ceal its real character from observation. It has accordingly been surmised that, notwithstanding the obstacles which it provides against the re-exportation of a colonial cargo by the importer, such a re-exportation may perhaps be lawful. Attempts on his part to sell in the United States, without effect, (which must often happen) may, it is supposed, be sufficient to save him from the peril of the rule: But, admitting it to be certain, instead of being barely *possible*, that these attempts would form any thing like security against final condemnation, it is still most material to ask, how they are to afford protection against seizure, by what document they can be proved to the satisfaction of those to whom interest suggests doubts, and whom impunity encourages to act upon them? The formal transactions of the custom-house once deserted as a criterion, the cargo must be followed through private transfers, into the warehouses of individual merchants; and, when proofs have been prepared with the utmost regularity, to establish those transfers, or the other facts, which may be deemed to be equivalent, they are still liable to be suspected, and will be suspected, as fictious and colorable, and capture will be the consequence.

For the loss and damage which capture brings along with it, British courts of prize grant no adequate indemnity. Redress to *any* extent is difficult---to a *competent* extent impossible; and even the costs which an iniquitous seizure compels a neutral merchant to incur in the defence of his violated rights, before their own tribunals, are seldom decreed and never paid.

Your memorialists have thus far complained only of the recent abandonment, by Great-Britain, of a known rule, by which the oppressive character of an important principle of her maritime code, has, heretofore, been greatly mitigated. But they now beg leave to enter their solemn protest against the principle itself, as an arbitrary and unfounded pretension, by which the just liberty of neutral commerce is impaired and abridged, and may be wholly destroyed.

The reasons upon which Great-Britain assumes to herself a right to interdict to the independent nations of the earth, a commercial intercourse with the colonies of heenemies (out of the relaxation of which pretended right has arisen the distinction, in her courts between an American trade, from the colonies of the United States, and from the same colonies to Europe) will, we are confidently persuaded, be repelled with effect and firmness by our government.

It is said by the advocates of this high belligerent claim, that neutral nations have no right to carry on with either of the parties at war, any other trade than they have actually enjoyed in time of peace. This position forms the basis, upon which Great-Britain has heretofore, rested her supposed title, to prevent altogether, or to modify at her discretion, the interposition of neutrals in the colony trade of her adversaries.

But if we are called upon to admit the truth of this position, it seems reasonable that the converse of it should also be admitted; that war should not be allowed to disturb the customary trade of neutrals in peace—that the peace-traffic should in every view, be held to be the measure of the war-traffic—and that as on the one hand, there can be no enlargement, on the other there shall be no restriction. What, however, is the fact? The first moment of hostilities annihilates the commerce of the nations at peace, in articles deemed contraband of war—the property of the belligerents can no longer be carried in neutral ships; they are subject to visitation on the high seas; to harrassing and vexatious search; to detention for judicial enquiry; and to the peril of unjust confiscation. They are shut out from their usual markets, not only by military enterprizes against particular places, carried on with a view to their reduction, but by a vast system of blockade, affecting and closing up the entire ports of a whole nation. Such have been the recent effects of an European war upon the trade of this neutral country; and the prospect of the future affords no consolation for the past. The triumphant fleets of one of the contending powers cover the ocean; the navy of her enemies has fallen before her; the communication by sea with France, & Spain, & Holland, seems to depend upon her will, and she asserts a right to destroy it at her pleasure. She forbids us from transporting in our vessels, as in peace we could, the property of her enemies; enforces against us a rigorous list of contraband; dams up the great channels of our ordinary trade; abridges, trammels and obstructs what she permits us to prosecute; & then refers us to our *accustomed traffic in time of peace* for the criterion of our commercial rights, in order to justify the consummation of that ruin, with which our lawful commerce is menaced by her maxims and her conduct.

This principle, therefore, cannot be a sound one. It wants uniformity and consistency; is partial, unequal and delusive. It makes every thing bend to the right of war; while it affects to look back to, and to recognize the state of things in peace, as the foundation and the measure of the rights of neutrals. Professing to respect the established and habitual trade of the nations at peace, it affords no shadow of security for any part of it. Professing to be an equitable standard for the ascertainment of neutral rights, it deprives them of all body and substance, and leaves them only a plausible and unreal appearance of magnitude and importance. It delivers them over, in a word, to the mercy of the states at war, as objects of legitimate hostility; and while it seems to define, does in fact extinguish them. Such is the faithful picture of the theory and practical operation of this doctrine.

But, independent of the considerations, thus arising out of the immediate interference of belligerent rights, and belligerent conduct, with the freedom of neutral trade; by which the fallacy of the appeal, to the precise state of our peace-trade, as limiting the nature and extent of our trade in war, is sufficiently manifested; there are other considerations, which satisfactorily prove the utter inadmissibility of this principle.

It is impossible that war among the primary powers of Europe, should not, in an endless variety of shapes, materially affect the whole civilized world. Its operation upon the prices of labor and commodities, upon the value of money, upon enchange, upon the rates of freight and insurance, is great and important. But it does much more than all this. It imposes upon commerce, in the gross and in its details, a new character; gives to it a new direction; and places it upon new foundations. It abolishes one class of demands, creates or revives others; and diminishes or augments the rest—and, while the wants of mankind are infinitely varied, by its powerful agency, both in object and degree; the modes and sources of supply, and the means of payment, are infinitely varied also.

To prescribe to neutral trade, thus irresistibly influenced, and changed, & moulded by this imperious agent, a fixed and unalterable station, would be to say, that it shall remain the same, when not to vary is impossible; and to require, since change is unavoidable, that it shall submit to the ruinous retrenchments and modifications, which war produces, and yet refrain from indemnifying itself by the fair advantages, which war offers to it as an equivalent, cannot be warranted by any rule of reason or equity, or by any law, to which the great community of nations owes respect and obedience.

When we examine the conduct of the maritime powers of Europe, in all the wars in which they have been engaged for upwards of a century, we find, that each of them has, occasionally departed from its schemes of colonial monopoly; relaxed its navigation laws; and otherwise admitted neutrals, for a longer or shorter space, as circumstances required, to modes of trade, from which they were generally excluded. This universal practice; this constant and invariable usage, for a long series of years, would seem to have established, among the European states, a sort of customary law upon the subject of it, from which no single power could be at liberty to depart, in search of a questionable theory, at a variance with it. Great-Britain is known to suspend, in war, and on account of war, her famous act of navigation, to which she is supposed to owe her maritime greatness, and which, as the palladium of her power, she holds inviolable in peace;—and her colonies are frequently thrown open, and neutrals invited to supply them, when she cannot supply them herself. She makes treaties in the midst of war, (she made such a treaty with us) by which neutrals are received into a participation of an extenrive traffic, to which before they had no title. And can she be suffered to object, that the same, or analogous acts, are unlawful in her enemies; or that when neutrals avail themselves of similar concessions made by her opponents, they are guilty or liable to punishment, as for a criminal intrusion into an irregular and prohibited commerce?

The weight of this consideration has been felt by the advocates of this doctrine; and it has, accordingly, been attempted to evade it by a distinction, which admits the legality of all such relaxations in war, of the general, commercial, or colonial systems of the belligerents, as do not arise out of the predominance of the enemy's force, or out of any necessity resulting from it. It is apparent, however, that such relaxations, whether dictated by the actual ascertained predominance of the enemy's force or not, do arise out of the state of war, and are almost universally produced and compelled by it—that they are intended as reliefs against evils, which war has brought along with it; and that the opposite belligerent has just as much right to insist that these evils shall not be removed by neutral aid or interposition, as if they were produced by the general preponderance of her own power, upon the land, or upon the sea, or by the general success of her arms. In the one case as completely as in the other, the interference of the neutral lightens the pressure of war; increases the capacity to bear its calamities, or the power to inflict them; and supplies the means of comfort and of strength. In both cases the practical effect is the same, and the legal consequence should be the same also. But whence are we to derive the conclusion of fact, upon which this extraordinary distinction is made to turn? How are we to determine, with precision and certainty, the exact cause, which opens to us the ports of a nation at war, to analyze the various circumstances, of which, perhaps, the concession may be the combined effect; and to assign to each the just portion of influence, to which it has a claim?

How easy it is to deceive ourselves on a subject of this kind—Great-Britain will herself instruct us by a recent example. Her courts of prize have insisted that during the war, which ended in the peace of Amiens, France was compelled to open the ports of her colonies, by a necessity created and imposed by the naval prowess of her enemies; and yet these ports were opened in Feb. seventeen hundred and ninety three when France and her maratime adversaries had not measured their strength in a single conflict; when no naval enterprize had been undertaken by the latter, far less crowned with success; when the lists were not even entered, and when the superiority afterwards acquired by Great-Britain in particular, was yet a problem; when the spirit of the French nation and government was lifted up to an unexampled height by the enthusiasm of the day, and by the splendid atchievements by which their armies had recently conquored Savoy, the county of Nice--Worms and other places upon the Rhine—the Austrian Low Countries and Liege. It would seem to be next to impossible to contend that a concession made by France to neutrals, on the subject of her colony trade, at such a period of exultation and triumph, was "compelled by the prevalence of British arms* ;" that it was "the fruit of British victories," or the result of "British conquest;" that it "arose out of the predominance of the enemy's force;" that it was produced by "that sort of necessity which springs from the impossibility of otherwise providing against the urgency of distress, inflicted by the hand of a superior enemy;" & that "it was a signal of defeat and depression!" It would seem to be impossible to say of a traffic, so derived, "That it *could* obtain, or *did* obtain, by no other title than the success of the one belligerent against the other, and at the expence of that very belligerent, under whose success the neutral sets up his title." Yet all these things have been solemnly said and maintained; and have even been made the foundation of acts by which the property of our citizens has been wrested from their hands. It cannot be believed, that the laws of nations have entrusted to a belligerent, the power of harrassing the trade, and confiscating the ships and merchandize, of peaceable and friendly nations, upon ground so vague, so indefinite and equivocal. Of all law, *certainty* is the best feature; and no rule can be otherwise than unjust and despotic, of which the sense and the application are and must be ambiguous. A *siege* or *blockade* presents an intelligible standard, by which it may always be known, that no lawful trade can be carried on with the places against which either has been instituted; but the suggestions upon which this new belligerent encroachment, having all the effect of a siege or blockade, is founded, are absolutely incapable of a distinct form, either for the purpose of warning to neutrals, or as the basis of a judicial sentence. The neutral merchant finds, that in fact, the colonial ports of the parties to the war are thrown open to him, by the powers to which they belong; and he sees no hostile squadron to shut them against him. Is he to pause and stop before he ventures to exercise his natural right to trade with those who are willing to trade with him, until he has enquired and determined *why* these ports have been thus made free to receive him? To such a complicated and delicate discussion, no nation has a right to call him. It is enough that an actual blockade can be set on foot to close these ports; and that they may be made the objects of direct efforts, for conquest or occlusion, if the enemy's force is in truth so entirely predominant, as it is pretended to be; and if it is not predominant to that point, and to that extent, there can be no cause for ascribing to it an effect to which it is physically incompetent, or for allowing it to do that constructively, which it cannot do and has not done actually. The pernicious qualities of this doctrine are enhanced and aggravated, as from its nature might be expected, by the fact, that G. Britain gives no notice of the time when, or the circumstances in which she means to apply and enforce it. Her orders of the 6th November, 1793, by which the seas were swept of our vessels and effects, were, for the first time, announced by the ships of war and privateers, by which they were carried into execution. The late decisions of her courts, which are in the true spirit of this doctrine, and are calculated to restore it in practice, to that high tone of severity which milder decisions had almost concealed from the world, came upon us by surprize; and the captures, of which the Dutch complained in the seven years war, were preceded by no warning. Thus is this principle most rapacious and oppressive in all its bearings. Harsh and mysterious in itself, it has always been and ever must be used to betray neutral merchants into a trade, supposed to be lawful, and then to give them up to pillage and to ruin. Compared with this principle, which violence and artifice may equally claim for their own, the exploded doctrine of *constructive blockade*, by which belligerents for a time insulted and plundered the states at peace, is innocent and harmless. That doctrine had something of certainty belonging to it, and made safety at least *possible*. But there can be no safety while a malignant and deceitful principle like this hangs over us. It is just what the belligerent chooses to make it—lurking, unseen and unfelt,—or visible, active and noxious. It may come abroad when it is least expected; and the moment of confidence may be the moment of destruction. It may sleep for a time, but no man knows when it is to wake, to shed its baleful influence upon the commerce of the world. It clothes itself, from season to season, in what are called "*relaxations;*" but again, without any previous intimation to the deluded citizens of the neutral powers, these relaxations are suddenly laid aside, either in the whole or in part, and the work of confiscation commences. Nearly ten months of the late war had elapsed before it announced itself at all; and, when it did so, it was in its most formidable shape, and in its fullest power and expansion. In a few weeks, it was seen to lose more than half its substance and character; and, long before the conclusion of the war, was scarcely perceptible. With the opening of the present war, it re-appeared in its mildest form, which it is again abandoning for another, more consonant to its spirit. Such are its capricious fluctuations, that no commercial undertaking, which it can in any way affect, can be considered as otherwise than precarious, whatever may be the avowed state of the principle at the time of its commencement.

It has been said that, by embarking in the colony trade of either of the belligerents, neutral nations, in some sort, interpose in the war; since they assist, and serve the belligerent, in whose trade they so embark. It is a sufficient answer to this observation, that the same course of reasoning would prove, that neutrals ought to discontinue all trade whatsoever, with the parties at war. A continuance of their *accustomed peace trade* assists and serves the belligerent, with whom it is continued; and, if this effect were sufficient to make a trade unneutral, and illegal, the best established and most usual traffic, would, of course, become so. But, Great-Britain supplies us with another answer to this notion, that our interference in the trade of the colonies of her enemies is unlawful, *because they are benefited by it.* It is known that the same trade is, and long has been, carried on by British subjects; and your memorialists feel themselves bound to state, that according to authentic information lately received, the government of Great-Britain does, at this moment, grant licences to neutral vessels, taking in a proportion of their cargoes there, to proceed on trading voyages to the colonies of Spain, from which she would exclude us, upon the condition that the return cargoes shall be carried to Great-Britain, to swell the gains of her merchants and to give her a monopoly of the commerce of the world. This great belligerent right, then, upon which so much has been supposed to depend, sinks into an article of barter. It is used, not as a hostile instrument, wielded by a warlike state, by which her enemies are to be wounded, or their colonies subdued, but as the selfish means of commercial aggrandizement, to the impoverishment and ruin of her friends; as an engine by which Great-Britain is to be lifted up to a vast height of prosperity, and the trade of neutrals crippled, and crushed, and destroyed. Such acts are a most intelligible commentary upon the principle in question. They show that it is a hollow and fallacious principle, susceptible of the worst abuse, and incapable of a just and honorable application. They shew that in the hands of a great maritime state, it is not, in its ostensible character of a weapon of hostility, that it is prized, but rather as one of the means of establishing an unbounded monopoly, by which every enterprise, calculated to promote national wealth and power, shall be made to begin and end in Great-Britain alone.—Such acts may well be considered as pronouncing the condemnation of the principle against which we contend, as withdrawing from it the only pretext, upon which it is possible to rest it.

Great-Britain does not pretend that this principle has any warrant in the opinions of writers on public law. She does not pretend, & cannot pretend, that it derives any countenance from the conduct of other nations. She is confessedly solitary in the use of this invention, by which rapacity is systematized, and a state of neutrality and war are made substantially the same. In this absence of all other authority, her courts have made an appeal to her own early example, for the justification of her own recent practice. Your memorialists join in that appeal, as affording the most conclusive & authoritative reprobation of the practice, which it is intended to support by it.

It would be easy to shew by an examination of the different treaties to which Great-Britain has been a party from times long past, that this doctrine is a modern usurpation. It would be equally easy to shew, that during the greater part of the last century, her statesmen and lawyers uniformly disavowed it, either expressly or tacitly. But, it is to a review of *judicial* examples, of all others the most weighty and solemn, that your memorialists propose to confine themselves.

In the war of 1744, in which Great-Britain had the power if she had thought fit to exert it, to exclude the neutral states from the colony trade of France and Spain, her high court of appeals decided that the trade was lawful, and released such vessels as had been found engaged in it.

In the war which soon followed the peace of *Aix-la-Chapelle*, Great-Britain is supposed to have first acted upon the pretension that such a trade was unlawful, as being shut against neutrals in peace. And it is certain, that during the whole of that war, her courts of prize did condemn all neutral vessels taken in the prosecution of that trade, together with their cargoes, whether French or neutral. These condemnations, however, proceeded upon peculiar grounds. In the seven years war, France did not throw open to neutrals the traffic of her colonies. She established no free ports in the East or in the West, with which foreign vessels could be admitted to trade, either generally, or occasionally *as such*. Her first practice was simply to grant *special licences* to particular neutral vessels, principally Dutch, and commonly chartered by Frenchmen, to make under the usual restrictions, particular trading voyages to the colonies. These *licences* furnished the British courts with a peculiar reason for condemning vessels, sailing under them, viz. "that they became in virtue of them, the *adopted or naturalized vessels of France.*" As soon as it was known that this effect was imputed to these licences, they were discontinued or pretended to be so; but the discontinuance, whether real or supposed, produced no change in the conduct of Great-Britain; for neutral vessels employed in this trade, were captured and condemned as before. The grounds upon which they continued to be so captured and condemned, may best be collected from the reasons subjoined to the printed cases in the prize causes decided by the high court of admiralty, (in which Sir Thomas Salisbury at that time presided) and by the lords commissioners of appeal, between 1757 and 1760.

In the case of the *America*, (which was a Dutch ship, bound from Saint Domingo to Holland, with the produce of that island, belonging to French subjects, by whom the vessel had been chartered) the reason, stated in the printed case, is, "that the ship must be looked upon as a French ship (coming from St. Domingo) for by the laws of France, no foreign ship CAN trade to the French West-Indies.

In the case of the *Snip*, the reason (assigned by Sir George Hays and Mr Pratt, afterwards Lord Camden) is, "for that the *Snip* (though once the property of Dutchmen) being employed in carrying provisions to, and goods from, a French colony, *thereby became a French ship, and, as such, was* justly condemned."

It is obvious that the reason, in case of the *America*, proceeds upon a presumption, that, as the trade was, by the standing laws of France, even up to that moment, confined to *French* ships, any ship, found employed in it, must be a *French* ship. The reason, in the other case, does not rest upon this idle presumption, but takes another ground; for it states, that, by reason of the trade, in which the vessel was employed, she *became* a French vessel. It is manifest that this is no other than the first idea of adoption, or naturalization, accommodated to the change, attempted to be introduced into the state of things, by the actual, or pretended, discontinuance of the special licences. What then is the amount of the doctrine of the seven years war, in the utmost extent which it is possible to ascribe to it? It is in substance, no more than this,—that, as France did not at any period of that war, abandon, or in any degree suspend, the principle of colonial monopoly, or the system arising out of it, a neutral vessel, found in the prosecution of the trade, which, according to that principle, and that system, still continuing in force, could only be a *French* trade, and open to *French* vessels, either *became*, or was legally to be *presumed* to be, a *French* vessel. It cannot be necessary to show, that this doctrine differs essentially from the principle of the present day. But, even if it were otherwise, the practice of that war, whatsoever it might be, was undoubtedly contrary to that of the war of 1744, and as contrasted with it, will not be considered, by those who have at all attended to the history of these two periods, as entitled to any peculiar veneration. The effects of that practice were almost wholly confined to the Dutch, who had rendered themselves extremely obnoxious to Great-Britain, by the selfish and pusillanimous policy, as it was falsely called, which enabled them during the seven years war, to profit of the troubles of the reast of Europe. In the war of 1744, the neutrality of the Dutch, while it continued, had in it nothing of complaisance to France. They furnished, from the commencement of hostilities, on account of the Pragmatic sanction, succors to the confederates, declared openly, after a time, in favor of the Queen of Hungary, and finally determined upon, and prepared for war, by sea and land. Great-Britain, of course, had no inducement, in that war, to hunt after any hostile principle, by the operation of which, the trade of the Dutch might be harrassed, or the advantages of their neutral position, while it lasted, defeated.

In the war of 1756, she had this inducement in its utmost strength. Independent of the commercial rivalry, existing between the two nations, the Dutch had excited the undisguised resentment of Great-Britain, by declining to furnish against France, the succors stipulated by treaty; by constantly supplying France with naval and warlike stores, through the medium of a trade systematically pursued by the people, and countenanced by the government; by granting to France early in 1757, a free passage through Namur and Maestricht, for the provisions, ammunition and artillery belonging to the army destined to act against the territories of Prussia, in the neighborhood of the Low Countries—and by the indifference with which they saw Nieuport and Ostend put into the hands of France, by the court of Vienna, which Great-Britain represented to be contrary to the barrier treaty, and the treaty of Utrecht. Without entering into the sufficiency of these grounds of dissatisfaction, which undoubtedly had a great influence on the conduct of Great-Britain, towards the Dutch, from 1757, until the peace of 1763, it is manifest that this very dissatisfaction, little short of a disposition to open war, and frequently on the eve of producing it, takes away, in a considerable degree, from the authority of any practice to which it may be supposed to have led, as tending to establish a rule of the public law of Europe. It may not be improper to observe, too, that the station, occupied by G. Britain, in the seven years war, (as proud a one as any country ever did occupy) compared with that of the other European powers, was not exactly calculated to make the measures which her resentment against Holland, or her views against France, might dictate peculiarly respectful to the general rights of neutrals. In the north, Russia and Sweden were engaged in the confederacy against Prussia, and were of course entitled to no consideration in this respect. The government of Sweden was, besides, weak and impotent. Denmark, it is true, took no part in the war, but she did not suffer by the practice in question. Besides, all these powers combined, would have been as nothing, against the naval strength of Great-Britain, in 1756. As to Spain, she could have no concern in this question; and, at length, became involved in the war on the side of France. Upon the whole, in the war of 1759, Great-Britain had the power to be unjust, and irresistable temptations to abuse it. In that of 1744, her power was, perhaps, equally great, but every thing was favorable to equity and moderation. The example afforded on this subject, therefore, by the first war, has far better titles to respect, than that furnished by the last.

In the *American* war, the practice and *decisions*, on this point, followed those of the war of 1744.

The question first came before the lords of appeal, in January, 1782, in the Danish cases of the Tiger, Copenhagen, and others, captured in October, 1780, and condemned in St. Kitts, in December following. The grounds upon which the captors relied for condemnation, in the *Tiger*, as set forth at the end of the respondent's printed case, were: "for that the ship, having been trading to Cape-Francois, where none but French ships are allowed to carry on any traffic, and haven been laden, at the time of the capture, with the produce of the French part of the island of St. Domingo, put on board at Cape-Fraincois, and both ship and cargo taken, confessedly coming directly from thence, must (pursuant to precedents in the like cases in the last war) to all intents and purposes, be deemed a ship and goods belonging to the French, or at least adopted and naturalized as such."

In the *Copenhagen*, the captors reasons are thus given: "First, because it is allowed that the ship was destined with her cargo to the island of Guadaloupe, and no other place"

"Secondly, because it is *contrary to the established rule of general law, to admit any neutral ship, to go to, and trade at, a port belonging to the colony of an enemy, to which such neutral ships could not have freely traded in time of peace.*"

On the 22d of January, 1782, these causes came on for hearing before the lords of appeal, who decreed restitution in all of them; thus in the most solemn and explicit manner, disavowing and rejecting the pretended rules of the law of nations, upon which the captors relied; the first of which was literally borrowed from the doctrine of the war of 1756, and the last of which is precisely that very rule on which Great-Britain now relies.

It is true that in these cases, the judgment of the lords was pronounced upon one shape only of the colony trade of France, as carried on by neutrals—that is to say, a trade between the colony of France, and that of the country of the neutral shipper. But as no distinction was supposed to exist in point of principle, between the different modifications of the trade, & as the judgment went upon general grounds, applicable to the entire subject, we shall not be thought to overrate its effect and extent, when we represent it as a complete rejection both of the doctrine of the seven years war, & of that modern principle by which it has been attempted to replace it. But, at any rate, the subsequent records of the same high tribunal did go that length. Without enumerating the cases of various descriptions, involving the legality of the trade in all its modes, which were favorably adjudged by the lords of appeal, after the American peace, it will be sufficient to mention the case of the *Vervagting*, decided by them in 1785 and 1786. This was the case of a *Danish* ship, laden with a cargo of dry goods and provisions, with which she was bound on a voyage from *Marseilles*, to *Martinique* and *Cape Francois*, where she was to take in for *Europe* a return cargo of West India produce. The ship was not proceeded against; but the cargo, which was claimed for merchants of *Ostend*, was condemned as enemy's property, (as in truth it was) by the vice-admiralty of *Antigua*, subject to the payment of freight, *pro rata itineris*, or rather for the whole of the outward voyage. On appeal as to the cargo, the lords of appeal, on the 8th of March, 1785, reversed the condemnation, and ordered further proof of the property to be produced within three months. On the 28th March, 1786, no further proof having been exhibited, and the proctor for the claimants declaring that he should exhibit none, the lords condemned the cargo; & on the same day reversed the decree below, giving freight, *pro rata itineris*: (from which the neutral master had appealed) and decreed freight generally, and the costs of the appeal.

It is impossible that a judicial opinion could go more conclusively to the whole question on the colony trade than this—For it not only disavows the pretended illegality of the neutral interposition in that trade, even directly, between France and her colonies, (the most exceptionable form, it is said, in which that interposition could present itself); it not only denies that property engaged in such a trade is on that account liable to confiscation, (inasmuch as, after having reversed the condemnation of the cargo, pronounced below, it proceeds afterwards to condemn it merely *for want of further proof as to the property*); but it holds that the trade is so unquestionably lawful to neutrals, as not even to put in jeopardy the claim to freight, for that part of the voyage which had not yet begun, and which the party had not yet put himself in a situation to begin. The force of this and the other British decisions, produced by the American war, will not be avoided by suggesting, that there was any thing peculiarly favorable in the time when, or the manner in which, France opened her colonial trade to neutrals, on that occasion. Something of that sort, however, has been said. We find the following language in a very learned opinion on this point: "It is

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* *Sir William Scott, in the Emmanuel.*