the enemies of Great Britain, prohibited in time of peace; and upon the indemnification of such American citizens, for their losses and damages sustained by these captures and condemnations; and to enter into such arrangements with the British government, on this and all other differences subsisting between the two nations, and particularly respecting the impressment of American seamen, as may be consistent with the honor and interests of the United States; and manifest their earnest desire to obtain for themselves and their citizens, by amicable negociation, that justice to which they are intitled.

THIRD,

RESOLVED — That it is expedient to prohibit by law the importation into the United States of any of the following goods, wares, or merchandise, being the growth, produce, or manufactures, of the United Kingdom of Great Britain and Ireland, or the dependencies thereof; that is to say: — woollens, linens, hats, nails, looking-glasses, rum, hardwares, slate, salt, coal, books, shoes, ribbons,

* These words were struck from the confirmed resolutions.

silks, and plated-glass wares. The said prohibition to commence from the day of , unless previously thereto equitable arrangements shall be made between the two governments on the differences subsisting between them, and to continue until such arrangements shall be agreed upon and settled.

The Rubicon then is past; argument is at an end; and discussion closed. America has assumed in her own favor the very question which she pretends a wish to make the subject of negociation. America must either retract her threatenings, and abandon her claims, or this country, relinquishing her rights, must be prepared to sustain the injury of having France aided in her prosperity and revenue, and enabled to carry on the war with more vigor and effect, by pretended friends and hostile neutrals.

12*th of May*, 1806.

BELLIGERENT RIGHTS

ASSERTED AND VINDICATED

AGAINST

NEUTRAL ENCROACHMENTS,

&c. &c. &c.

IN the war which commenced in the year 1756, and ended in the year 1763, France relaxed her colonial monopoly, and admitted neutral vessels, under certain restrictions, to carry the produce of her colonies to French or foreign ports in Europe. The prize courts of Great Britain condemned such vessels as were captured while engaged in it, together with their cargoes, notwithstanding both ship and cargo were proved to be neutral property.

In England this has been called "the rule of the war of 1756;" and in the work which has lately been re-printed from the American edition, it is called the British exception and the British principle.

On the return of peace, France re-closed her colonial ports, but opened them again a little time previous to her engaging in the American war, and continued to permit neutrals to partake of her colony trade during its continuance: but the prize courts of Great Britain did not enforce the "rule of the war of 1756" on this occasion.

At the commencement of the last war, the "rule of 1756" was revived in his majesty's royal instruction of the 6th of November 1793. In order to avoid disputes with America, Great Britain relaxed from the instruction of November 1793; and, in a new one of the 8th of January 1794, confined the application of the "rule of 1756" to the direct trade between the French West-India islands and Europe: but she did this of her own free grace, and not in consequence of any treaty.

Again, by a third instruction of the 25th of January, 1798, the "rule of 1756" was further confined, and neutrals were permitted to trade between this country and the colonies of our enemies, and also between their own country and such colonies. Upon these instructions the prize courts acted during the last war.

The experience of last war caused a variation in the instructions issued on the 24th of June, 1803, by which "a neutral vessel" is allowed to pass unmolested "which shall be carrying on

trade directly between the colonies of enemies and the neutral country to which the vessel belongs, and laden with the property of inhabitants of such neutral country: provided, that such neutral vessel shall not be supplying, nor shall have on the outward voyage supplied, the enemy with any articles of contraband of war, and shall not be trading with any blockaded port:" (P. 123.) with the additional one of the 3d of August 1805, purporting "that the trade with the settlements and islands belonging to the enemy, in America and the West Indies, is to be carried on through the medium of the British free ports in the West Indies, and not otherwise." (P. 137.)

It is evident that the instructions of 1794, 1798, 1803, and 1805, relax that of 1793; and of course, if the instruction of 1793 can be proved consistent with, and warranted by, the law of nations, the other three will fall within that proof, and will then be evidences of the moderation and liberality of Great Britain. The American author of "An Examination of the British Doctrine, which subjects to Capture a Neutral Trade not open in Time of Peace," acknowledges that we have completely destroyed the commerce between our enemies and their colonies; (P. 134.) that, by putting an end to re-exportations from neutral countries, and reducing the importations into these, to the mere amount

of their own consumption, the immense surplus of productions accumulating in the American possessions of our enemies can find no outlet but through the free ports provided for it, nor any other market than the British, and those to which she finds it for her interest to distribute it; (P. 137.) and that neutrals carrying on the trade prohibited by the "rule of 1756," carry on a trade auxiliary to our enemy's prosperity and revenue, which he could no longer carry on himself, and which, at the same time, by liberating his naval faculties for the purposes of war, enable him to carry on the war with more vigor and effect. (P. 3.)

Hence it may be laid down as a maxim, which he cannot dispute, that the trade prohibited by the "rule of 1756" is one at this time beneficial to France and injurious to England, and is one at all times beneficial to the weaker, and injurious to the stronger, naval power; and that the benefit and the injury are proportionably greater as the one power is stronger than the other.

The American author on whose work I am commenting, says, "a nation not engaged in the war remains in the *same* relations of amity and of commercial pursuits with each of the belligerent nations as existed prior to the war;" (P. 1.) and in a great measure rests his

defence of modern neutral claims on this ground, forgetful that the list of contraband, and the right of blockade, infringe upon his rule, and are recognised by even the partisans of the armed neutrality.

When reminded of this, the author will shift his ground, and say, "War imposes on neutral commerce a variety of privations and embarrassments: it is reasonable therefore, as well as lawful, that neutrals should enjoy the advantages which may happen to arise from war." (P. 192.) Yes; as far as the enjoyment of these advantages does not interfere with the war—but no further; and surely it will not be denied, that a trade which is auxiliary to the prosperity and revenue of one of the belligerents, at the expense of the interests of the other, and which enables the belligerent so favored to carry on the war with more vigor and effect, is a trade which does interfere with the war.

Is not the injury to neutrals, from refusing them the carriage of belligerent property, from the list of contraband, and the rights of search and blockade, amply compensated by the carrying trade of the neutral world, which belligerents are obliged to abandon to them, and by the relative prosperity which their neutrality gives them over those who are engaged in war?

At the end of his fifth page, the author appeals

wholly to AUTHORITIES, and begins with the most received writers upon public law; but, by his own quotations from them; it will be found that they sanction the principle of the "rule of 1756." Gentilis is passed by as superseded by Grotius, who, in the author's own extracts, says —

He is to be reputed as siding with the enemy, who supplies him with things necessary for war. (P. 10.)	In hostium esse partibus qui ad bellum necessaria hosti administrat. (P. 9.)

To do a thing is a common expression; and hence it is clear that things include, not only substances, but services and actions; and the original Latin fully confirms this construction. Who then can hesitate in declaring that he ought to be reputed as siding with the enemy who supplies him with the service or action which enables him to carry on the war with more vigor and effect?

Puffendorf is brought forward; but he, in a letter here quoted to Groningius, observes that England and Holland "are willing to leave neutrals the trade they usually carry on in time of peace; but they cannot see them *take advantage of the war*, to extend their commerce to their prejudice." (P. 15.) The American author, indeed, is pleased to say this passage, thus negatively sanctioned by Puffendorf, "cannot possibly refer to the British distinction between a

trade usually permitted in peace, and a trade permitted only in war;" (P. 17.) and then quarrels with Dr. Kennett's translation of the sentence which precedes the above. The original French is "Qu'il n'est pas just que les peuples neutres s'enrichissent à leurs depens, et en attirant â eux un commerce interrompu pour l'Angleterre et la Holland, fournissent à la France des secours." (P. 17.)

Dr. Kennett translates it —

They say it is not reasonable that neutral nations should enrich themselves at their expense; and, by engrossing to themselves a commerce which the English and Dutch want, furnish the French with money to continue the war. (P. 15.)

The American author says the true meaning is —

That it was not deemed just that neutrals should enrich themselves by entering into a commerce interrupted for England and Holland by the war. (P. 17.)

But the correct translation would be — "They say it is not just that neutrals should enrich themselves at their expense; and, by drawing to themselves a commerce in which England and Holland are interrupted, furnish succour to France;"—and if this is correct, it destroys the attempt to oppose

it to the passage first quoted from Puffendorf, and supports the "rule of 1756;" and the general tenor of the letter is clearly in favor of the British doctrine.

Bynkershoek is next summoned to give evidence, who, however, says —

It is agreeable to usage, that we should assist neither one nor another with those things which may furnish and foment the war against our friends.

Usu tamen placuit, ne alter utrum his rebus juvemus, quibus bellum contra amicos nostros instruatur et foveatur.

And — That in whatever manner we succour one against the other, we take part in the war. (P. 20.)

And — Quomodocunque enim alteri contra alterum succurramus, bello nos interponimus. (P. 19.)

Strong as these two remarks are in condemnation of whatever enables one belligerent to carry on the war with more vigor and effect, and though the author himself has admitted that the interference of neutrals in the colony trade of a belligerent does aid his prosperity and revenue, and enable him to carry on war with more vigor and effect, he does not scruple, with all the skilful boldness of an accustomed disputant, to conceal this conclusion; by asserting, "that it cannot be pretended that there is a single ge-

neral expression, or *particular allusion*, that can be tortured into an exception of any trade, *merely for the British reason*, that it was not open to neutrals before, as well as during, the war." (P. 21.)

Now mark the "*merely for the British reason.*" Why does the "rule of 1756" include the principle, that neutrals shall not carry on that portion of the trade of a belligerent which is shut against him in time of peace? It is because this change, this opening of a trade at other times closed, is a presumption that it is opened on account of the war, in order to avoid its pressure; and the neutral who enters into it, thereby relieving one belligerent from the pressure of the contest in which he is engaged, gives him succour; and therefore, on the authority of Bynkershoek, takes a part in the war, or in other words departs from his neutral character.

And this explains the observation of Puffendorf, that "If the northern princes can maintain their trade with France, by sending strong convoys with their fleets, I see nothing to blame in it;" (p. 16.) for it is very well known that the jurists admit of a state of hostility and reprisal short of absolute war; that state in which the injured nation does itself right upon the injuring individuals, without engaging in a general war

with the nation at large; and the very circumstance of Puffendorf requiring a strong convoy, is an evidence that in his opinion the injured belligerent has a right of capture whenever strong enough. This is also confirmed by Vattel, when he says, "It is therefore very proper and very suitable to the law of nations, which disapproves of multiplying the causes of war, not to consider those seizures of the goods of a neutral nation as acts of hostility." (P. 29.)

This writer is quoted at great length by the American author: and only observe one proposition of his, and then it will be easy to decide whether the American has not equally failed in this witness:—"Whatever a nation does in use of its own rights, and solely with a view to its own good, without partiality, without a design of favoring one power to the prejudice of another, *cannot, in general,* be considered as contrary to neutrality; *and becomes such* only upon particular occasions, *when it cannot take place without injury to one of the parties, who has then a particular right to oppose it.*" (P. 26.)—If it is an injury to aid the prosperity and revenue of one of the belligerents—if it is an injury to enable him to carry on the war with more vigor and effect—is not Vattel clear that the suffering and injured belligerent has a particular right to oppose it?—

Is it necessary to enter into proof that these services to a belligerent are injuries to the other?

But the American author is fond of being a critic—Vattel too is erroneously translated.—In what way? why because *suivre tout uniment leur commerce* is rendered "continue their customary trade;" and he mends the matter by saying it should be "simply pursue their commerce." (P. 28.) *Uniment* is *evenly*, *uniformly*, *plain*, or *smooth*. Strange ignorance of language which would consider any of these words as synonymous with simply! Suppose it were rendered "follow quite uniformly their commerce;" where is the real difference between this and the old translation?

Martens, the advocate of the armed neutrality, is also called upon for his testimony: but he remarks, that "the right a nation *enjoys in time of peace*, of selling and carrying all sorts of merchandise to every nation who chooses to trade with it, *it enjoys also in time of war*, provided that it remains neuter." (P. 32.) In the first place, Martens wrote after "the rule of 1756" had been acted upon; and yet only admits the continuance of that trade which the neutral had enjoyed in time of peace: and, secondly, only admits this upon the condition that it remains neutral; and it has already been shown that the

authorities of Grotius and Bynkershoek decide it to be a departure from neutrality, a siding with one side, and a taking a part in the war, to render one of the belligerents a service in preference to the other, while the author himself acknowledges that the trade prohibited by the "rule of 1756" aids the prosperity and revenue of one of the belligerents, and enables him to carry on the war with more vigor and effect.

Hubner too is examined by the American author; yet he, like the rest, talks of the "right which belligerent nations have of opposing *every* thing which *tends* to the immediate assistance of their enemies;" and of neutrals "merely exercising their industry, *as in time of peace.*" (p. 178-9.) The author affects not to understand him, and to call these opinions the rambles of Hubner: he was, however, careful to quote him at the end of his book, and not under his head of written authorities.—Mark too that Hubner is a Dane, and wrote during the war of 1756.

Henning is the last author here quoted; and as far as the extracts make, he is certainly against the "rule of 1756;" but he wrote within these twenty years, and is one of the most hardy and extravagant champions of neutral claims.

The American author closes his review of the writers on public law by the sweeping remark, that "the other numerous writers of *most modern*

date, though generally strenuous advocates for the neutral rights [claims] of commerce, make no allusion to the British principle; for it would be absurd to regard in the light of an allusion to, *and consequently a recognition of this particular principle*, the language they happen to use in stating the general principle, that when war arises between some nations, the nations at peace with all are to proceed in their trade with all *on the same footing* in time of war, *as they did before the war broke out.*" (P. 182.)

Now it is very necessary for those who mean to judge fairly upon this controversy, to recollect that these "numerous writers of most modern date" have all of them wrote since "the rule of 1756" was avowed and enforced, and most of them since the royal instruction of November 1793. It is therefore impossible but that this rule, which the author deems a greater injury to neutrals than all the other belligerent rights (P. 36.), could have escaped their notice; and he himself admits, that *if they did* consider this rule, or had it in view, *when* saying "proceed ... their trade *on the same footing* in time of war, as they did before the war broke out," *it would* "consequently be a recognition of it."

The author relies a great deal on the silence of all the old writers on the general subject of neutral commerce relative to this "rule of 1756;" and even deems it "an unanswerable proof that

the exception now contended for could not be known, or could not be recognised, by those writers." (P. 36.) If it was not known to them, their silence does not make any thing on either side; but if it was known to them, their silence is contrary to the conclusion here drawn from it, that the "rule of 1756" could not be recognised by them; for they were called upon to have noticed and condemned the rule, since in 1705 friendly vessels were introduced by the French into their colony trade, and *were captured.* (P. 37.) Their silence therefore well warrants the conclusion, that they considered the "rule of 1756" legal and acknowledged: But in fact are they silent? — This American gentleman seems incapable of applying principles to the question he has undertaken to discuss; and because the "rule of 1756" has not been formally recited and considered, he declares all these writers silent upon it, though, in his own quotations from them, they lay down the principles on which neutral commerce may be carried on; and the principles thus generally laid down are applicable to the "rule of 1756," and in the preceding pages have been shown to support and approve it.

Having thus gone through those jurists, whom the advocate of American claims thought it for his argument to examine, and found that their authority is in favor of that belligerent right which mercantile avarice and republican partiality

would seek to destroy, it will be proper to proceed to the author's second head of

TREATIES,

Which he begins with saying may be considered in the four views, of affirming the general law—forming exceptions to the general law—explanatory of the general law—and as constituting a voluntary or positive law of nations: and then adds, that, "in the present case, *it having been shown*, from the sources generally allowed to be the most authentic, *that the law of nations is violated by the principle asserted by Great Britain*, it is a just inference that every article in treaties, contradicting that principle, is an affirmance and direct proof of the general law; and that any stipulation of the principle would, as an exception to the general law, be an indirect proof of it." (P. 40.)

Now as it has been attempted to be shown that the law of nations is not violated by the "rule of 1756," and as the attempt has been made by a reference to this American writer's own authorities, the reader who thinks the attempt has been successful, and that the neutral advocate has failed in establishing his argument in the first instance, will see that the very reverse of the above inference must be the explanatory

key through the remainder of the discussion, and that every article in treaties contradicting the "rule of 1756" is an exception to the general law, and a voluntary or positive law to the subscribing parties only.

The author next wishes to have it conceded to him, that "the authority of every treaty is to be considered as opposed to the principle asserted by Great Britain, where it either stipulates a general freedom of commerce," or "where it stipulates a right to trade freely to and between the ports of such nations." (P. 43.) But as this is merely a repetition in another form of the proposition just now denied, it would be a waste of time to do more than observe, that, instead of such treaties being opposed to the "rule of 1756," they are evidences of its legality and recognition, since a relaxation therefrom could only be obtained as a benevolence or concession, the result of insulated negociations, and was the price given to procure some correspondent advantage.

From the treaty of Westphalia to the armed neutrality, the neutral advocate brings forward sixteen treaties to which Great Britain was not a party.

A treaty in 1650, between Spain and Holland, agreed for sailing and trading with all freedom, without being molested, upon the account of hostilities which existed, or might hap-

pen to exist, and that "this liberty should, in relation to France, extend to all sorts of merchandise which might "be carried thither *before she was at war with Spain.*" (P. 45.)

The Pyrenean treaty between France and Spain in 1659 stipulated that "all merchandise might be transported to other countries in war with Spain, *as was allowed before the said* war." (P. 46.)

But the American author says that these expressions are "*merely* a mode of describing the indefinite right to trade, as if no war had arisen, and consequently to enter into any new channels of trade which might be opened to them." (P. 46.) Any reader acquainted with the English language will deny this remark, and say, these expressions, instead of describing the indefinite right to trade, describe what species or kind of trade the neutral shall carry on, and that they confine it to such trade as was allowed before the war, negatively prohibiting all other, at least not giving a sanction to any other; and that neither of them, even if allowed before the war, permit a neutral to engage in the carrying trade of a belligerent, since they speak only of a trade to, and not of one between, the ports of a belligerent.

The next four treaties brought forward are, to use the words of the author, of corresponding import. (P. 47.)

A declaration made in 1676, by Spain and Holland, is the seventh instance cited under this head: (p. 47.) and here the coasting trade is permitted; but the author does not state whether it contained any expression similar to those in the first six of "as was allowed before the war;" and therefore this evidence can scarcely avail him. The remaining ten are said by him to hold the like language; but let it be noticed, that one of them is between France and the duke of Mecklenburg!!! The American author must have been close run to have thought that a treaty with the duke of Mecklenburg could assist in supporting his argument.

Of these sixteen treaties, four are between France and Holland, and are therefore only repetitions; two between Holland and Spain; and two between Holland and Sweden, which are equally so: thus these eight treaties can be taken but as three. This reduces the treaties quoted to eleven, of which six are in favor of the "rule of 1756." What then becomes of this argument of the American advocate? Besides, to what do these treaties amount? To every one of them, but two nations are parties: there was no general assent—no general recognition; they are therefore but a voluntary and positive national law between the subscribing parties, and between them alone.

From the treaty of Westphalia to the present time, the American author selects twenty-eight treaties to which Great Britain was a party, as supporting his argument. The treaties with Sweden of 1654, 1656, and 1661, allow only of a "trade *with* the enemies of the other," and without impediment, *to carry to them*, except to places blockaded or besieged, any goods "whatever, not contraband;" and provision is made against covering enemies' property. (P. 49-50.) Now is it possible to construe these stipulations into a permission of a trade *for* an enemy, when one *with* an enemy only is granted, especially when the intention of prohibiting all trade *for* the enemy is clearly shown in the provision against covering enemy's property?

According to the account given of them by the author, the treaties with Spain in 1667, and Holland in 1667 and 1668, permit the coasting trade of a belligerent to be carried on by a neutral. But those with Denmark, of 1669 and 1670, allow only a trade *with* enemies, and *to* all places excepting *prohibited ports* and *colonies*: these, therefore, make against the neutral claim. Then the American writer triumphantly brings forward the treaties of 1674 and 1678 with Holland, negociated by sir William Temple, and which continued in force until 1781; and they certainly grant to the subscribing parties all

what the Americans are now claiming. (P. 51, *et sub.*) In, however, considering these treaties, it must not be forgotten that England was at the time in peace with France, who was at war with Holland, and that sir William Temple boasts of the success of his efforts in obtaining them. He is well known to have been the most perfect negociator of his time; and why should he boast of his success, had these treaties merely been declaratory or confirmatory of the general law? Are they not rather to be taken as a well and skilfully driven bargain, and a voluntary or positive national law between the parties subscribing only, and that too upon condition.

Besides allowing the neutral party the trade prohibited by the "rule of 1756," these treaties also grant to each other that their "free ships should make free goods:" now it is allowed by this writer that Grotius, (P. 23.) Bynkershoek, (P. 23.) Vattel, (P. 30.) and others, (P. 23.) "decide that the neutrality of the ship does not protect the cargo from capture and condemnation." (P. 23.) Of course this article of the treaty is an exception to the general law: Why should not the rest of the treaty be so taken? Can two rules of construction, at direct variance to each other, be applied in the interpretation of the same treaty? Most clearly not. These treaties, therefore, allowing the widest freedom to neutral trade

being shown to be exceptions, are to be taken as an indirect proof of that general law asserted by Great Britain in the "rule of 1756."

The treaty with France of 1677 is said to be favorable to the neutral claim, while that of 1689 with Holland went to prohibit all neutral commerce whatever with France.

The treaties of navigation and commerce with France and Spain, of 1713, are exhibited as if conclusive on the question; but it is needless to enter into their detail, since they were rejected by the British parliament. Unwilling that this important fact should appear too abruptly before his readers, the advocate of neutral claims only says "that it was for some time under a legislative negative;" (P. 59.) and then enumerates nine treaties with France and other nations, in which the treaties of Utrecht are, among others, confirmed. But to what does this amount? Is this writer ignorant that the treaties of Utrecht settled the limits and boundaries of many of the nations upon the continent, and affected even the ownership of the West-Indian islands—that these treaties so confirmed, were confirmed subject to their original limitations—and that the acts necessary to have given the navigation and commercial treaties force, were never passed by the British parliament, and that they consequently remained in a state of abeyance?—Besides, granting it to be true that these treaties stipulate for all what America

claims, America was no party to them; and if it be true that they were thus anxiously and carefully renewed and confirmed in every treaty of peace, is it not evidence that the parties to them, and consequently those only who were interested in them, felt that these claims were encroachments on belligerent rights, and exceptions to the general national law of Europe, which required the sanction of an express treaty in order to be claimable?

The treaties of 1734 and 1766 with Russia do not, according to the account given of them, appear to decide any thing; while that of 1780 with Denmark "determines that merchandise, not contraband, may be transported to places in possession of enemies." (P. 61.) But can this expression be supposed to extend to the transport of merchandise from one enemy's port to another? most clearly it means that a direct trade, contraband excepted, may be carried on between a neutral and a belligerent by the neutral; but this is not opposed or obstructed.

The commercial treaty with France in 1786 is also brought forward; but as it renewed the navigation treaty of 1713, it can merely be considered as the tenth confirmation of it, and to fall under the same course of observation.

This examination of treaties is closed with the armed neutralities of 1780 and 1800, and the convention with Russia of June 1801. The

armed neutralities have been sufficiently shown to be unprincipled attempts to take advantage of the difficulties and distresses into which Great Britain was involved at the time of their formation; and as they have not only never been recognised by her, but have always encountered her most determined opposition, they cannot be brought as evidence against those rights for which she is now contending; and, without entering into any particular view of the convention of 1801, it is sufficient that, in a declaration made by her and Russia in October of the same year, it stated the convention "does not authorise a neutral power to carry, in time of war, the produce and merchandise of the colonies of the belligerent power direct to the continental possessions; nor, *vice versa*, from the mother country to the enemy's colonies." (P. 66.) And even granting that this convention had conceded to Russia, Denmark, and Sweden, some of our belligerent rights, are they therefore ceded to America, who was no party to this treaty? "The treaty is expressly declared (by Russia and Great Britain) to be an invariable determination of their principles upon the rights of neutrality, *in their application to their respective monarchies:*" (P. 65.) and notwithstanding this last confining and limiting clause, the neutral advocate says the contents of the treaty should be ex-

tended and applied to other states and monarchies; for that "principles and rights must be the same in all cases, and in relation to all nations." (P. 65.)

In what school of logic could this writer have been educated?—"principles and rights the same in all cases!"—Pray what is a principle? It is the first cause or foundation of any thing, whether act or substance.—What is a right? It can only exist by means of a correspondent obligation: he who claims a right, imposes an obligation on another; he who grants a right, imposes an obligation on himself. But because one grants a right to another, does he necessarily grant it to all? If A allows B a right of passage through his meadow, does he grant a public right of passage to all the world?—A mere student at law would be enabled readily to say, No; rights then are not the same in all cases, nor to all persons or nations; and a principle being the first cause or foundation, it follows that friendship or interest may lead or cause, or be the foundation for, the grant of rights. And the last clause—"in their application to their respective monarchies"—is evidence that the terms "principles" and "rights" were used in this sense, and confined to the contracting parties only.

To close the list of treaties, the advocate of American claims adds—"The UNITED STATES

have, or have had, treaties with France, Holland, Sweden, Russia, Spain, and Great Britain. In all of these, EXCEPT THE TREATY WITH GREAT BRITAIN," (P. 73.) they have maintained the neutral right of trading with belligerent colonies.

Grant they have had such treaties: but how came it that this stipulation was omitted in the treaty with Great Britain—the only power whose situation rendered it beneficial to enforce the "rule of 1756?"—For the very plain reason, that Great Britain would not relinquish the right; that it was a right founded on the law of nations, and therefore one which the United States could not insist on her relinquishing.

It is difficult to say how it is: but though this gentleman talks very fluently of "the progress of the law of nations mitigating the evils of war," (P. 4.) he deems it expedient to strengthen his diplomatic references, by saying—"To these might be added their treaties (those of America) with the coast of Barbary!!!" "which are all favorable to the neutral rights of commerce!!!" (P. 73.)—I will not indulge in those remarks which instantly occur to the mind on reading such an appeal: argument is scarcely necessary for combating such claims as those to which the Barbary states are favorable. Perhaps some future pleader for what is called the "freedom of

the seas," may appeal to the Barbary states in behalf of piracy; and they certainly will, as far as their authority goes, support his appeal.

But to end this most barren part of the discussion, the advocate of neutrality contends that the decision of the board of commissioners between this country and America, on captures founded on the instruction of November 1793, is conclusive in his favor. The board consisted of two named by Great Britain; two by America; the fifth was drawn for; and the ballot fell on an American!!!*

For their decision to be authority, it is therefore necessary that it should have been sanctioned by the two English commissioners: on this circumstance, however, nothing is said. The author indeed remarks—"Whether the British commissioners concurred in the decision, does not appear: but whether they did or did not, the decision was equally binding, and affords a precedent of great weight in all similar controversies between the two nations." (P. 74.) It is readily granted that it is equally binding, but strenuously denied that it affords any precedent whatsoever. If the board were known to have been unanimous, it would have afforded a precedent to the extent of their judgements and knowledge: but

* See Appendix, for further remarks on the report of this board.

as this is not known, and as three out of five are known to have been Americans, it does not afford any decision at all.

Thus out of all these treaties ten are repetitions or confirmations of those of 1713; three do not decide one way or the other; seven are *said* to be against Great Britain; and eight support the principle of the "rule of 1756." And let it be marked and remembered by the reader, that no authority is reverted to but such as are quoted by the American writer himself; and *his* account of the treaties which he brings forward are taken for granted as correct.

The third head of this pleader on behalf of neutral claims is

THE CONDUCT OF OTHER NATIONS,

Which he acknowledges is merely negative, "but not on that account without a convincing effect;" (P. 75.) forgetting that no nation has been in the condition to be injured by neutral interference in the colonial trade of her enemy but Great Britain, since it has become a policy to open that trade in time of war which is always kept closed in time of peace. Great Britain was never called upon to apply the "rule of 1756" till her enemies opened their colonial trade, in order to evade the power of her arms; and her false friends

were ready to depart fom their neutrality, in order to assist her enemies in carrying on their warfare with more vigor and effect. "This momentous innovation" (P. 75.) on colonial monopoly on the one side, and neutral good faith on the other, is the cause which forced Great Britain to apply the principles on which belligerent rights are founded, to redress the grievances and injuries to which she was obnoxious.

The fourth head of the American author is the

CONDUCT OF GREAT BRITAIN,

Which he divides into two parts; and first, that "whilst Great Britain denies to her enemies a right to relax their laws in favor of neutral commerce, she relaxes her own, those relating as well to her colonial trade as to other branches;" (P. 76.) in which he says she is "governed by the same policy of eluding the pressures of war, and of transferring her merchant-ships and mariners from the pursuits of commerce to the operations of war;" (P. 78.) and these remarks occur again in P. 79, 81, 160, *et sub.* and 190.—Pray in what do these remarks impugn the "rule of 1756?" Does Great Britain deny to her enemy the right to open her colonial ports in time of war? No; not a bit more than she denies her the

right of conveying her colony produce in her own ships during war. But Great Britain says this to the belligerent—"Open your ports, and welcome; but I will intercept your own trade with them, and all neutral commerce with them too, which you have admitted contrary to your customary peace regulations."—Does any one deny to a belligerent to levy troops in a neutral country? No one, certainly; yet such levy in any country is a good ground of war, and an evident departure from neutrality; and therefore an act which the injured belligerent has a right to oppose.

Does any one deny to the belligerent the right to purchase contraband of war of a neutral nation, and to have it conveyed in a neutral ship? No one denies this right to the belligerent: but the right of affording this supply, help, and succor, is by all denied to the neutral. It is not the right of the belligerent to receive assistance, but the right of the neutral to give it, which is the question. In the case of a blockaded town, no one denies the right of the besieged to receive supplies, but the neutral conveys them at his peril; and subject, if intercepted, to capture and condemnation.

The relaxations, therefore, of her colonial monopoly by Great Britain, afford no sort of argument against the right which she exercises

of capturing and condemning a neutral trade shut in peace and opened in time of war by her enemies.

The second position of the author is—that "whilst Great Britain denies to neutrals the right to trade with the colonies of her enemies, she trades herself with her enemies, and invites them to trade with her colonies." (P. 76.)

And to what does this amount? Great Britain has a clear right to interdict such commerce, but she finds it for her interest to let the right sleep. In so doing, she does not the least injury to any neutral state whatever, nor does she invade any one neutral right; in so doing, she makes her enemy's colonies subservient to her revenue and her naval greatness, and thereby is enabled to carry on the war with more vigor. While her enemy loses the supply of his colonies, and can only obtain part of their produce, after it has extended her navigation, and swelled her revenue, thus does this trade of Great Britain with her enemy essentially aid her in the war; while the interference of neutrals reverses the whole, and casts the balance of advantage into the scale of France, this is weakening the means of annoyance, and injuring the prosperity of one belligerent at the time of aiding the revenue and prosperity of the other, and of enabling him to carry on the war with more vigor and ef-

fect. (P. 3.) This, in the language of Grotius, is to side with the enemy; (P. 10.) and, in that of Bynkershoek, is to take part in the war. (P. 20.) In other words, it is a departure from neutrality, and an injury which the belligerent has a particular right to oppose.

The neutral advocate says—"It is a material fact that the principle was never asserted or enforced by England against other nations before the war of 1756." (P. 81.) "At some times," he adds, "nations have been seen engaged in attempts *to prevent all commerce whatever with their enemies;* at others, to extend the list of contraband to the most innocent and necessary articles of common interchange; at others, to subject to condemnation both vessel and cargo, where either the one or the other was the property of an enemy*; at others, to make the hostility of the country producing the cargo a cause of its confiscation. But *at no time* was this encroachment on the rights of neutrality devised by any nation until the war of 1756:" (P. 84-5.) and so to prevent all commerce whatever with an enemy, does not include the interdiction of a particular branch of trade with him!

The fact however is—that until the war of 1756, the French and Spaniards never attempted

* This has always been the law in France.

to elude the pressure of war by relaxing their colonial monopoly; for the attempt of France in 1705 can scarcely be deserving of mention; or if it is, then the "rule of 1756" is of as ancient date as the neutral vessels so employed were captured, and the effort crushed at the outset.

The author shows the great error into which he has fallen throughout his argument, when he remarks that "certain it is, the *original principle* was that of a virtual adoption, this principle being commensurate with the original occasion; and that, as soon as this original principle was found insufficient to reach the new occasions, a strong tendency was seen towards *a variation of the principle*, in order to bring the new occasions within its reach." (P. 90.)

In truth, the original principle is that on which enemy's property is confiscated when found on board a neutral vessel; that on which is founded the list of contraband and the other rights of belligerents; namely, that it is the duty of those who are neutral not to succor one belligerent against the other, nor to assist either one or other with those things which may furnish and foment the war.

Now the American author admits that the trade prohibited by the "rule of 1756" does enable a belligerent to carry on the war with more vigor and effect. (P. 3.) Such a trade,

therefore, is within the principle; and the "virtual adoption" of which he was speaking above was only one of the modes in which it has been applied; and when new occasions arise through the arts, frauds, and encroachments, of neutrals, new rules must be devised in order to carry into effect and apply the original principle.

In England the law condemns a man to death for some species of robberies, and to transportation for others. The principle is but one — to prevent theft: and the punishment is proportioned to the extent and mode of the offence, that the remedy may be commensurate with the evil; and so, while America did not abuse the indulgence granted in the royal instruction of January 1794, the grand belligerent principle of opposing every neutral act which benefits or strengthens an enemy, was in full action. But when America, under cover of this indulgence, carried on the colonial trade of France, the action of the principle was suspended, and England was driven to a more rigorous enforcement of the "rule of 1756," in order to again bring the original principle into action.

It is very necessary to notice the extreme unfairness, to speak in the mildest manner, of this American writer when commenting upon the treaties of 1674 and 1678, between this country and Holland, in pages 51, 52, 53, 54,

and 55. They are in these five pages triumphantly introduced and dilated upon as particularly important in the present discussion, (P. 53.) and as granting to the Dutch the very trade prohibited to neutrals by the "rule of 1756." While the author concealed the fact, that during the war of 1756 those treaties came under discussion between the two countries, in order to ascertain how far the rule was compatible with them, when it was urged by Great Britain "that the treaty of 1674 said only that the liberty of trade should extend to all merchandises* which were transported *in time of peace*, those of contraband excepted; and was, therefore, not applicable to the colonial trade in time of war:" (P. 86.) while the treaty of 1678 only stipulated an "unlimited freedom of trade *from and to* ports of enemies:" (Mark, not from port to port!) yet the Dutch began to avail themselves of the war, and "to enter into the colony commerce, both to their own ports and to French ports." (P. 86.) Either way, then, they violated their treaties, while in the first the "rule of 1756" is recognised, and the coasting trade of an enemy is excluded in the other.

* In the convention with Great Britain and Russia, merchandises are taken to include "produce, growth, and manufactures."

The author through many a page contends that Great Britain relinquished, abandoned, and renounced, the "rule of 1756" during the American war; yet he quotes the Danish Henning, who is known to have maintained the most extravagant notions in behalf of neutral claims; wherein it is said, speaking of her conduct during the American war, "nothing, on neutral trade, has been *expressly conceded* by Great Britain; yet the commerce of neutrals with the colonies has been *generally permitted.*" (P. 98.)

Well; and is this at all resembling an abandonment or renunciation, when nothing is expressly conceded, and the trade only generally permitted? Surely the permission may be withdrawn, for there has been no concession of the right. Is it not better and more true to say that the "rule of 1756" was suspended from policy during the American war? and is not the policy readily found in the embarrassed state of Great Britain at the time, rent with civil war, and contending with France, Spain, and Holland, while the maritime states of Europe, urged by the intrigues of France, and led by the policy of Russia, combined together, in order to make a permanent encroachment upon belligerent rights?

But while Great Britain from policy suspended the "rule of 1756," she was anxious the world

should know that she had not renounced it; for she virtually gave [illegible] parliamentary sanction by the act of 1778, after the capture of Grenada by the French, legalising a neutral trade with that island in consideration of the misfortunes of those who had but just ceased to be British subjects.—Rightly indeed does Henning ask, "If there is no such principle (the "rule of 1756"), why is the permission of Great Britain required?" (P. 181.) He indeed denies the legality of the principle, but that is another point; for he is only quoted to show in what light he considered this act of parliament.

The American author reviews the instructions of 1793, 1794, 1798, and 1803, with all the severity of a critic and all the acuteness of a special pleader. It is to be lamented he was not consulted upon their wording; and perhaps it is not too late for use to be made of his remarks.

If at any relaxation of her belligerent rights by Great Britain every American lawyer is to be set at work to discover the modes in which the friendship and moderation of this country can be turned to her injury—if congress too is to aid the fraudulent neutral trader in his attempts to take advantage of British indulgence, by acts enabling him to render her prize-court rules (for *bonâ fide* landing, and paying the duties upon

West-Indian produce) a mere farce—America should not be surprised, and cannot have cause to complain, that Great Britain retorts her arts by a more rigid enforcement of belligerent rights. (P. 66, 104, 140.)

This discussion does not relate to the inaccuracies or omissions in the royal instructions; and it would therefore be a waste of time to criticise the review of them by the American writer, though few will think he has much cause for triumph in the remark, "Unpleasant as the task is—to trace into consequences so selfish, and so abounding in contradictions, the use made by Great Britain of the principles assumed by her." (P. 111.) And pray what are the motives of America in opposing the rights of this country?—Are not they too selfish? Is her zeal for carrying on the colonial trade of France pure benevolence and perfectly disinterested? Is there no commission? no factorage? no freight?—The whole jut of the argument is, that the "rule of 1756" prohibits a neutral conduct beneficial to France and injurious to Great Britain: this is the ground and principle of all belligerent rights, and it is wholly, intirely selfish. So also are the clamors, the frauds, and the claims, of neutrals; and the author, who thinks he has disgraced Great Britain by such a remark, must be ignorant of human nature, and unacquainted

with the springs of action, as well as the foundation of all public policy.

The advocate of neutral claims does not attempt to deny the position of Mr. Ward, that a neutral trade is unlawful which "is not *with*, but *for*, an enemy:" (P. 188.) and he acknowledges, as a "principle settled by ancient judgements," the position laid down by sir William Scott, "that neutrals are not permitted to trade on freight:" (P. 141.) yet he quibbles upon these propositions, and essays to fritter them down to nothing. He appears incapable of considering commerce in any other relation than that existing between the immediate individuals concerned in it, and never once recollects that in this discussion it is to be considered in its relation to the belligerents and the neutral as nations. A belligerent's coasting trade, of belligerent produce, may be carried on by neutrals, as property belonging to the neutral owner of the ship; and then to him individually it is not a trading on freight: But is this the just view of the principle, or its just application?—A neutral buys wine at Bourdeaux, ships it in his own ship, and sails, intending to carry his cargo to Caen, and there dispose of it. Is not this *to every national purpose* a trade on freight? and most decisively is it not a trade *for*, instead of *with*, an enemy?

To trade *with* an enemy, nationally considered, is to trade *to and from* a country, or *between* the neutral state and the belligerent power; while to trade *for* an enemy, is to enable him to have his commerce carried on as usual, to have his internal markets of his own produce and manufactures supplied without interruption, that the consumption of his people may be continued without derangement, and his industry may be unchecked.

This distinction is supported in the second article of the convention between this country and Russia; and the declaration thereon, of October 1801, in which it is stipulated "that effects embarked on board neutral ships shall be free; though the produce, growth, or manufactures, of the countries at war, if *acquired* by the subjects of the neutral power, and transported on *their account*:" (P. 64.) but that this "should not authorise them to carry, in time of war, the produce and merchandise of the colonies of the belligerent power *direct* to the continental possessions; nor, *vice versa*, from the mother country to the enemies' colonies." (P. 66.)

Is not this saying, in the most explicit language possible, to the neutral—You may trade with either or both belligerents, but you shall not carry on his or their trade for him or them.—But the force of this construction America has

endeavored to evade by chicaning on the word "*direct;*" and this author says the use of the word leaves the indirect trade open, as well as the direct trade between a belligerent and the colonies of another belligerent, though in alliance, and waging a confederate war. It may be granted that this criticism would have force at the Old-Bailey, as a legal objection taken by a special pleader to the words of an indictment; but it is mean and unworthy to have recourse to such verbal fencing, in a discussion relating to the intercourse between nations. Besides, even of this ungenerous and severe instruction America cannot avail herself, as she was not a party to the convention.

The American author complains that Mr. Ward "does not distinguish between the carriage of enemy's property in neutral vessels, and the neutral carriage of neutral property in channels *navigated in time of peace by domestic carriers only.*" (P. 170.) But on the part of England it is contended, that the fact of such navigation being in time of peace confined to domestic carriers, and only opened to foreigners in time of war, is evidence that such property is merely colorably neutralised; that though it may have been really purchased by a neutral trader, yet *that it was purchased by him only to cover and protect the voyage,* and not a regular mercantile adventure;

that in substance and equity, as far as the relations between states are concerned, the neutral is but the factor or agent trading for freight and commission; while, as a further evidence, that in spirit and truth this is the case, it may be urged, that neutral capitals are inadequate to carry on *bonâ fide* the trade opened to them by France, Spain, and Holland, during the last thirteen years. In similar circumstances the author admits, that during the war of queen Anne, when similar pretensions were advanced, and similar attempts were made to carry on the coasting and colonial trade of France under the pretence of neutral ship and ownership—"That the property was French, *is the more to be presumed*, as the Dutch, the only nation whose capital *might* have neutralised the property, were parties to the war. Had they indeed been neutral, their treaties with Great Britain would have protected the trade in their vessels.——The true inference on the subject is, that the neutral carriers were Danes, or of some other nation *who had no such treaties with Great Britain, and whose capitals* [*therefore*] *did not neutralise the cargoes of French produce.*" (P. 37-8.)

It is important to mark the "*might have neutralised,*" as the *might* relates to the right she claimed by treaties; and also the "*did not neutralise,*" as the *did* relates to the want of treaties.

With any other reference, it must have been *could* have neutralised, and *had* not neutralised.

At length, then, there is obtained the author's admission, that neither neutral vessels, nor neutral capitals, will neutralise cargoes of French produce engaged in the coasting and colony trades of France, but when the particular neutral has a special licence by treaty so to do; and is not this all for which Great Britain is contending? — If this does not include every possible neutral encroachment upon a trade, only opened in time of war, it certainly includes the utmost extent to which the "rule of 1756" has hitherto been carried.

Feeling himself driven from his first position by both authority, treaty, and practice, and finding himself under a necessity of abandoning the neutral claim to carry on openly the colony and coasting trades of a belligerent, either upon belligerent or neutral account, the American author endeavors to defend the evasion of this rule by his country. Conscious that the citizens of the United States have abused the indulgence and moderation of Great Britain, in permitting them a trade to and from the West-Indian colonies of France, by exporting from American ports their previous imports from French colonies, and that this passage through the ports and custom-houses of America were a mere farce, he

complains heavily "of subjecting to capture colonial produce, *re-exported* from a neutral country to countries *to which a direct transportation* from the colonies by vessels of the re-exporting country *has been disallowed by British regulations:*" (P. 124.) and contends that "no doubt had existed that an importation of colonial produce into a neutral country *converted* it into the commercial stock of the country, *with all the rights,* especially those of exportation, *incident to the produce or manufactures of the country itself.*" (P. 126.)

Now to what purpose are these remarks?—Does the author mean to say that neutrals have a right to do that indirectly which they are prohibited from doing directly? Does he mean to justify that fraud, which renders an importation of colonial produce into America a cover, for enabling the neutral flag to carry on the trade between colonies and the mother country? If he does, he will not find many to applaud the skill of his evasion, or to approve the morality or honor of his contrivance.

Besides, the author admits "experience has finally shown, that the activity, the capital, and the economy, employed by the American traders, has overpowered the disadvantages incident to the circuit through the ports of the United States." (P. 134.) If this then is the case,

re-exportations of colonial produce are auxiliary to our enemy's prosperity and revenue, and enable him to carry on the war with more vigor and effect. (P. 3.) They are therefore on the authority of Grotius a siding with the enemy (P. 10.), on that of Bynkershoek a taking a part in the war (P. 20), and in the language of Vattel an injury which the belligerent has a particular right to oppose. (P. 26.)

Confounding the modes of applying a principle with the principle itself, the advocate for neutral claims remarks that "the doctrine established by that decision has been followed by other decisions and *dicta*, *at first* requiring the re-exportation in another ship, *then* a previous sale of the articles in the neutral market, *then* other conditions, one after another, *as they were found necessary; till* it is finally understood that no precautions whatever are to bar the cruisers from suspecting, nor the courts from scrutinising, the intention of the original importer;" (P. 135.) and that, "according to late decisions in the British courts, it is in future to be a rule that produce of an enemy's colony, lawfully imported into a neutral country, and incorporated into its commercial stock, *as far* as the ordinary regulations of a sovereign state *can work such an effect*, is to be subject on re-exportation to capture and condemnation;

unless it can be shown that it was imported in the preceding voyage, with an intention that it should not be re-exported." (P. 199.)

In these remarks it cannot fail being observed, that the American author makes two important admissions: First, that the new modes of carrying the original principle into effect were devised and applied only "as they were found necessary. And why were these new modes found necessary, but for the evasions of the old modes, through the artifices, shifts, and frauds of neutrals? —Second, that the importation was only incorporated into the neutral stock as far as neutral regulations can work such an effect.—He is careful not to commit himself with saying that the neutral sovereign can work such an effect, though he evidently wishes to have it inferred that he can do so.

And complains of "the indignity offered to a neutral sovereign, in subjecting the integrity of its internal regulations to the scrutiny of foreign courts." (P. 199.) It is a pity writers will not express themselves with more correctness.—What foreign court interferes with the integrity of the internal regulations of America? Not that of Great Britain: the dispute is not concerning internal, but external, regulations—regulations to which belligerents are as much parties as the neutral state.

If this complaint is just from America, Great

Britain may retort it upon her for her interference with the decisions of British prize-courts. But in truth, all regulations of neutral trade with a belligerent are external regulations, must be founded upon and agree with the law of nations and existing treaties; and therefore an interference with them, instead of being an indignity offered to the party complained of, is the right of the *injured* or *complaining* party.

But these remarks of the American author must not be dismissed without further observation; for while intending to censure the progress and variations in the mode of applying the original principle, he inadvertently pays a high and deserved compliment to the moderation and equity of Great Britain, acknowledging that the relaxations of the "rule of 1756" "opening the door to neutral commerce with the belligerent colonies wider than was compatible with the interests of British commerce, the avidity of British cruisers, or the probable intentions of the British government;" (P. 143.) and he might have added, or than was consistent with the belligerent prosperity of Great Britain: "the first remedy tried was that of shutting the door gradually." (P. 143.) The reader of this American pamphlet would scarcely have dreamt that the moderation and friendly disposition of Great Britain had restrained her from every expression of resentment at the

succession of evasions and frauds of neutrals, and that the course which she pursued, when she found her relaxations and her favors turned against her, and her indulgences abused, was to gradually shut the door she had imprudently opened, to gradually return to the old and only efficacious application of the original principle, which prohibits a neutral from aiding her enemies in their prosperity and revenue, and from enabling them to carry on the war against her with more vigor and effect.

Indeed, the sinister and fraudulent practice and views of America are sufficiently discovered, when this author says—first, "by checking the West-India importations into the United States, and *thereby* lessening the surplus for re-exportation." (P. 112.)

Now mark the history of American complaints and of American conduct.—By the "rule of 1756," all neutral commerce with a belligerent in time of war, not open in time of peace, was prohibited. It being deemed a hardship that a neutral should not be permitted to supply himself for his own consumption with belligerent colonial produce, a direct trade to colonies was allowed. This not answering for the fraud which the neutral contemplated, he complained that, in the eagerness of commercial speculation, his markets were overstocked; and he was indulged

with the liberty of exporting this accidental surplus. And now with a hardihood scarcely ever witnessed before, he complains that, by not permitting him an unchecked importation from belligerent colonies, his surplus for exportation is lessened. He now avows his past frauds, and demands permission to rob with impunity. He at first asked to import for his own consumption, then to export an accidental surplus, and now he threatens because he may not import *in order* to export; and this too at the very time when he acknowledges that "experience has shown the activity, the capital, and the economy, employed by the American traders, to overpower the disadvantages incident to the circuit through the ports of the United States;" (P. 134.) or in other words, this American author here contends for a trade which shall be to every national and in every belligerent view equivalent to a neutral carrying on the direct trade between belligerent colonies and their mother country.

This is certainly sufficient to show the futility and quibbling of the distinction between a direct and indirect trade, and the absolute necessity of prohibiting all re-exportations, unless Great Britain is willing to suffer America to aid the prosperity and revenue of her enemies, and to enable them to carry on the war against herself with more vigor and effect.

In the royal instruction of June 1803, it is ordered that neutral vessels on their return shall be subject to capture, which shall, on their outward voyage, have supplied the enemy with any articles of contraband of war. The American author says "this principle is of modern date;" (P. 113.) and then proceeds to question the legality of the instruction: but here again he fails, from confounding the application of a principle with the principle itself, and also fails to observe, that by the "rule of 1756" all trade with a belligerent colony is interdicted. The instruction, therefore, which only interdicts the trade, and subjects the neutral to capture, which conveys in the outward voyage contraband of war, is a relaxation of the "rule of 1756," and is included within it, instead of being a new principle, or even a new mode of applying the old one.

Commenting upon a passage of Grotius quoted by Mr. Ward, the American author observes, that "according to Grotius, the right to intercept the neutral commerce accrues from its particular necessity as a measure of defence:" as a measure for preventing the prosperity and revenue of an enemy being aided, and for preventing his being enabled to carry on the war with more vigor and effect. But "according to Great Britain, the necessity is not the criterion. If there be no

such necessity, the trade is condemned, in case the channel were unlawful before the war. Be the necessity what it may, the trade is free, if the channel was lawful before the war." (P. 174.)

Attending to the author's own account of the "rule of 1756," it is evident that this is not a true statement of the case. The very fact of opening a trade to neutrals in time of war which is shut against them in time of peace, is sufficient to prove that the belligerent is "governed by the policy of eluding the pressures of war, and of transferring her merchant-ships and mariners from the pursuits of commerce to the operations of war;" (P. 78.) while the list of contraband, with all the other belligerent rights, are in opposition to the remark—that be the necessity what it may, the trade is free, if the channel was lawful before the war. This is not a solitary instance of this writer's attempt to prejudice the minds of his readers against Great Britain. To mislead their judgements is a difficult task: but the glaring falsity of this assertion prevents its dwelling upon the mind sufficiently for particular refutation; while its declamatory impression, he hoped, might, by the aid of repetition, produce his wished-for effect.

The American author is very fond of contemplating "the progress of the law of nations, under the influence of science and humanity mitigating

the evils of war, and diminishing the motives to it, *by* favouring the rights of those remaining at peace (P. 4.), and of indulging himself with the prospect of the enlargement of neutral rights." (P. 182.) But should not this avowed tendency of neutral writers, to favor and enlarge neutral rights, excite some degree of mistrust in those to whom their speculations are addressed; and in transactions, implicating and affecting several parties, does not justice require that the rights and interests of all should be equally protected and enforced, instead of those of one only being favored and protected. But the author for this departure from justice and equity appeals to the influence of science and humanity: yet when it serves his momentary turn, he can forget his appeal, and discard even reason from his mind, saying, that "were the intrinsic reasonableness of the claim admitted, it would not follow that the claim is justified by the law of nations as actually established;" (P. 150.) and that this is "a question which is to be decided, not by the abstract precepts of reason, but by rules of law positively in force." (P. 192.) So then at last it comes to this—that though abstract and intrinsic reason support and warrant the claims and rights of the belligerent, he is to be tied down to "the rules of law positively in force;" while

the more fortunate neutral is to have his claims and rights favored and enlarged, under a notion that, *as far as he* can be benefited thereby, the law of nations is in a state of progress.

It may, however, be well asked, Why abstract and intrinsic reason should not act as powerfully in behalf of the belligerent, as science and humanity in behalf of the neutral? why the belligerent should be confined to the "rules of law positively in force," and the neutral be permitted to take advantage of "the progress of the law of nations?"—Indeed, if these propositions of the advocate of neutral claims are admitted, they will successfully carry him any length, and obtain for his hungry clients every advantage and claim avarice can wish or concealed hostility desire.

In one part of his work, the neutral advocate quotes the letter from Mr. Pinkney (the American minister at London) to Mr. Jefferson, then secretary of state, and now president of America, in which, alluding to an interview with lord Grenville, he says, "I reminded him that the two first articles, though founded upon their principles—of not suffering in war a traffic which was not admitted by the same nations in time of peace, and of taking their enemy's property when found on board of neutral vessels—

were nevertheless contrary to what we contended to be the just principles of the modern law of nations." (P. 107.)

This quotation from the letter of Mr. Pinkney is particularly important for several reasons.— First, the American ambassador says the rights of Great Britain are "contrary to what America contends to be the just principles of the modern law of nations."

Now mark — this is only contended, not asserted, much less established; and that it is contended to be only the just principles of the modern law of nations, not the real and acknowledged modern national law; and that it is contended to be the just principles only of the *modern* law of nations, not those of the general and received law of nations. Pray at what period do these writers choose to date the commencement of this modern law of nations? or do they leave it unfixed, that, covered by the uncertainty of the term, they may be at liberty to revert to it as a sanction for whatever claims they may think it for their interest to advance? And for what is a reference made to the just principles of the law of nations, unless on points where the law is obscure or doubtful? In such cases, recourse may be had to just principles: but how are they to be ascertained, unless they are judged by their abstract and intrinsic reasonableness? Yet

the author would exclude this when reason favors the belligerent; and only admit the appeal, when it advances and enlarges the rights, and favors the interests of neutrals.

Second, it should be remarked that the "rule of 1756," and the right to confiscate enemy's property in neutral ships, are both classed together, and put upon the same footing. Now not only do the principles of Grotius, Puffendorf, Bynkershoek, and Vattel, sanction the law, but they expressly state and authorise the right; and the American minister's classing them together well warrants the conclusion, that he considered them as resting on the same foundation, and warranted by the same authorities; and that these two belligerent rights could only be evaded or impugned by a reference to his curious ally, "the just principles of the modern law of nations."

Third, and last, this letter was written on the 3d of January, 1794; and *after this* a treaty was entered into between Great Britain and the United States, in order to settle all their differences, and to cement a lasting friendship: yet in this treaty, instead of any stipulation against either of those belligerent rights, or even for any modification of them, all reference to them is carefully avoided, though every other treaty to which the United States is a party contains pro-

visions and stipulations against these rights. What is this but an admission of them? and after this, is it not fair to demand that the present neutral claims of America should be most undeniably made out by the most unquestionable reference to both authority and practice, or that America should procure their recognition as a concession from Great Britain, instead of complaining of injustice, and clamoring about wrong, when neither injustice is committed nor wrong done?

The American author, in closing his criticism on Mr. Ward, well states that "the real hinge on which the question turns, is *the injury resulting to one belligerent*, from the advantage given to another, by a neutral whose ships and mariners carry on a trade previously carried on by the belligerent himself, and which, *consequently*, enable the belligerent to employ his own ships and mariners in the operations of war, without even relinquishing the revenue, which has its sources in commerce." (P. 189.) This, adds the neutral advocate, "is the most plausible consideration perhaps which could be urged in the cause which he defends:" but he thinks "it is completely subverted by three other considerations: First, that the argument is just as applicable to cases where the vessels of the nation, before it was at war, were actually employed, *without any legal*

exclusion of those of the neutral nation, as to cases where there was a legal exclusion of foreign vessels before, and a legal admission of them during the war:"—"Either, therefore," it is added, "the argument must be extended (which will not be undertaken) to the latter case, or it loses its force as to the former." (P. 190.) Surely this writer was rather too bold to say it would not be undertaken (not to extend, but) to show the argument embraces both cases, if in fact two cases can be made out. But the truth is, it is but one case, it is still a trade carried on by neutrals in time of war which they do not carry on in time of peace. The difference between part of such trade being subject to legal interference, and part left to the fluctuations and struggles of commercial speculation, makes no variation as to the argument, or the principle it defends, though it makes a material alteration in the practice; since, where a trade prohibited in time of peace is legalised to neutrals in time of war, evidence can be adduced of each insulated and individual departure from neutrality, and invasion of the "rule of 1756." Such evidence cannot, from the very nature of the case, be procured in the second instance; and therefore it is that the trade is permitted to go free. However, granting the whole force of this remark, does it really amount to any thing? Is not the

ground on which the "rule of 1756" is defended by Mr. Ward, a ground common to every other belligerent right? Is it not from the injury which would result to one belligerent, to the advantage of the other, that the rights of blockade and contraband arise? These are not even questioned by any neutral advocate: but if, because the argument is not extended to the interdiction of all neutral commerce with belligerents, the "rule of 1756" must be abandoned, then what will become of the above belligerent rights?—In truth, this is one of those sophisms common in controversy, and is scarcely worth refutation. It is sufficient that to benefit one side and to injure the other, is to take a part in the war, is a siding with one of the parties, and is an act which the injured belligerent has a particular right to oppose.

Second, that Great Britain adopts in this respect the policy of France.—This has already been answered*: the controversy is not what France or Great Britain have a right to do, but what neutrals have a right to do. Every belligerent has a right to obtain succor, contraband of war, conveyance of his property, and relief to his fortresses, when blockaded: but the question is not whether *he* has this right, but whether *the neutral* has a right to give him this succor, to

* See p. 28 of this tract.

supply him with contraband of war, to convey his property, and to relieve his blockaded fortresses. That he has not such right, is clear from every authority; and it is about this right only that the present controversy has arisen.

Third, that "this fundamental argument of Mr. Ward is expressly thrown out of the question by sir William Scott:" (P. 190.) but on turning to pages 162 and 163, where the opinion of the very learned judge is stated at length, it will not appear that he has for a moment thrown out of the question this fundamental argument, though in page 167 an attempt is made by the author to confound the right of the belligerent with that of the neutral, and so to ground the incorrect conclusion, that sir William Scott rests the rights of Great Britain, and the legality of the "rule of 1756," on mere predominance and superiority of force, thence bursting forth into a declamatory philippic against this country.

If however it be true that the foundation of all belligerent rights is to prevent neutrals from injuring one of the parties at war, by rendering advantage to the other belligerent in revenue, prosperity, or force — and if the proposition stated in the early part of this tract, and which is drawn up from the American author's own admissions, be correct, that the trade prohibited by the "rule of 1756" is one at this time bene-

ficial to France and injurious to England, and is one at all times beneficial to the weaker and injurious to the naval power, and that the benefit and the injury are proportionably greater as the one power is stronger than the other*—then it must follow that the same trade which is a violation of and departure from neutrality, when carried on with the weaker naval power, is not such benefit to the stronger power as to constitute either a violation of or a departure from neutrality. Hence the conclusion of the learned judge is founded on this very argument of Mr. Ward, instead of his having disregarded his argument.

The American author closes his remarks with an undistinguished and most unwarranted attack upon the admiralty courts of Great Britain, even venturing the assertion, that "the opinion has long and generally prevailed of their not being those independent and impartial expositors of the law of nations which they have professed to be;" (P. 197.) observing, that "the principle urged against a neutral trade in time of war, not permitted in peace, is the more unreasonable, because it gives to a tribunal, established by the belligerent party only, a *latitude of judgement* improper to be confined [confided] to courts of justice however constituted." (P. 195.) Now in

* See P. 4 of this tract.

what does this latitude of judgement consist? In determining "whether in a distant quarter of the globe a particular trade was or was not allowed before the war?" (P. 198.) But this being a simple fact, is a matter of evidence only, and neither allows nor calls for the exercise of any discretionary judgement at all; in determining "whether, if not allowed before the war, its allowance during the war proceeded from causes distinct from the war, or arising out of the war." (P. 198.) This too must be determined on evidence; and though it must in this case be presumptive, is nevertheless reducible, and is reduced, to settled principles and fixed rules; and therefore does not admit of any latitude of judgement; in determining "whether the allowance had or had not been common to all wars:" (P. 198.) and this is a fact capable of the most direct evidence. And lastly, in determining, "whether, if resulting from the particular pressure of the war, the pressure amounted to a necessity; whether, if amounting to a necessity, the necessity resulted from an impossibility, imposed by a decided predominance and superiority at sea of the adverse party." (P. 198.) This question could have been better commented upon if it had been less obscure. It is not easy to understand the author's necessity resulting from an impossibility; and in regard to such meaning as

can be extracted from the passage, it involves those mistakes which led the author to suppose sir William Scott had thrown the argument of Mr. Ward out of his consideration; but as far as determining whether the opening the trade resulted from the particular pressure of war, it is easily answered, that such a trade bears a presumptive evidence so conclusive of its being allowed, in order to avoid the pressure of war, that it is perfectly just to demand of the claimant to rebut the presumption with stronger testimony.

Thus it appears, that the four points on which this author deemed an improper latitude of judgement is confided to the admiralty judge, are those on which no latitude of judgement can be exercised; that they are within the common rules of evidence, instead of being "questions in their nature improper to be decided by any judicial authority whatever; and in their importance, they are questions too great to be left even to the sovereign authority of a country, where the rights of other sovereigns are to be the object of the decision." (P. 199.)

But what is the meaning of this passage?—Does the author mean that questions involving the rights of other sovereigns are too great to be decided by any judicial authority whatever? Why, are not all decisions on belligerent capture

of neutral commerce contrary to belligerent rights; are not all decisions on blockade and contraband, decisions by judicial authority, which involve the rights of other sovereign states? and are they ever questioned? Is it possible for any belligerent right to be exercised and inforced but through the medium of a judicial decision?—The whole is either idle declamation, or an artful cast-about to feel the public pulse, whether the unheard-of claim might not be advanced of neutral judges exercising in the country of belligerents a concurrent admiralty jurisdiction with the belligerent judge.

This neutral advocate quotes the duke of Newcastle, "that in England the crown never interferes with the course of justice. No order or intimation is ever given to any judge;" (P. 195.) and thinks he finds a contradiction in sir William Scott's remark, that "the true rule to this court is the text of the instructions. What is not found there permitted is understood to be prohibited, *upon this general plain principle*, that the colony trade is generally prohibited; and whatever is not specially relaxed continues in a state of interdiction." (P. 196.) Yet this author adds, that "it was incumbent on sir William, if he meant to keep himself above all executive interference with the course of justice, to have reserved the right of testing the instructions by the law of na-

tions." (P. 197.) But has not the learned judge reserved to himself this right? Indeed, has he not exercised it when he states the general principle on which he founds the rule of the court to be the text of the instructions? for does he not appeal to the law of nations for this general principle, and consider the instructions as relaxations of it? and has not every person in possession of a right, a power to remit or relax it?— But, further adds this author, the royal "instructions have extended the belligerent claims against neutral commerce beyond the law of nations, as asserted on the part of Great Britain." (P. 197.) Now turning to the author's review of the royal instructions in page 102, *et sub.* it will appear that he only considers the instruction of November 1793 in this light; and in what does this consist? — First, that it interdicts the roundabout or indirect trade, as well as that immediately from the colony: but it has already been shown that in principle and spirit this indirect trade is within the "rule of 1756*," and therefore this objection falls to the ground: Second, that it interdicts a trade from certain ports and places in the colonies, authorised by permanent regulations antecedent to the war: but the author is in error

* See P. 42, *et sub.* of this tract.

when he says the French free-port act of 1784 was in force in 1793: besides, that act did not extend to every species of colonial produce. Thus is the author driven from these two positions, though he readily takes a third, and urges that "the original advisers and framers of the instructions do in their judicial capacity of privy-councillors carry them into effect." (P. 197.) Still, however, comes the old argument—these instructions are not enactments of a public law; they are not even declarations of it; they are relaxations from the belligerent rights of Great Britain, and in favor of the neutral instead of adverse to him.

Uneasy at not being able to establish any thing against this country, the American author has recourse to the insinuation of—"How far the authority of the instructions has been pursued by the high court of admiralty, in opposition to precedents of the superior courts settling the law of nations, is a fit subject of inquiry, *for which the adequate means are not* possessed." (P. 197.)—Thus without the shadow of a cause, thus without even the means of showing a reasonable suspicion, does this neutral advocate venture to question the integrity, and to doubt the independence, of the justice of this country.—Bad indeed must be the cause which is driven to such shifts!

The last remark of this author which appears to require notice, is—"that out of three hundred and eighteen appeals, thirty-five only of the condemnations were confirmed by the superior court." (P. 194.) But he should have also stated, how many condemnations had occurred in the same period, from which no appeal had been made: *this he has carefully avoided;* and as it is, pray to what conclusion does the statement—(that of the numerous and various condemnations which had occurred, but three hundred and eighteen of these were deemed erroneous)—lead? And of this number, though objected to after mature deliberation, one in nine were confirmed. Appeals take place only in cases of doubt, or where evidence has been subsequently obtained, which shakes the previous decision: still aided by every favoring circumstance, one in nine has been confirmed—a convincing evidence to the impartiality, independence, and ability, of the vice-admiralty courts of this country; while the reversion of two hundred and eighty-three condemnations bears testimony to the purity of the superior court, whose integrity this writer has ventured to question.

Well, then may it be concluded, that a strict adherence to the "rule of 1756" is required, in order to prevent neutrals from aiding the revenue

and prosperity of our enemies, and in order to prevent them from enabling the foes of Great Britain to carry on the war against her with more vigor and effect — While the rule itself is warranted by the law of nations, sanctioned by the ablest and best writers, recognised in treaties, and consonant to belligerent practice.

APPENDIX.

SINCE forwarding the foregoing pages to the press, the tract in reply to which they have been written has gone into a second edition, and has had annexed to it the Letter of Mr. Monroe (the American minister plenipotentiary) to Lord Mulgrave (then secretary of state) dated 23d of September, 1805; in which it is stated that "the vessels condemned were engaged in a commerce between the United States and some port in Europe, or between those states and the West-India or other islands, belonging to an enemy of Great Britain. In the European voyage the cargo consisted *of the productions of the colonies;* in the voyage to the colony, it consisted *of the goods of the power to which the colony belonged,* and to which the ship was destined. The ship and cargo, *in every case,*

were the property of American citizens; and the cargo had been landed, and the duty paid on it, in the United States." (P. 3.)

It is here obvious to every one what must be the true nature of this trade, although, during the transit, the ship and cargo were both owned by American citizens. It was a neutral conveyance of colonial produce to the mother country, bringing back in return goods of the mother country to the colony—evidently a carrying trade *for* France, instead of a *bonâ fide* trade *with* France. But this neutral aid to our enemies is defended on two grounds by the American minister; and though his first argument has been already examined, a respect for his official importance will prevent his mode of stating it from being passed over in silence.

"If we examine it [these condemnations] in reference to the law of nations, it appears to me to be repugnant to every principle of that law;" for "by the law of nations, as settled by the most approved writers, *no other restraint is acknowledged on the trade of neutral nations with those at war, than* that it be *impartial between the latter; that* it shall not extend to articles which are deemed contraband of war; *nor* to the transportation of persons in military service; *nor* to places actually blockaded or besieged." (P. 2.) To this appeal Mr. Monroe adds—"It requires

but a slight view of the subject to be satisfied that these condemnations are incompatible with the law of nations, as above stated." (P. 3.) But this remark may be either assented to. or denied, without in the least affecting the question, as there are other belligerent rights besides those of prohibiting the transportation of contraband of war and military persons, and succoring places blockaded. The right of seizing enemy's property in neutral vessels is one *always* maintained and exercised by both this country and France, *except* when specially suspended by treaty; and from the time when her enemies adopted the policy of relaxing their colonial monopoly, Great Britain has claimed the belligerent right of prohibiting neutrals engaging in a trade thus opened for the express purpose of avoiding the pressures of war.

The American minister is incorrect in saying that "None of the cases have involved a question of any kind that was ever contested till of late." (P. 3.) Indeed, an uninformed reader of his memorial would conclude that the "rule of 1756" was first invented and enforced in the royal instruction of 1793, instead of it having its origin so far back as 1756. Nor should it pass unobserved, that even Mr. Monroe enumerates, among *his* list of neutral duties, the obligation of being impartial between those at war. (P. 2.)

But it can never have been deemed impartial to aid the prosperity and revenue of one of the parties, and to enable him to carry on the war with more vigor and effect against his adversary. (Ex. P. 3.) This the most approved authorities condemn; Grotius, Bynkershoek, and Vattel, as well as others. In common with the anonymous American author, to whose work this tract is intended as an answer, Mr. Monroe says the royal instructions "have *authorised* the seizures which were made, at different times, in the course of the last war, and which were lately made by British cruisers of the vessels of the United States. They, too, *form the law* which has governed the courts in the decisions on the several cases which have arisen under those seizures." (P. 4.) And that "the strictness with which the courts have followed those orders, through their various modifications, is equally a proof that there is *no other authority for the government of their decisions.*" (P. 8.) Now, though sir William Scott calls the text of the instructions the true rule of the court, in a particular case on which he was then giving judgement, (Ex. P. 196.) yet he was extremely careful that the remark should not be misunderstood, or lead to the supposition that the text of the instructions either formed the law, or authorised the court to decide upon it, since he purposely added, that the text of the

instructions was only the rule (not the authority) of the court, "upon the general plain principle, that the colony trade is generally prohibited, and whatever is not specially relaxed continues in a state of interdiction." (Ex. P. 196.)

What is the conclusion then from this? — Does the learned judge refer to the text of the instructions for "the general plain principle, that the colony trade is generally prohibited?" No: this he rests upon the law of nations, as contained in approved authors, and modified by treaties; and considers the text of the instructions as relaxations from the letter of the law in favor of the neutral. And surely a belligerent has a right to modify, relax, or even abandon, his rights, if it pleases him, or serves his purpose: besides, Mr. Monroe falls into a contradiction in the latter part of his letter, where he complains "that the decree of the lords commissioners of appeals, in the case of the Essex, produced the same effect as an order from the government would have done." (P. 14.)

This is at least admitting, that in this case (which in page 3 is referred to as establishing the grounds of the late condemnations) the lords commissioners of appeal neither considered the instructions as forming the law, or as necessary to give them authority for condemning the trade. It must excite surprise, that, while in one part

of his letter Mr. Monroe asserts—"If the order of the 6th of November, 1793, contained the true doctrine of the law of nations, there would have been no occasion for those which followed;" (P. 8.) he should in another part of the same letter acknowledge that "the second and subsequent orders modify it [the first] in various forms," and that "the doctrine in every decision is the same;" (P. 4.) while this last admission is a full and sufficient answer to his complaint of want of notice to American traders of those successive royal instructions.

The first of them was merely declaratory of the law of nations as maintained and acted upon by Great Britain for nearly a century; and the others but modifications of the first, or relaxations of it in favor of neutral traders.

Again, falling into the same error as that of the neutral advocate, (Ex. P. 76.) Mr. Monroe asks, "Does it follow, because the parent country monopolises in peace the whole commerce of its colonies, that in war it should have no right to regulate it at all?" (P. 5.) The dispute is not about the right of the belligerent to receive neutral assistance, but about the right of the neutral to give it; and since the American minister admits that "It is known they [colonies] are essentially dependent for their existence on supplies from other countries," (P. 5.) does it not

follow that a neutral trade which supplies them with "the goods of the power to which they belong," (P. 3.) is a trade which, by destroying their dependence on the superior naval belligerent, prevents their falling into his hands; and snatches from him the fruit of his victories, and what would otherwise be the result of his maritime greatness.

In answer to the remark, "that neutral powers ought not to complain of this restraint, because they stand under it, on the same ground with respect to that commerce, which they held in time of peace," (P. 7.) Mr. Monroe says, "The claim involves a question of right, not of interest. If the neutral powers have a right in war to such commerce with the colonies of the enemies of Great Britain as the parent states respectively allow, they ought not to be deprived of it by her;" (P. 7.) which is no more than saying Great Britain ought not to deprive neutral powers of their rights; for it certainly does not advance the question a single inch, nor even tend to a determination of what are the rights of neutral powers in this respect. As to the appeal to humanity in behalf of the French colonies, (P. 7.) Mr. Monroe might as well have claimed the right of neutrals to succor and relieve besieged and blockaded places, where the distress and suffering are infinitely greater than

any privation to the French colonists, from an interdiction of neutral trade with, and supply of them. When the American ambassador asserts that the neutral claim to engage in a belligerent's colonial trade is "a right of which the mere circumstance of war cannot deprive them," (P. 8.) he forgets that it is this very circumstance of war which originates all belligerent rights. and imposes all neutral duties.

Leaving his reference to the law of nations, the American ambassador next proceeds to urge that the conduct of Great Britain is repugnant "to the understanding, or, as it may be more properly called, the agreement of our [the two] governments respecting the commerce in question:" (P. 2.) and states, that "by the order of the 6th of November, 1793, some hundreds of American vessels were seized, carried into port, and condemned. Those seizures and condemnations became the subject of an immediate negociation between the two nations, which terminated in a treaty, by which it was agreed to submit the whole subject to commissioners, who should be invested with full power to settle the controversy which had thus arisen." (P. 9.)

It is natural to expect, from this relation, that some reference was made to the royal instruction of November 1793, in the treaty between America and this country. But no such thing: it is

not even alluded to; nay, even all allusion to the "rule of 1756" is carefully avoided; and the seventh article, by which the above-named commissioners are appointed simply and generally, states, that "Whereas complaints have been made by divers merchants and others, citizens of the United States, that during the course of the war in which his majesty is now engaged, they have sustained considerable losses and damages, *by reason* of irregular or illegal captures or condemnations, *under color* of authority or commissions from his majesty." (Art. 7.) — Is then the authority or commissions of his majesty called in question?—No: their abuse only is complained of; and for damages arising from their abuse only, is compensation provided. No wit can torture, no art can twist this seventh article to mean, that compensation is to be given for damages or losses sustained by reason of any capture or condemnation; *other* than such as were made under irregular or illegal color of such authority or commission; by implication, excluding from the view and consideration of the commissioners all captures and condemnations pursuant and consonant to the authority or commissions of his majesty. And the commissioners went beyond their powers, when "in their decisions they condemned the principle of the order." (P. 9.) Indeed they not only disregarded but violated the preamble to the

treaty, which states that all differences shall be terminated "in such a manner *as, without reference to the merits of their respective complaints and pretensions,* may be the best calculated to produce mutual satisfaction and good understanding." (Preamble.) Now if the order was a subject matter of complaint, to decide upon and condemn its principle was to refer to the merits of such complaint. If the order was not a subject matter of complaint, by what authority did the commissioners decide upon it? Perhaps the difficulty may be solved, by noticing the circumstance, that the ballot for the fifth commissioner falling on an American, three of them were citizens of the United States, and that unanimity was not required from them.

However, Mr. Monroe adds, "It merits particular attention, that a part of the twelfth article of that treaty *referred expressly* to the point in question, and that it was, on the solemn deliberation of each government, by their mutual consent, expunged from it." (P. 9.) To point out and expose misrepresentations in a public diplomatic memorial is painful; but the more necessary, from the official character and authority which such a statement possesses. Now instead of the twelfth article being expunged from the treaty, on the solemn deliberation of each government, the truth is, that by the constitution of the United States all treaties must be ratified by congress;

and that when this treaty came before the American legislature, this article was refused ratification.

In consequence, the negociation was renewed, when, in an additional article the British government consented that "*so much* of the twelfth article" as respected the trade between the United States and the British islands, "*should be suspended.*" Widely different this from being expunged after the solemn deliberation of each government. But this is not all. Mr. Monroe says this article "referred expressly to the point in question." Now the only part of the article relating to neutral rights, claims, or pretensions, is as follows: and "the said parties will then also (at the expiration of two years after the last war) renew their discussions, *and endeavor to agree*, whether in any and what cases neutral vessels shall protect enemy's property, and in what cases provisions and other articles, not generally contraband, may become such. But, in the mean time, their conduct towards each other, *in these respects*, shall be regulated by the articles hereinafter inserted *on those subjects.*"

And so a provision for a future discussion respecting neutral vessels protecting enemy's property and the list of contraband is an express reference to the "rule of 1756," which prohibits a

trade opened by the belligerent to neutrals only in war, in order to avoid its pressure.

Besides, instead of this provision being expunged from the treaty, as Mr. Monroe would insinuate, it is not even suspended; for the suspension is confined to the provision concerning the trade between the United States and the British islands.

The article then is not expunged from the treaty in respect to neutral claims: it is not even suspended; and does not refer at all, or even allude, to the point in question. What then becomes of the American minister's conclusion, that "it is impossible to consider this transaction, under all the circumstances attending it, in any other light than as a fair and amicable adjustment of the question between the parties?" (P. 10.)—Why, as far as the treaty speaks, the question was never considered by them, instead of having been the subject of negociation and adjustment.

The provisions, in both the twelfth article (which *was* suspended) and in the thirteenth article (which *was not* suspended), alike condemn the principle and practice of re-exportations, since, at the moment of admitting the American into her East and West-Indian trades, Great Britain annexed the stipulations, "that the vessels of

the United States shall not carry any of the articles exported by them from the said British territories, to any port or place, except to some port or place in America, where the same shall be unladen.——And that the said American vessels do land and carry their cargoes in the United States only, it being expressly agreed and declared, that during the continuance of this article, the United States will prohibit and restrain the carrying away any molasses, sugar, coffee, cocoa, or cotton, in American vessels, either from his majesty's islands, *or from the United States*, to any part of the world, except the United States, reasonable sea-stores excepted."

Nothing can be more clear, nothing more precise; and if America objected to the principle, instead of ratifying the thirteenth article, and merely suspending the twelfth, she should have procured a formal renunciation of the rights contained in these provisions.

The remaining remarks of the American minister upon the treaty of 1794, and the report of the commissioners, are sufficiently answered in the preceding observations. The treaty no-where states the "rule of 1756," or any of the royal instructions: it neither alludes nor refers to them; and a stipulation against the "rule of 1756," inserted in every other treaty to which the United

States have been parties, is omitted in this with Great Britain. How obvious, therefore, is the conclusion, that the treaty in no way or degree affects or impugns either the "rule of 1756," or the royal instructions, founded upon and relaxing it!

Mr. Monroe next endeavors to assimilate the case of America with that of Russia, Denmark, and Sweden, and falls into the same course of observation upon the Russian convention as the American author: but the preamble, confining the application of "their principles (those contained in the convention), upon the rights of neutrality, *to their respective monarchies*," (Ex. p. 63.) is evidence that neither the northern powers, nor Great Britain, intended those principles should be extended or applied to other countries.

It should, from this examination, seem that the American minister has failed to establish the claims of his government, or to affix any charge against this country, either by his appeal to the law of nations, or by his reference to the treaty subsisting between the two countries.

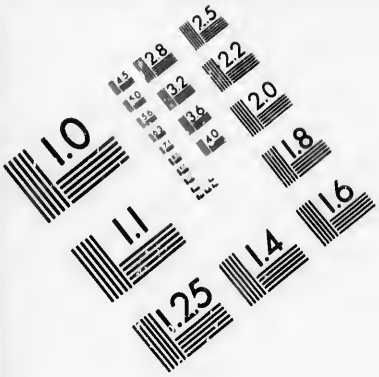
Though very little that is new, of either fact or argument, appears likely to be urged upon the question of law and justice, in behalf of the neutral claims, yet the advocates of America have not thought it prudent to be idle, but affect to give the discussion an air of novelty, by

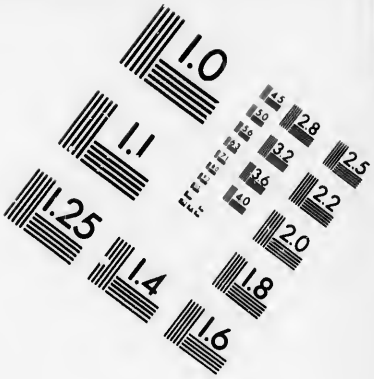
changing their expressions, and by intermixing with the debate the question of policy. Scarcely had the able and convincing tract of "War in Disguise" crossed the Atlantic, than a gentleman who professes to be neither connected with the law, trade, nor government, of the United States, undertook an Answer, which has been transmitted to, and re-printed, in this country. Though intemperate in some of his remarks, this writer begins by a skilfully devised attempt to prejudice the English reader in favor of the claims and encroachments of the neutral world; and with this view, he even goes so far as to make it a doubt, whether America should not join us in our arduous contest; (P. 7.) and after speaking pretty strongly concerning the abuses of the neutral trade, declares that "he considers it the interest of America to carry the British doctrine (on that subject) as far as reason and justice can, in any manner, permit." (P. 8.) — Who then could expect that, within two pages, this very writer should represent the belligerent rights claimed by Britain as equally extravagant with the claims and usurpations of France! or that he would close his tract, with questioning, whether France is not warranted in calling us the tyrants of the sea, and the first to violate the principles of justice; and whether the war waged by France against us is not of general interest! (P. 76.)

The author of the Examination, who holds a high situation in the American government, cautiously puts his remarks on the British prize-courts into the shape of questions, or in a note; while Mr. Monroe only insinuates that these courts may be subject to an undue influence. But this writer, unconnected with the law, trade, or government, of the United States, feels no such delicacy; and unfettered by any restraint, hesitates not to declare, that "prize-courts are bound, from their nature and office, to decree according to the orders of their sovereign. His right to establish, to alter, and to abrogate, the rules and principles of their decision, is a necessary incident to his power of peace and war.—— The business of a judge, in prize-courts, is to weigh evidence so as to ascertain facts; to compare facts with the principles which are to govern his decision; to decree according to the law of nations, when not otherwise directed; and to assign such reasons for his decrees as may best consist with the honor and dignity of his royal master." (P. 17.) It were indeed scarcely necessary for this gentleman to inform his readers he was unconnected with the legal profession; for if he had been, he would have known, instead of the above unworthy and unprincipled judicial character he has sketched, being the portrait of an admiralty judge, that the learned civilian

who presides in a prize-court, sits there to administer with indifference that justice, which the law of nations holds out without distinction to independent states; and that the law itself has no locality, though the seat of judicial authority is in particular country. (Sir William Scott, in Ex. p. 196.)

But, says this author, "it would be absurd and dangerous that prize-courts, by condemning what the sovereign had directed them to acquit, should involve him in war:" (p. 17.) and both absurd and dangerous it would be; without allowing the sovereign the power of establishing, altering, or abrogating, the rules of their decisions; for every state and every individual has a right and power to forego his rights; and a sovereign may, upon the clearest principles, say to the admiralty-judge, by the law of nations I have such a particular right; now in behalf of a certain favorite individual state, I choose to forego it, and direct you not to inforce my right against him.—Has any one here cause to complain?—Is this an arbitrary interference?—Is any right violated, or wrong done?—Does this give to the law a locality?—If the reverse had been the case—if the judge were to receive and comply with instructions neither declaratory of nor relaxing the law of nations, but, on the contrary, hostile to or unsoundly applying such universal law—then in-





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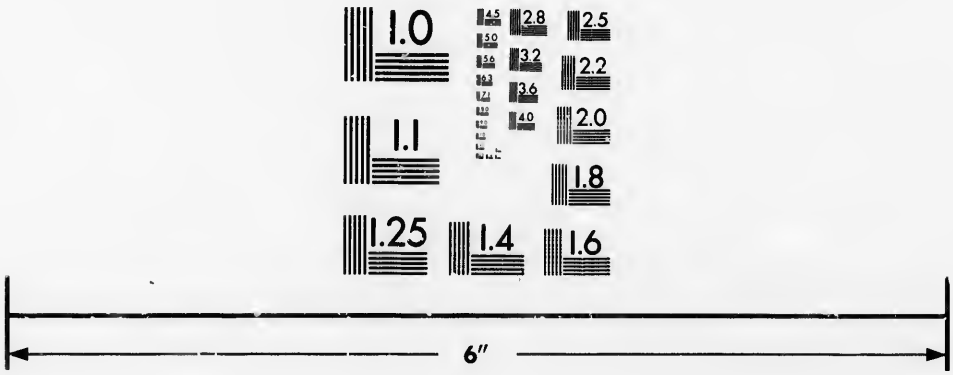

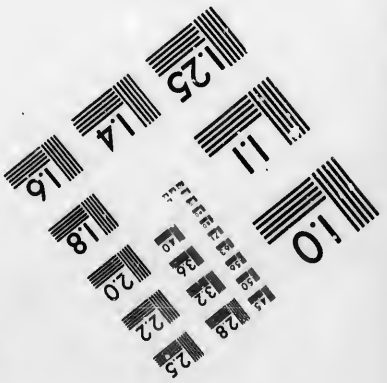

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deed complaint might be made, for wrong would have been done, and the proud independence of British prize-courts been levelled to the ground. But this has not been the case: the royal instructions have been founded upon what is contended to be the law of nations; and in whatever they have varied from the rules of public law, they have relaxed and softened, not enlarged or sharpened it.

Though it was in this sense that sir William Scott declared "the true rule of the court to be the text of the instructions (Ex. P. 196.), both the author of the Examination, and this writer, join in the attempt to pervert and misrepresent the remark, to say, the court looked rather to the text of the instructions than to the law of nations. Notwithstanding the learned judge added (*which this writer omits*), "what is not found there [the instructions] permitted is understood to be prohibited, upon the general plain principle, that the colony trade is generally prohibited." (Ex. P. 196.)

So the prohibition is to be searched for and found in the general plain principle of the law of nations, while the instructions are only referred to for the permission or relaxation. As if aware of this remark, though in opposition to his own observations, this author admits that "a numerous class of cases may exist, in which the belli-

gerent shall see himself continually and evidently the dupe of fraud and perjury. Under these circumstances, *it is competent* for him to establish rules, by force of which such cases shall be decided according to the fact, without regard to the testimony. He will *in consequence* issue an order broad enough to embrace his object." (P. 35.)

Thus at length is obtained the admission, that where there is a substantial, though not an apparent departure from neutrality, it is competent for the injured belligerent to issue an order broad enough to embrace and obtain the object of opposing such departure, and of counteracting such injury. This is sufficient to justify the prohibition, capture, and condemnation of a trade, indirectly carried on after the direct channel has been closed. This is sufficient to justify following the substance instead of the shadow, and all the variations in the instructions which have been resorted to, *in order* to meet the successive frauds and perjuries which commercial avarice, or a hollow neutrality, may have invented or practised, with the view of evading the letter of the law, while violating its spirit.

Unacquainted with the authority upon which captures are made, and erroneously concluding that the fact of war existing between two nations authorises the individual members of them to

make reciprocal captures, this writer brings forward the suspension of "the rule of 1756" during the American war, as an evidence that the British prize-courts have not considered this rule as part of the law of nations. (P. 38.) But had he been connected with the legal profession, or even with the government of his country, this gentleman would have known, that, besides the fact of an existing war, commissions, or letters of marque and reprisal, are requisite to enable a subject to make a legal capture: these are a species of royal instructions, and require obedience to them. Hence the example of the American war is no evidence to the author's conclusion.

It would be equally useless and wearisome to repeat the arguments which have already been the subject of examination. In this place it will be sufficient to refer back for an exposition of the attempts to confound neutral with belligerent right (P. 22, 24.)* — to maintain that property once imported is as if it had been of native growth and manufacture (P. 46.)† — to argue against the practical right, because the theoretical principle cannot always be applied, as in the case of a mere enlargement, on account of the war, of a neu-

* See P. 28 and 57 of this tract.

† See P. 45 of this tract.

tral trade (P. 23, 59.)* — and to bring the Dutch treaty as evidence against our belligerent rights. (P. 11, 37.)†.

Reverting to the question of policy for a moment, this author argues, that "if the finances of France be the object in contemplation, American *purchase* of wine and brandy must be more beneficial than her *sale* of indigo and cotton:" (P. 48.) and on this mistake of his the question a good deal depends. The transporting the commerce of the colonies to the mother country, is rather the remittance of rents to the great body of non-resident proprietors, than the exchange of colonial for European commodities. (Inquiry into the State of the Nation, 1806 — P. 190.) Instead therefore of America carrying on a trade *with* France, the intervention of her capital (if her capital be *boná fide* employed, as this gentleman says it is, P. 51.) is only a fraudulent device to enable the French West-Indian planter to have his rents remitted him; and instead of weakening France, by selling her objects of luxury and expense, this covering commerce enriches her to the sum of its total amount; whereas a common trade is beneficial only to the rate of profit or commission upon it.

* See P. 56 of this tract.

† See P. 20 and 34 of this tract.

But it is asked, "Whence a belligerent derives his right to make prize of a neutral?" (P. 30.) And this author answers his own question with saying, "When the neutral divests himself of his proper character, and takes part in the war." (P. 31.) This however he contends is only done when the neutral carries contraband of war to a belligerent, or relieves his blockaded ports: "In both which cases," he acknowledges "him to be engaged in direct hostility." But is not a neutral interference, which aids the prosperity and revenue of one belligerent, and enables him to carry on the war with more vigor and effect, yet more important in its effect, and yet more extensively injurious; and therefore, yet more hostile than a cargo of contraband, or the relief of a town?

Bynkershoek says, "In whatever manner we succor one against the other, *we take part in the war.*" (Ex. p. 20.) And therefore, according to this American gentleman's own admission, such trade is obnoxious to capture. Lest argument should fail, this writer thought he would try the effect of a feeling apostrophe, exclaiming, "Miserable indeed must be the condition of man, if those who are invested with power can prescribe their own convenience as a rule for the conduct of others! (P. 33.)

Pray what is the right of exclusive property

but a rule of convenience? what that of blockade, or contraband, but rules of convenience arising out of a particular state of circumstances?— The whole question is, whether the belligerent has a right to have his convenience consulted. It is conceded that he has this right in the cases of contraband and blockade: why not in the case of a trade interdicted in peace, and opened in war, in order to avoid its pressure?— Are not all three, and all other belligerent rights against neutral interference, founded on the common principle, that it is the duty of a neutral to be impartial, and not to interfere on one side or the other? But it is an interference, and a partial one too, to aid the prosperity and revenue of one belligerent, and to enable him to carry on the war with more vigor and effect. This is the true hinge of the controversy; and to this common principle must every belligerent right and every neutral duty be referred.

Though the author says he "will not concede that America has not a right to import *with a view* to exportation," (P. 45.)* he at length gives up the controversy; for when speaking of the war of 1756, and the conduct of the British prize-courts then condemning neutral vessels engaged in the colony trade of France, he says, "The

* See P. 47 of this tract.

Dutch carried to France produce of French colonies, the property of French subjects. *Whatever may have been the appearance,* such was the unquestionable fact; and certainly this property was lawful prize by the law of nations." (p. 36.) And may not this remark be applied to the American interference in 1806? may it not be said "the Americans carry to France produce of French colonies, the property of French subjects?—Whatever may be the appearance, such is the unquestionable fact."

For what is touching at an American port, even unlading the cargo, and bonding, *not paying,* the duties, but a fraud of which the belligerent sees himself continually and evidently the dupe? What is American import of French colonial produce, *with a view* to its export to France, but an appearance, *in order* to conceal the unquestionable fact of its being a remittance of rent to the non-resident planter residing in France? Though the right appears thus clear, the anonymous author of the "Inquiry into the State of the Nation" questions the policy of inforcing it; and says, the consequence will be, "either the French will be compelled to carry their produce in their own ships, or the English will be allowed to purchase it, and then sell it to the nations of Europe, who will carry it to France; or the produce will be condemned to

remain in the colonies." (P. 187.) And is it no advantage that in the first case it will be liable to almost certain capture, thereby enriching us, in proportion as it impoverishes our enemies? and in the third case, that though it may not enrich ourselves, it must impoverish those with whom we are at war, while in the second we gain those freights and profits which this last American author says has so increased the capital of the United States, as to enable her citizens to *bonâ fide* own the costly exports of the Havanna, and other Spanish ports. (P. 51.) Besides these extensive and important advantages, and those of enlarging our commercial navy, and giving life and activity to our cruisers, there is the decisive benefit, that by interrupting all direct and indirect communication between our enemies and their colonies, the general revenue of the nations with whom we are at war will be lessened, and thereby generate a feeling of discontent, which must materially embarrass the French government, and eventually compel it to seek a peace, even at the price of those sacrifices, which the honor, security, and prosperity of this country demand.

THE END.

WOOD AND INNES, PRINTERS, POPPIN'S-COURT, FLEET-STREET.