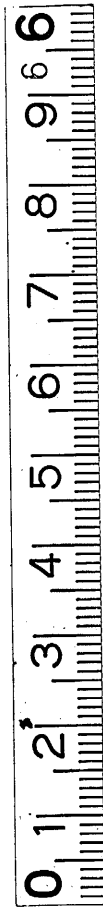


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THE
C A S E
OF THE
D U T C H S H I P S,
C O N S I D E R E D.

[Price One Shilling.]

0137

THE X
 C A S E
 OF THE
 D U T C H S H I P S,
 C O N S I D E R E D,

By *JAMES MARRIOT*, LL.D.
 And one of the Advocates of Doctors-Commons.

The SECOND EDITION.

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 M.DCC.LIX.

ADVERTISEMENT.

EVERY Purpose of the following Considerations will be answered in a Cause so national and important, as the Subject of them is, if it should be judged, upon a Perusal of them, that the Justification of the Conduct of Great-Britain may rest safely upon any one single Argument advanced in them; or if it should be thought, that the *joint* Result of the whole Reasoning establishes the Proposition which is intended to be maintained.

The Quotations which are placed in the Margin, and which are unnecessary in themselves to support or recommend the Principles of common Sense, are introduced merely as Authorities, disinterested and previous to the Object in Dispute, from Foreigners to Foreigners.

By Writers upon Subjects of this Nature, of every Country, and of the highest Authority, and by the common Usage of all Nations, it has been constantly DETERMINED,

That, in a War between two Nations, each Enemy may lawfully take, seize, and possess himself of the Property of his Opponent, wherever it can be found.

From this Principle it follows, especially considering how widely Commercial Interests are diffused, that it is an actual Impossibility for two great, and Maritime Powers, to engage in a War, but the Intercourse of all the rest must be liable to be disturbed.

In such a Case, the Advantages of a Neutrality are necessarily mixed with Inconveniencies which must be submitted to, or the Neutrality must be renounced.

If the Goods of Enemies may be lawfully seized wherever they are, then it follows, that they certainly may be seized on-board the Ships of Neutrals*.

Every Ship going to, or coming from, the Port of an Enemy, is strongly attended with a Presumption of Enemy's Property.

Neutrals cannot continue Friends, if they protect the Enemy, or Goods of Enemies; because

* How far the States of Holland themselves have carried this Doctrine in their own Conduct towards Neutrals, confiscating both Ships and Cargoes, is to be seen from the Placarts quoted in the Appendix to this Case.

because an impartial Conduct is the very Idea of Neutrality.

It is incumbent upon Neutrals to remove a Presumption that is against them, by a Justification of themselves, and by submitting to a proper Enquiry, without Fraud, or Resistance.

Neutrals therefore may be justly *detained*.

Neutral Property may be *confiscated* as illegal in its Destination from relative Circumstances*.

It is relative Circumstances, which, by the constant Practice of Nations, have made all Commodities, which are destined for Places belonging to the Enemy, blocked up,

* Magnum sane aliquando momentum in bellis habent etiam res minimi momenti, si hostis laboret inopia; nec rerum istarum aliunde copia fit. Sæpe urbes munitissimæ ob herbarum istius combustibilis, vel vini adusti inopiam fecerunt, & famem facilius tolerare militem præfidiarium quam rerum illarum desiderium. Quis ergo neget? tum cives, tum externos male mereri de Republica, qui talia suppeditant hostibus nostris, sine quibus facile adiguntur ad deditionem potuissent. Adeo verum est, belli temporibus, commercia non modo inter hostes cessare, verum etiam amicis & neutrarum partium gentibus non promiscue permitti negotiationem cum hostibus, [nisi sibi hæc securitatem à belligerante utroque stipulentur.] Quum enim hosti in hostem in infinitum omnia liceant quæ ad debellandum illum sunt necessaria, licebit sane & gentem amicam impedire quo minus hosti res, quibus validior instructiorque ad bellum gerendum fiat, advehere possit, seu jam supra vidimus.

Sin hostes nostri cum gente externa nobisque amica negotiantur, eo minus dubitare licet, quin fas nobis esse oporteat, illa commercia turbare, & id agere, ne quid ex illis lucri ad hostes nostros redeat. Heinneccius. Sylloge 11. Exercitat. 30. §. 12.

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up, or invested, to be considered as prohibitable in their Nature, or in other Words, contraband; because they tend to uphold the Enemy under Circumstances of Distress.

Commodities, the Property of Neutrals, having this Tendency, and destined for the Colonies of the Enemy, which are the Object of the War, and under Circumstances of Distress, are therefore contraband.

Ships, the Property of Neutrals, may be confiscated upon different Accounts; upon one, in view of Punishment of bad Faith, for a Breach of Neutrality in carrying contraband; upon another, when sailing under the special Licence of the Enemy; as the adopted Property of the Enemy.

It appears, therefore, that the Subjects of Holland have no Right to trade with the Enemies of Great-Britain, without being subject to Enquiry at least, nor in the unlimited Manner in which they now pretend to do it; so far as the Principles of mere Neutrality, and of the Law of Nations, are concerned.

Are they then privileged by subsisting Treaties?

The whole Argument in their Favour is rested intirely upon the Words of the Treaty of December 11, 1674.

But, first, the Words of this Treaty do not establish this Privilege without Exception.

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2dly,

2dly, The Words * of this Treaty must be judged to take their Meaning from the Things in view, and in the Intention of the Treaty.

3dly, The Question is not to be grounded solely upon this Treaty, but all subsisting Treaties must be referred to.

Lastly, All Duties required by the Laws of Neutrality, and by subsisting Treaties, must have been discharged by the Ally, who claims a Privilege under any Treaty.

Article I. of the Treaty concluded at London, December 11, 1674, between Great-Britain, and the United Provinces.

From the Words of the Ist and IId Articles taken together, and with their natural and necessary Relations to each other, the Sense of the whole appears to be.—

That Free Traffic in all Kingdoms, Countries, and Estates shall be allowed to the Neutral.—

Article I. It shall, and may be lawful, for the Subjects of the Lords the States, with all Freedom, and Safety, to sail, trade, and exercise all manner of Traffic in all other Kingdoms, Countries, and Estates, which now are, or at any time hereafter shall be at Peace, Amity, or Neutrality, with

But

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the

* 'Sensum non vana nominum vocabula amplecti oportet.' L. 4. Cod. de Const. Pec. tit. 18.

[6]

the Lords the States,
so that they shall not
be any way hinder-
ed, or molested in
their Navigation, or
Trade, by the Mili-
tary Forces, or Ships
of War, or any other
Vessels whatever, be-
longing either to the
said King, or his Sub-
jects, upon account,
or under pretence of
any Hostility, or
Quarrel now subsist-
ing, or which may
hereafter happen,
between his said Ma-
jesty, and any other
Princes, or People
whatever, which are,
or shall be in Peace,
Amity, or Neutra-
lity, with the said
Lords the States.

Article II.

*But this Free Traf-
fic aforesaid in all King-
doms, Countries, and
Estates, allowed to the
Neutral, shall extend to
all Commodities which
might*

Art. II. Nor shall
this Freedom of Na-
vigation and Com-
merce be violated,
or interrupted by
reason of any War ;
but

[7]

might be carried in time
of Peace.—

Carried † whither,
and from whence ?

To and from all
Kingdoms, Countries,
and Estates.

Carried by whom † ?

By the Parties, sti-
pulating.

Contraband Goods
only excepted from com-
ing within the Extent
of such Free Traffic.

but such * Freedom
shall extend to all
Commodities which
might be carried in
time of Peace ; those
only excepted, which
are described, under
the Name of Con-
traband Goods, in
the following Ar-
ticle.

The Argument therefore stands thus :
As Contraband is only excepted, from
coming within the Extent of such free Traf-
fic to and from all Countries, Positively ;
so all that goes beyond the Extent of the
Line drawn, is also excepted, Consequen-
tially.

The Product coming from French Co-
lonies to Europe, are Commodities which
could never yet be lawfully carried by
Dutch Ships in time of Peace, directly nor
indirectly ; nor can it be shown that they
will

* The Words of the Treaty are in Latin, as follows :
Sed ad omnes merces, (i. e. mercaturæ objecta transpor-
tanda) quæ in Pace subvehentur, which shall be carried in
time of Peace, se extendet, exceptis solum, (not solis, but
solummodo) iis quæ Articulo proximo, &c.

† Vide Objection I. of the Dutch Expositor, at the End of
this Case.

will hereafter so be carried: Therefore they cannot be carried *now*, by all the Words of this Treaty.

The same Reasoning holds in the Case of Goods carried by Dutch Ships directly or indirectly, to the French Colonies.

For greater Clearness, to repeat Part of the Argument again, in other Words: The Terms of both Articles contain an Affirmative with a positive, particular Exception.

Affirmative.—What may be carried to and from all Countries in time of Peace, may be carried in time of War.

Positive, particular Exception.—Contraband only excepted.

And they contain a Negative by Inference, with an universal Exception.

Negative by Inference.—What may not be carried to and from all Countries in time of Peace, may not be carried to and from all Countries in time of War.

Universal Exception.—Only Contraband is always excepted from being carried.

If this is rightly stated; then the Contents of these two Articles do *lead* and controul all other Articles, whatever may be determined to be the Meaning of,

<p>Article VIII. <i>But, in this Article the Sense is, All the Objects of Commerce, free,</i></p>	<p>Art. VIII. 'All that which shall be found put on-board Ships be-</p>
---	---

free, as in the afore-said Extent, and Things excepted are expressed; which Things being stopped or taken, all Things in general and special shall be done according to the Spirit, View, and Intention of the Articles going before, as well as according to the Letter of them.

' belonging to the Subjects of the Lords the States, shall be accounted clear and free, altho' the whole Lading, or any Part thereof, by just Title of Property, should belong to the Enemies of his Majesty (except always contraband Goods *) which being intercepted, all Things shall be done, according to the Meaning and Direction of the foregoing Articles.'

It appears, therefore, from all the Words, taken together, of the foregoing Articles; and from their natural Construction, and Inference, that the Privilege, in the Extent, and Manner claimed by the Dutch Traders,

* The Words of the Treaty are: 'Quibus (i. e. rebus) interceptis (i. e. vel captis, vel detentis) omnia (i. e. res omnes) & singularum omnia (i. e. intercepta, vel capta, vel detenta) ex Articulorum præcedentium, Mente & præscripto fiant.'

'Quibus,' refers to all that went before; *scil.* 'Quicquid à subditis Dominorum Ordin. General. impositum esse deprehendatur: totum id,' omne id quod navibus: totum oneris, ejusdem Pars aliqua: (Mercibus Contrabandis), &c.

Traders, is not given by special Words; nor by Construction.

If it is not given by special Words, but by Construction, then it appears that the Words are *equivocal*, and *dubious* *.

Where Words are equivocal, and dubious, a Prohibitory Construction is to be presumed for, against a Construction that is Permissive.

Extraordinary Stipulations are not to be interpreted in the utmost Latitude, where they are capable of a Construction to the contrary; but are to be understood rather to contain a tacit Limitation †.

But an extraordinary Privilege, that subverts the common Principles of the Law of Nature and Nations, and which is ruinous in its utmost Extent of Construction, is, *stricti Juris*, beyond all other Privileges; nor can it be given, but by special Words only.

Treaties are liable to tacit Exceptions, notwithstanding Words seeming to be special.

For, to judge of Words, we must judge of Intentions.

Intentions are to be judged of from existing Circumstances.

It

* 'Semper in obscuris quod minimum est sequimur.' L. 50. Dig. tit. 17. §. 9.

† 'Quæ extendit Interpretatio difficiliter procedit quam quæ arctat.' Grotius de Jure Belli & Pacis, lib. 2. c. xxvi. par. 20. §. 1.

It has been disputed, whether *any Treaty* whatever is of eternal Obligation; but that its Obligation extends no farther than to, *Rebus sic stantibus* *; that is, to the same Objects existing, in a future time, as they existed, and were in view, at the time of making the Contract.

But a Commercial Treaty, which is very different in its Objects, and Consequences, from a Treaty of Peace, extends no farther in its Obligation than to the general State of Commerce in existence, and view at the time of contracting.

What was not in being, nor probable to be foreseen, could not be in the View of the contracting Parties. What was not in view of the contracting Parties, was not in their Intention to make part of the Obligation.

Objects apparently ruinous to either of the contracting Parties, had they been existing, or probable to be foreseen, would have been verbally excepted †.

But

* Vide the Answer of Queen Elizabeth to the Hanse-Towns and States, 1595. Camden.

N. B. Seneca, who had no view to Political Cases, but as reasoning upon Moral Obligation, says, 'quicquid mutatur, libertatem facit de integro consulendi;' and proves it by many undeniable Examples in private Life, where a Change in the promising Person, or Circumstances relating to him, alters the Obligation of the Contract. De Beneficiis, l. 4. c. 35, 39.

N. B. The Case of Queen Elizabeth was not relative to Peace and War, but to Privileges of Commerce, and to Subsidies.

† 'Quia casus nec prævideri omnes possunt, nec exprimi, ideo libertate quadam opus est eximendi casus, quos, quis
C qui

But Objects arising, *ex posteriori*, not from the common Course of Commercial Affairs, but from the mere *temporary* Act of Fraud and malicious Intention of the Enemy of any one of the contracting Parties, for his own Benefit and Preservation, but to the Detriment and Destruction of his Opponent, these Objects arising, *ex fraude* *, and, *ex posteriori*, are certainly, by every equitable Construction, excepted.

For, altho' it be true, that, *Res inter alios acta non nocet*; that ' what is transacted between two Parties does not prejudice a Third no ways concerned or interested;'

Yet, if it prejudices, the Rule is reversed; and then the Rule is, *Res inter alios acta non juvat*; that ' what is transacted between two Parties, but prejudices and concerns a third Party interested, shall not benefit either of the two Parties transacting, so far † as the Third is prejudiced.'

The

' qui locutus est, si adesset (i. e. si casus adesset) eximeret.' Grotius de Jure Belli & Pacis, l. 2. c. 26. par. 26.

* See the Marine Regulations of France in the Appendix, Articles X. and XI. how litt'e the French will suffer any Advantage to be taken of Transactions between the Neutral and the Enemy, while the War is depending, as carrying with them a violent Presumption of Collusion.

' Circumventio alterius, alii non præbet Actionem.' L. 5. Dig. tit. 17. §. 49.

† ' Qui utitur Jure suo nemini debet facere injuriam.' L. 50. Dig. de Reg. Juris. l. 1. §. 12. Dig. de Aqu. & Aqu. Pluv. Arcend.

The Trade to the Colonies of each Nation in Europe was shut up to the Subjects of every other Nation by fundamental Laws of each particular State, Inviolably, as it was thought, at the time of making the Treaty of December 11th, 1674.

The Opening a Trade to the Colonies of France, *flagrante Bello*, is a Transaction between France, and the Subjects of Holland, to the Prejudice of England.

There was a Defect of every such Object at the time of making the Engagement in question between England and Holland.

This Trade, therefore, *ex post facto* *, cannot be opened in time of War to the Subjects of Holland; so as for them to carry it on by virtue of the Engagements subsisting between England and Holland; prior not only to the Existence, but even probable Existence of this Object.

The Absurdity † of an Object, no less than the Defect of an Object, proves a Defect of Intention.

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* ' Si post ex intervallo aliquid extra naturam contractus conveniat, ob hanc causam agi non potest, propter eandem regulam, " ne ex pacto actio nascatur, quod & in omnibus bonæ fidei Judiciis est dicendum." L. 2. Dig. 14. §. 7. De Pactis.

† ' *Restringens Interpretatio* extra verborum significationem quæ promissionem continent, aut ex defectu petitur Originario voluntatis, aut ex casus emergentis repugnantia cum voluntate. Defectus voluntatis originarius intelligitur ex *abjurdo* quod alioqui evidenter sequeretur, ex cessatione rationis, quæ sola plenè & efficaciter movit voluntatem, vel ex *materiæ defectu*.' Grotius de Jure Belli, l. 9. c. 16. par. 22.

[14]

It never was, and never could be, the Intention of any contracting Parties, to subject the Meaning of their particular Contracts to the accidental Interpretation of their own Enemy. It was not therefore the Intention of either England or Holland.

By the Treaty of December 11, 1674, was intended a Right to trade with the Enemy in time of War in such Places, and in such a Manner, as either of the contracting Parties might do by the Laws of the Enemy's Government, which are standing Laws in time of Peace.

If it is asserted, that by the Treaty of December 11, 1674, was meant a Right to trade with the Enemy in every Place and in every Manner, *possible*, which it shall be in the Enemy's Inclination to allow in time of War;

Then it is asserted, that it was the Intention of the contracting Parties to bind themselves * by the Act of their own Enemy, to their great Prejudice, and perhaps to their Destruction; which cannot be admitted in Equity.

But whatever Privilege of free Commerce is conceded by the Treaty of December 11, 1674,

* To see the Absurdity of this Argument and Assertion, it is proper to refer the Reader to the very Words of the Dutch Expositor himself, Objection IV. at the End of this Case.

† Non credendus est quisquam ad magnum suum incommodum se voluisse obligare. Grot. de Jure Belli. L. 9. c. 16. par. 26.

[15]

1674, it was intended to be conceded to the State of the contracting Party, and to its Subjects, generally.

If the Enemy, for his own immediate and temporal Interest, pleases to give to certain particular Persons, Subjects of any neutral Power, a Licence to trade to his Colonies; yet nevertheless, if an Enemy does not give this Liberty, as a general and *constant* Privilege, to the neutral State itself, but confiscates all such Ships of theirs as are found trading thither without that Licence, then that Licence is special and personal.

Therefore that special and personal Licence does adopt all those who have it and their Property in the View of Subjects of that Government which grants the Licence.

A Dutch Ship trading to the Colonies of France, without a Licence from the French * Government, is confiscated, as good Prize to French Captors.

Therefore all Dutch Ships so licensed, are adopted French Ships.

The Privilege of the Treaty of December 11, 1674, is minutely reciprocal in its Degree of Extent.

† The manner in which a reciprocal Privilege is enjoyed in the first Instance, establishes a Precedent for its Extent in a second Instance. A

* These Licences are signed by the King himself, and differ greatly from the common Passes granted by the High-admiral of France, for Voyages in Europe.

† 'Semper in stipulationibus, et in cæteris contractibus id sequimur quod actum est.' L. 50. Dig. tit. 17. §. 34.

A Precedent established is unalterable, or its Degree of Reciprocity is destroyed.

After the Conclusion of the Treaty of December 11, 1674, Holland continuing the War with France, the Subjects of Great-Britain had the Benefit of a free Trade with France, till the Year 1678, when the Peace of Nimeguen was concluded.

But the Subjects of Great-Britain have not, at any time, enjoyed the Benefit of this Privilege in the Extent, which the Subjects of Holland now claim it for themselves.

The Subjects of Great-Britain never traded to the Colonies of France.

If Great-Britain *has* enjoyed a more extensive Benefit from the Privilege, in a former Instance, than she *will* now allow to Dutch Subjects, Holland *has been* injured.

If Dutch Subjects *shall* enjoy now a more extensive Benefit from the Privilege than Great-Britain *has* enjoyed in a former Instance, Great-Britain *will* be injured.

Such free Trade, as the Subjects of Great-Britain enjoyed at *that* time, is reciprocally to be permitted *now* to the Subjects of the States-General, and no other.

But the Intentions of a Treaty do not more subject it to a restrictive Interpretation, than it is restrained by other subsisting Treaties, equally in force.

That

That a Treaty should not subsist in force, it must be abrogated, specially*, by a subsequent Treaty.

The Treaty of February 12, 1673-4, is not abrogated by any Treaty.

All Treaties, specially revived, draw their Force from the Act of Revival.

No Treaties therefore, which are revived, have greater Authority, as being prior, or posterior, in order of Time, but are as one Treaty from the Act of Revival.

The Treaty of February 12, 1673-4, is a revived Treaty.

The Force of an Act of Revival is best seen from the Words of the Treaty of Seville, acceded to by the States-General, November 21, 1729.

Article I. ' All former Treaties, and ^{George II.} Conventions of Peace, and of *Commerce*, ^{1729.} concluded between the contracting Parties, respectively, shall be, as they hereby are, *effectually renewed*, and confirmed, in all those Points which are not derogated from by this present Treaty, in *as full and ample manner as if the said Treaties were here inserted word for word*, the said Parties promising not to do, or suffer any thing to be done, which may be *contrary thereto* directly, or indirectly.'

Not

* Thus the Treaty of October 29, 1709, between Great-Britain and the States-General, is abrogated by express Words in the Treaty of January 12, 1712-13.

- Not only by the last mentioned Treaty of Seville, but by the Article, Hague, December 30, 1675, which is *relative* to and *explanatory* of the Treaty of February 1^o, 1673-4, as of a Treaty subsisting in full Vigor, but by the Preamble to the Treaty of Windsor, August 17, 1685.
- James II. 1685. By the Treaty of Whitehall, August 24, 1689, Article II.
- William III. 1689.
- Anne 1712-3. By the Treaty of Utrecht, January 1^o, 1712-13.
- George I. 1715-16. By the Treaty of Westminster, February 6, 1715-16, Article II.
- George II. 1728. By the Treaty of Westminster, May 27, 1728.
- George II. 1731-2. By the Treaty of Vienna, acceded to by the States-General, February 20, 1731-2.
- Charles II. 1673-4. By all these Treaties severally, the Treaty concluded between Great-Britain and the States-General, February 1^o, 1673-4, is specifically named, approved, and confirmed.

The secret Article of this Treaty of February 1^o, 1673-4, is as follows:

- Neither of the said Parties shall give,
- nor consent that any of their Subjects, or
- Inhabitants, shall give any *Aid, Favour, or*
- *Council*, directly, or indirectly, by Land,
- or by Sea, or on the fresh Waters, nor
- shall furnish, nor consent that the Sub-
- jects and Inhabitants of their Dominions
- and Countries, shall furnish any Ships,
- Soldiers,

- Soldiers, Mariners, *Provisions, Money,*
- Instruments of War, Gun-powder, or any
- *other thing necessary* * for making War, to
- the Enemies of the other Party; and the
- present Article shall have the same Force
- and Virtue, as if it had been included in
- the same Treaty.

This Treaty of Peace and Alliance, February 1^o; 1673-4, was the Basis and Preliminary to that of Commerce, December 1^o, 1674, the present Object of Contention.

Both Treaties are considered in the View of one Treaty by the Article, which is explanatory of them both, Hague, Decemb. 30, 1675. Both are equally subsisting, and in force: Yet each Treaty being contradictory to the other, how is the Question to be determined?

A positive, but permissive Article, must yield to a contrary Article that is equally positive, but negative.

If we determine more favourably, the Point in Debate between them must be *left open to common Principles of Neutrality*, as undecided by equally subsisting Treaties; and in respect of Things nominally specified

D in

* The Words of this Treaty are in Latin, as follows, and point out a relative Contrabandity, (if I may use such an Expression) from Circumstances of Necessity.

• Neque subministrabit, nec subministrari consentiet, victu-
• alia, aut ulla alia *ad bellum, faciendum necessaria* (necessary in
• order to make War) hostibus alterius partis.

in both Treaties, those Articles which are in their Terms mutually destructive of each other, must be withdrawn out of the Question, as necessarily * null and void.

Article IV. Treaty, December 11, 1674, subsisting.

Provisions, Gold, To be carried free to
and Silver, coined and the Enemy of either
not coined, all Sorts of Party.
Metals and Naval-
stores

Secret Article Treaty, Feb. 9, 1673-4, not abrogated, but revived and subsisting.

Victuals, Money, and Not to be carried to
any other thing (be- the Enemy of either
sides Instruments of Party.
War) necessary for
making War, to the
Enemy

The Dutch claim an Extension of carrying free, not only the above Commodities, but all others, being Enemy's Property, in every Place and Manner possible, at any time, by a pretended Construction of the Words of the Treaty of Commerce, December 11, 1674.

The Treaty of Peace and Friendship, February 9, 1673-4, founds the Effence of all Alliance, positively, upon no Aid, nor Favour,

* ' Ubi pugnantia Inter se juberentur, neutrum ratum est.' L. 50, Dig, tit, 17. §. 183.

Favour, nor Counsel, being given to the Enemy of the other Party.

If the Construction and Extent claimed, is admitted, all Confidence, as between Allies, is destroyed; the Enemy enfeebled is favoured, aided with Counsel, and supplied with Means, to carry on a * long and bloody War; the Trade of his Colonies is secured, which are the Object of the War; the Mariners and Vessels before engaged, of Necessity, in the Business of Commerce, are employed to complete the Armaments of the State, and the Ally of the Neutral may be ruined, beyond Recovery, although now superior.

But this constructive Privilege of covering the Property of the Enemy, in so extensive and ruinous a Manner, is contrary to a positive Declaration of a subsisting Treaty, and is granted in special Words by no Treaty; therefore we must reject the Claim to this Extension, or we must allow that which is least supported.

Whatever is the Meaning of the Treaty of December 11, 1674, the same is the Meaning of the explanatory Article of August 30, 1675, as to the Object of Commerce out of Europe, which is the Question.

If the Treaty of December 11, 1674, means only Freedom of Traffic in Europe with

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* See p. 24 of this Case, and the Note.

with the Enemy, then the Explanatory-article means only a Freedom of Traffic, from an Enemy's Port to an Enemy's Port, in Europe.

No Argument therefore can be drawn in favour of the Privilege, as claimed by the Dutch in its Extent, of a Free-trade to the Enemies Colonies in time of War, from this Article, independently of the Treaty of December 11, 1674.

The same Reasons that hold against the Extension of the Privilege without special Words, in the Treaty, hold against the Extension of the Privilege without special Words, in the Article.

The Explanatory-article itself proves against any Privilege to be extended by Construction, without special Words.

If an additional Explanatory-article was absolutely necessary to extend the Freedom of Commerce, permitted in general Words by the Treaty, in one Step, then is another specifical and additional Article equally necessary now, to extend it still farther in another Step.

The last Question remains:

' In the present War between England and France, have the Subjects of Holland discharged their Duty, in the Relation which they bear to England as Neutral-friends and Allies, so as to entitle them to any Benefit of Neutrality, or to the Privi-

' leges

' leges that are supposed to belong to them, by any Treaty?

The Privilege of Free-commerce with the Enemy does not extend by Treaties to America.

The Dutch are therefore upon the Footing of mere Neutrals in America.

Neutrals not carrying Enemy's Property, nor Contraband, nor lending their Names with a fraudulent View to conceal; nor doing any Act that is fraudulent in its Intention or Appearance, are not liable to any Confiscation or Expences attending the Contestation of their own Property: But otherwise the Expences, attending the Proofs, necessary to remove the Presumptions that arise against them, from their own Act, ought to be charged to their Account, although they should be released.

And no Conclusion is to be drawn from a Number released, that therefore they were unjustly detained, or charged with the Expences of Contestation.

But the Dutch have lent their Names to French Subjects to cover French Property.

The Dutch sailing to French Colonies, have feigned * Voyages to their own Colonies, to defraud and frustrate the Subjects of England, in the lawful Pursuit of their Right,

* ' The Precaution taken of feigning Expeditions to our own Colonies,' Dutch Exposition, p. 9.

Right, and in the Prosecution of a just War.

The Dutch have carried Provisions from British Ports to the Enemy, under pretence of Property destined to Neutral-ports *.

The Dutch have suffered their Territory to become the Channel and Repository of the Commerce, and even the Arsenal of Military-stores and Necessaries of the Enemy of England; and have aided and counselled the Enemy, in every Method that might complete his Voyages through their Medium, with Safety, as they hoped, to him, and Impunity to themselves.

The Dutch have failed to and from the Enemy's Colonies, in the View of naturalized or adopted French.

Special Permissions from the French Government have suspended in their Favour, *flagrante Bello*, the established and fundamental

* It is certain that the Dutch Trade, to and from the Colonies of France under these Circumstances, is a Contraband-trade, although many of its Objects are of a promiscuous Nature, if these Circumstances are parallel to this Decision of Grotius.

‘ In tertio illo genere *usus Ancipitis*, distinguendus erit *Belli Status*. Nam si tueri me non possum nisi quæ mittuntur interceptam *necessitas* jus dabit. sed sub onere restitutionis, nisi *causa alia* accedat (scilicet, hæc causa quæ sequitur.)

‘ Quod si juris mei executionem rerum subvectio impeditur, idque scire potuerit qui advexit, ut si deditio vel *Pax* expectabatur tenebitur ille, ut qui *debitorem carceri exemit*, aut *fugam* ejus in fraudem *meam* instruxit. Et ad damni dati modum *res quoque ejus* capi, et dominium earum debiti consequendi causa quæri poterit.’ De Jure Belli, L. 3. c. 1. par. v. §. 3.

fundamental Laws of the Enemy's State in time of Peace, without which they could not sail to the French Colonies, but would be condemned when taken, as Prize to French Subjects.

So far therefore as any one of these Circumstances is true, so far are particular Dutch Subjects liable to all Inconveniences resulting from every Act of their own, inconsistent with the Idea of Neutrality, with the Law of Nations, and the Rights of true, unmixed Hollanders.

By the subsisting Treaty of Westminster, March 3, 1677-8, of perpetual Alliance and Defence, renewed and confirmed by all the Treaties which renew and confirm the Treaty of February 17^o, 1673-4, there is stipulated between the King of Great-Britain, for himself and Successors, Kings of Great-Britain, and the States-General, Confederacy with the Confederates, and Enmity with the Enemies of each other, as follows:

Article IV. ‘ The mutual Obligation of ^{The Fact.}
 ‘ assisting and defending one another is to be
 ‘ understood, and doth extend to the Con-
 ‘ servation and Maintenance of his Majesty
 ‘ and the said Lords the States-General,
 ‘ their Countries and Subjects, in all their
 ‘ Rights, Possessions, Immunities, and Li-
 ‘ berties, (as well in respect to Navigation
 ‘ as Commerce, and every thing else, both

The Fact. by Sea and Land, which shall be found to belong to them by common Right, or have been acquired by Treaties already made, or to be made in the manner aforesaid) *with and against* all Kings and Princes, Republicks and States. So far forth, that if his Majesty, or the said Lords the States, in prejudice to the said Tranquillity, or present or future Neutrality, shall hereafter be *attacked*, or in any manner whatsoever *disturbed* in the Possession and Enjoyment of their Estates, Territories, Towns, Places, Rights, Immunities, and Freedom of Commerce, Navigation, or any thing else, which his Majesty, or the said Lords the States-General now enjoy, or shall hereafter enjoy by common Right, or by Treaties already made, or which may be made as aforesaid; his Majesty, and the said Lords the States-General, as soon as they are informed of it, or required thereto by each other, shall do all they possibly can, conjointly to terminate the Troubles or Hostilities, and procure Reparation to be made for the Loss and Injuries done to one of the Allies.

Minorca invaded and taken. Avowed and notorious Preparations for the Invasion of Great-Britain or Ireland. so that the Enemy's Intention could not be doubted.

Article V. 'And in case the said *Attempt* or *Trouble* be seconded by an open Rupture, that Party of the two Allies, who is not attacked, shall be obliged to break with the Aggressor in *two Months*, immediately

diately after the Party that is already at Rupture shall *require it*; during which time he shall use all his Endeavours by his Embassadors, and other Ministers, to mediate a just Accommodation between the Aggressor and Disturber, and the Party first attacked or molested; and yet shall *in the said time* give powerful Assistance to his Ally, such as shall be agreed upon between his Majesty, and the said Lords the States-General; the which, though there had been no mention made of them in this Article, shall be kept and observed, as if they had been inserted and set down therein. It being already left to the Choice of that Party of the Allies, which shall be at Rupture, to continue to enjoy the Benefit of the said Succours, in case the Conjunction of the Times, and the State of his Affairs shall make him prefer *the Effect* before an open Rupture of his Ally with the Aggressor.'

The Fact. No Declarations made by the States-General to the Enemy, that they could not permit any such Attempts without affording their Ally such Succours as they were bound to furnish.

Separate Article.

Demanded, not complied with, nor any Act done, at the time of Requisition toward complying, or even toward shewing an Inclination to comply. The States to send six thousand Foot well armed, with twenty Men of War well fitted up and victualled.

E Besides

Besides the Stipulations of this Treaty, *Requisition being* made, Succours as above are to be sent to secure the Succession of the House of Hanover, *in consequence of the Requisition.* Treaty of Utrecht, Jan. 1712-13.

Anné 1712-3. Article XIV. 'The States-General shall, at the Request of her Majesty, &c. furnish the Succours hereafter mentioned, to make good the Guarantee of the Succession of the Crown of Great-Britain.'

It appears, in both the above-mentioned Treaties, that the Party requiring is to judge of his own Necessity. In the last mentioned Treaty he is to judge of the Danger of the Barrier, or of the Succession.

The Requisition makes the Succour stipulated to be due, according to the Words of both the Treaties.

Notorious or avowed Preparations, on the Part of a declared Enemy, to attack or invade, necessarily endanger the Object guaranteed, and are a Foundation for the Requisition: Great-Britain therefore is entitled, in such a case, to Succours by both Treaties.

But it is contrary to the Intention of the Contract, that the Party who is to succour, should judge of the Foundation for requiring it.

If it relied upon him, he would have it in his Judgment and Power to succour or not,

not, and the View of the Contract might be frustrated.

If he is * unable, a temporary Inability may be remedied, and it is in his Power.

If a perpetual Inability prevents his giving the Assistance stipulated, the same Inability prevents his receiving any Benefit stipulated.

The Non-performance † of part of an Alliance, is a Dissolution of the Whole, whatever are the Reasons.

The Dutch therefore, as a Republic, having done no one Act towards complying with the several Duties which are placed to their Account by the Spirit and by the Letter of every subsisting Treaty; and their Subjects being guilty of using every Fiction that is contrary to good Faith in their Transactions with the Enemies of Great-Britain, they have forfeited all Title to the express Privileges of any Treaty; much less, under these Circumstances, can they claim a Privilege founded only upon one Treaty (if it is founded at all) by a forced and false Construction.

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* Notwithstanding their own Danger, the Dutch States have neither augmented their Marine nor Army.

† 'Si pars una fœdus violaverit, poterit altera à fœdere discedere, nam capita fœderis singula conditionis vim habent.' Grotius de Jure Belli & Pacis, lib. 2. c. 15. par. 15.

Δυσὶ τὰς Σπονδὰς οἱ μὴ βοηθῶντες οἷς ἀν' ἑνὸς ἑσθλῶς ἔστι δεῖν ἄν τῶν παραβαίνων ἐκότεροι ἢ ὅτις τότε λελύσθαι τὰς Σπονδὰς. Thucyd. Hist. 1. 1. Belli Peloponnesiaci.

Summary Exposition of the Case of the Dutch Ships. Amsterdam. Page 12.

To consider the Objections.—

Objection I. The applying Kingdoms, Countries and Estates, from the Ist Article, to Commodities in the IId Article of the Treaty of December 17, 1674, is unfaithful, and without Foundation.

Answer. It appears to be otherwise, from the View of the Ist and IId Articles, as relative to each other.

Exposition, Page 9.

Objection II. The Proposition of Article II. *But this Freedom of Commerce shall extend to all Commodities which might be carried in time of Peace,* is to be considered in its Connexion and Totality.

Answer. It has been considered so. Proof *Objection I.*

Exposition, Page 8.

Objection III. *If such Commodities as may not be carried into all Countries in time of Peace, may not be carried in time of War, without Confiscation,* then, Muslin and Printed Callicoes carried into France would be deemed a lawful Prize to an English Captor; by the Consequences of this Proposition, which is maintained, in Justification of the Conduct of Great-Britain.

Answer. If a Proposition is true in relation to one particular Fact, it is not to be argued against from its Consequences, when applied to another particular Fact.

If this Proposition is true, so far as it relates to the Words of the Treaty on which it is founded, and to the Case of the Dutch trading

trading in America to the Colonies of France, it is not less true in that relation, because it may not be true in the Case of a French Smuggler, and in Europe, which may be different.

But it may be true with respect to a French Smuggler. There may be no Absurdity in the Consequence, nor any Injury to the Dutchman.

The Objection itself proves, that the Goods of a Smuggler (*being a Frenchman*), would not be protected by the Ship of a Dutchman, *from the Words of the Treaty,* which is the Consequence we are charged with. The Goods of a Neutral Smuggler are out of the Question. The Goods of Enemies are the Object of the Treaty.— We may therefore allow the Consequence, I believe, without overthrowing the Proposition, which is said to be absurd, and therefore not true, upon account of this Consequence.

Objection IV. The Prohibition or Per-
mission of the Commerce in question, is not the Matter of any Engagement between England and Holland, and it never had any Relation to them; but depends solely on his Most Christian Majesty's Will.

Exposition, Page 8.

Answer. If it is not the Matter of any Engagement between England and Holland, then neither England or Holland are bound by it; the Affirmative of which the Author
of

of this extraordinary Assertion intended to prove.

Exposition,
Page 9.

Objection V. The same right and supposed Meaning of the Treaty of 1674, which entitles the English to make Prize of Dutch Ships trading to French Colonies in America, might have entitl'd the Dutch to have made Prize of the Affienta Ship of the English South-sea Company, when the States continued the War with Spain, after the Peace concluded between England and Spain at Utrecht, July 11, 1713, till about June 26, 1714, when Peace was concluded between Holland and Spain.

Answer. This is arguing from Consequences against a Thing that is true, from a Supposition of a Thing that may not be true, nor similar in all Points, as it was answered to *Objection III.*

It would be sufficient to say, if the Dutch might have taken the Affienta Ship consistently with the Treaty in question, they would have been justified in doing it.

But the Case answers itself. It was the Ship of the South-sea Company, the Goods the Property of the South-sea Company; it was not a Ship licens'd by a particular personal Permit, but it sail'd under the Sanction of a National Treaty; nor were the Goods on-board the Goods of the Enemies of Holland.

But

But lastly, the Case never exist'd, to exercise the Indulgence of Dutch Captors.

Therefore no reciprocal Indulgence can be claimed for Dutch Traders in the present Question.

It appears from the Convention of Madrid, May 15, 1716, that the Affienta Ship Geo. I. 1716. never fail'd during the War between Holland and Spain.

The Words are, Paragraph 8.

'As to the yearly Ship, and which they have not sent to the Indies in the Years 1714, 1715, 1716, his Catholic Majesty is pleas'd to make the Company amends.'

That it did not fail in the Year 1713, and the Reason, appear from Paragraph 6.

Objection VI. France does not confiscate Exposition, Spanish, Swedish, Danish, Hamburgh, or Page 10. Dutch Ships bringing Merchandises to England.

Answer. They do not carry Merchandises from English Colonies to Europe. But France, with very great Severity, confiscates Dutch Ships for Reasons that English Courts of Admiralty have with Tenderness considered, only as just Causes of detaining *, and of Expences, hitherto; in which Regulations of France, whether justified by the Law of Nations or not, the Dutch Government

* See in the Appendix to this Case, the Marine Ordonnances of France presented to the States of Holland.

ment have acquiesced; and they are *become the Law of Nations* to them by their own Acquiescence, in all Cases where Treaties do not extend, or operate between them and their Ally the other Party at War; who, in such Cases, may, whenever he pleases, in all future Decisions, refer to these Regulations too, *as the Law of Nations*, acquiesced in by the Neutral, and as equally binding in the Favour of the Ally; since he has a Right to be put upon a Level with his Enemy, whether he demands it, or not, of the Neutral.

Exposition,
Page 12.

Objection VII. The English Government have in their Power to put a Stop to such Proceedings against the Dutch Traders, without referring them to the tedious and so very expensive Course of Ordinary Justice.

Answer. In Despotic Governments, as in Turkey, Judicial Proceedings are short and precipitate, because they are arbitrary. English Subjects, committing Acts of Piracy, are apprehended and tried in such Cases, by Law; nor can they otherwise be tried or punished. As to Expences, no Dutch Ship detained, having produced all authentic Proofs of a truly Neutral Property and Conduct, and of the strict Observations of Good Faith in every Act, is, or ever *

was

* I beg leave to observe, that the Concession made inadvertently by the Author of the *Reponse au Memoire*, is not grounded

was burthened with Expences of Contestation; but, on the other hand, is entitled to Demurrage; and the Captor, who has unjustly, and without *probable Cause*, at his own Peril, detained the Neutral, is punished with full Costs, and liable to every other Punishment that may result from Disobedience to the Instructions of his own Government, which he is bound by every kind of Obligation to obey.

Objection VIII. The Sentences of the English Courts of Admiralty have been over-hasty, arbitrary and unjust. Exposition,
Page 12.

Answer. That the Sentences of the English Courts of Admiralty have been over-hasty, is answered by *Objection VII.*

That they are unjust and arbitrary, is not true: For they decide by Evidence out of the Mouth of the Captured Party, and not of the Captor, whose Evidence, as well as the Evidence of third Persons, is never admitted, but where no other Proof can be had; as when the Captured abscond, or have destroyed all the Papers. The Evidence * of the Ship's Crew, and the Ship's Papers,

grounded upon Fact.— ' Je souhaiterois seulement qu'on
peut trouver quelque expedient pour empecher que les Hol-
landois agissant de bonne foi, fussent sujets a payer des fraix
de procedures dont ils ne sont coupables. C'est un grief
je l'avoue: on pourroit le justifier; mais il vaudroit mieux
l'oter.—P. 8. Response au Memoire.

* See the Royal Instructions, June 4, 1756. Article IV.
And the Act of Parliament for the Condemnation of Prizes,
1756.

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Papers, jointly condemn, or acquit: If they contradict one another, farther Proof is indulged to be brought by the Claimant; from the Defect or Neglect of which, if he suffers, it is with Justice—But the English Courts of Admiralty decide not by the Laws of England, with regard to Ships or Cargoes detained as Prize of War, any farther than those Laws co-incide with the Principles of Law *acknowledged by all Nations*; which are the Foundation of their Decrees; they have no Interest between the Parties, but are entirely independent and remote, as are all other English Courts of Justice, from the immediate Direction of the Throne, in particular Cases, unless where there are Instructions previously existing, before such Cases came before them; and which Instructions are in consequence of an Act of Parliament. They are therefore not less the Courts of the Captured, than of the Captor. Nor are any Ships, or Property of Neutrals, detained in the present War, yet, properly speaking, Prize, tho' condemned in one Court of Admiralty; if the Claimants do not forego of themselves their Right of Appeal. There is a Court of Review in the last Resort, consisting of Persons of the highest

See also the Letter of his Grace the Duke of Newcastle; and the Answer to the Memorial of the Prussian Minister, from p. 10. to p. 17. London, 1753.

highest Rank and Understandings, to do complete and ample Justice between all Parties.

Objection IX. In Courts of Appeal in the last War, there were Cases determined favourably with respect to the Dutch trading to the Enemy's Ports.

Answer. In Decisions that were made after the last War was ended, there may perhaps have been Instances of one or two Dutch Ships trading to the Enemy's Colonies, with great Lenity released, under particular Circumstances; adjudged, nevertheless, to pay all Costs to the Captor. But in National Causes *, under different Circumstances and with different Consequences, and de-

* It is by no means the Spirit of the Roman Law, or of the Law of Nations, to rest upon Precedents.

' Non Exemplis sed Legibus Judicandum est.' L. 13. Cod. & inter l. omn. Judic.

' Licet is qui Provinciæ præest omnium Romæ Magistratum vice & officio fungi debeat, non tamen spectandum est quid Romæ factum est, quam quid Romæ fieri debeat.' L. 12. Dig. de Officio Præfidentis.

' Senatus non ligatur suis anterioribus Sententiis, quin valeat postea in contraria judicare, Christinæus.' Vol. I. Decif. Concilii Mechliniæ.

' Argumentum à simili est multum fragile & infirmum, nec procedit quando datur dissimilitudo etiam parva.' Everard. Topic. loc. à simili, §. 2.

' Res per se valde est perniciofa, exemplis non legibus judicare, cum ex levissimâ personarum, vel locorum, vel temporum judicia mutantur.' Bodinus de Republ. l. 6. c. 6.

' Mutatis hominibus quid obstat mutari Sententias?' Bynkerhoek. Quæst. Juris Publici. L. 1. c. xi. p. 92. Ed. 1752. Leyden. F 2

determined by different Persons, at different Times, there may very justly be different Determinations. For all Decisions in former Cases, are but so many Inferences from Principles; and therefore cannot have any Authority farther than the Principles themselves shall be found to have Authority, upon a fuller Examination. But in the last War, Holland had entered into the Confederacy; her Troops had taken the Field with those of Great-Britain, against the common Enemy; and she had sent the Succours stipulated, immediately, such as they were, upon Requisition made. The contrary is the Case now, in every Particular.

Exposition,
Page 13.

Objection X. No Warning nor Caution was given.

Answer. There was no Ground for Notification. If the French Government had granted to the States of Holland generally, the *perpetual* Privilege of a free Trade to her Colonies in Peace and in War, by solemn Treaty, prior to the present War, and had not granted a *temporary* Privilege, *ex post facto*, to Dutch Subjects particularly, then it might have been expedient for Great-Britain to have opposed her Protestation, and to have notified, that in case of a War breaking out, she would not be bound consequentially, nor prejudiced by that Treaty; because otherwise she would have

have been esteemed to have acquiesced in it.

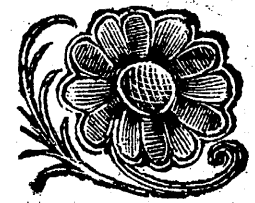
But the Case is totally upon a different Footing, as it appears from Facts.

2dly, There was no Ground to notify to the Dutch Government, what was understood to be the Extent of that Privilege of Free Trade, which is granted to them, and which they are still allowed, by the Treaty of December 11, 1674.

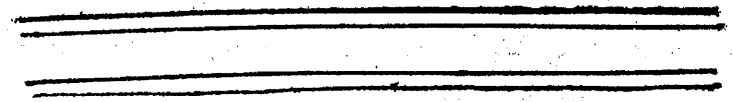
There was a *known* Precedent for the Extent of the Free Trade which Holland might, and still may carry on with the Enemy in time of War, by the Example of that which was carried on by the English with France from the Year 1674 to 1678, during the War between Holland and France; therefore there was no need to notify concerning a Trade, a Precedent of which was already notorious; and which was not expected to be carried on in so extensive a Manner, as to render all Lenity and Indulgence impossible, and the *least Delay to impede it*, dangerous and fatal.

Lastly, There are Times, Dispositions, and Circumstances, when such Notices might be construed as amounting to a Declaration of War; and of those Times, Dispositions, and Circumstances, the Governing Powers are the sole and proper Judges, as they are of

of the Inconveniencies and Dangers which may result under such Views to the State, and to their own Country; by the Exigencies of which they will most certainly be guided, as they will most certainly be justified.



A P-



A P P E N D I X.

THE States of the United Provinces, in their Wars with other Countries, have, at different Times, interdicted all other Neutral States any Communication with the Enemy, whatever, under Pain of Confiscation of both Ships and Cargoes.

In Proof of which are the Placarts, published July 27, 1584, April 4, 1586, August 4, 1586, June 26, 1630, and December 5, 1652.

In the Placart of June 26, 1630 *, are the following Words :

Article I. ' Dat Schip en goed van Neu- Article I.
' tralen, in of uyt vyandelike havenen in
' Vlaanderen komende, of zoo na dezelve
' zynde,

* ' Satis defendi potest rigor ejus Decreti,' 26 June, 1630. Bynkerhoek. Quæst. Juris Publ. Ed. 1752. Printed at Leyden, l. i. c. xi. p. 91.

zynde, dat ongetwyfelt is, dat zy daar in willen loopen, geconfisqueert zullen werden, om dat haar Hoog Mogende de voorschr, havenen met Oorlog schepen continuelyk beset hoouden, om de mercie met dan Vyand aldaar te beletten, 't welk van ouds in gebruyk is geweest, op't exempel van alle Princen, die ook gelyk regt in zodanige gevallen gebruyken.'

Article I. Art. I. ' *Neutral Ships and Goods* passing in or out of the Ports of the Enemy in Flanders; or *being so near them*, that there can be no Doubt but they will go into them, shall be confiscated: Because their High Mightinesses continually beset those Ports with Ships of War, in order to hinder any Commerce with the Enemy. Which has been an ancient Custom, warranted by the Example of all Princes.'

Article II. Art. II. ' Indien uyt de vracht brieven, of andere bescheiden bleek, dat de schepen na ne zelve Vlaamsche havenen gedefineert waren, niet jegenstaande zy nog verre daar van daan zynde wierden agterhaalt, ten ware zy proprio motu, eer zy in't gefight of gevolg van's Land's schepen raakten, *re adhuc integrâ pœniterende*, veranderden, 't geen, *pro re nata, ex con-*

jecturis & circumstantiis, zoude geoordeelt worden.'

And also Ships and Cargoes are to be condemned.

Art. II. ' If, from the Bills of Lading, Article II. or from other *Circumstances*, it appears that the Ships were destined to the said Ports in Flanders, notwithstanding they were overtaken at a Distance far from them, or had of their own Motion changed their Course before they came in Sight, or were chased, which shall be determined, *pro re nata*, from probable Conjectures and Circumstances.'

Art. III. ' Welke uyt de voorschr, ha- Article III. venen komen (sonder nood daar in geraakt zynde) al wierden de zelve verre daan van daan genomen, zoo lang zy van die reyse in geen vrye havenen van haar of een neutraal geweest zyn, maar geweest zynde, niet, ten ware zy in't uytkomen der voorschr havenen van's Land's schepen gevolgt, en in een andere haven, als haar eigen, of daar de reyse gedefineert was, gejaagt, en wederom uytkomende op zee veroverd wierden.'

Art. III. ' Or which Ships come from the Article III. afore said Ports (unless driven into them by
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‘ Necessity) altho’ they were taken at a Di-
 ‘ stance far from them, so long as they have
 ‘ not on that Voyage been in any Free Port
 ‘ of their own, or any Neutral Port; but
 ‘ having been in, (*viz.* in such Ports of the
 ‘ Enemy in Flanders) notwithstanding, in
 ‘ case, if, on their coming out from the
 ‘ aforesaid Ports, they are followed, and
 ‘ driven into another Port which is their
 ‘ own, or to which their Voyage was destined,
 ‘ and upon their coming out again from
 ‘ thence, if they are taken at Sea,

The Ships and Cargoes are in this Case
 to be confiscated.

The Placart of July 27, 1584, considers
 the Blocking up of the Enemy in a most
 extensive Manner, so as to comprehend the
 Enemy’s Coast; which is grounded upon
 this Principle, as it is to be imagined, that
 a Fleet lying in the Entrance of a Harbour
 is not necessary to make the Meaning of the
 Word Blocked up; which may certainly be
 taken, as it is by the Dutch States in this
 Placart, in a wider Sense; and that every
 Harbour is blocked up, *quoad hunc*, to every
 Ship destined for that Harbour that is taken;
 altho’ many Ships may escape: It is blocked
 up to all Intents and Purposes as to that
 particular Ship; and, for this Reason (to
 use

use the Words of a Dutch modern * Writer
 of great Authority) because the Captured
 are gone so far as not to have it in their
 Power to return. And it may be observed,
 that it is indifferent, certainly upon the
 above-mentioned Principle, whether the
 Ships are taken by single Cruizers, or by a
 Squadron.

*The Words of the Placart, confiscating both
 Ships and Cargoes, are:*

‘ Die binnen de banken van Vlaanderen
 ‘ of op de kusten van eenige verbodene
 ‘ havenen gevonden worden, zullen geoor-
 ‘ deelt worden tegen dese Ordonnantie ge-
 ‘ daan te hebben, ten ware zulks gebeurde
 ‘ door treffelyke en wel bekende nood.’

‘ Ships, that are found within the Banks
 ‘ of Flanders, or *on* the Coast of any for-
 ‘ bidden Harbour, shall be adjudged to have
 ‘ offended against this Ordonnance, *even*
 ‘ where this happens from evident well-
 ‘ known Necessity.’

Ships and Goods taken *near* the Enemy,
 are presumed to be going to the Enemy,
 and confiscable. Vide Placarts published by
 the States-General, 1665, 1672.

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* ‘ Quum eo jam sunt progressi unde locus redeundi non
 ‘ est.’ Bynkershoek. *Quæst. Juris Pub.* L. 1. c. xi. p. 89.

The Ordonnance of the States-General, prohibiting all Commerce with England, December 5, 1652, is as follows:*

<i>C'est pourquoy etant obligés a raison de ces hostilités de reparer & faire reparer les dits dommages avec l'assistance de Dieu, d'en prevenir d'autres a l'avenir, & d'empêcher autant qu'en nous est a ceux dudit Gouvernement les commoditez, & les choses necessaires par lesquelles ils pourroient continuer d'apporter du dommage a l'Etat de ces Pais, & aux bons habitans d'iceux; Nous avons trouvé bon & jugé necessaire d'ordonner a tous ceux qui sont sous notre Domination & de leur deffendre bien expres-</i>	<i>sement</i>	' Soo ist, dat Wy door de voorsz vyantlicke aggressien genootdruckt zijnde, omme de voorsz, schaden, door God's hulpe, te repareren, doen repareren, ende alle vordere in toecomende, voor te comen, oock daar benefens de ruine van de Commercie ende Navigatie deser Landen, soo veel doenlijck, te beletten, ende tot dien eynde die vande voorsz. Riegeringe, soo veel in Ons is, te benemen, ende te verhinderen de commoditeyten ende be-	' hoeftten,
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* This Ordonnance is published in Low-Dutch and French, in the *Corps Diplomatique*, Tom. VI. Part 3. Printed at the Hague, 1723.

<i>sement, comme aussi d'avertir toutes autres Nations qui sont en Alliance, Amitié & Neutralité avec cet Etat; comme nous Ordonnons, &c.</i>	' hoeftten, daer mede de Selve den staet deser Landen, ende de goede Ingesetenen van dien, verder afbreuck souden honnen doen, derhalven goet gevonden ende noodich geacht hebben, allen dan geenen die onder onse gehoor saemheyt zijn staende, te ordonneren, ende wel Scherpelick te verbieden oock in 't vruntlijck te advertieren en te waerschouwen alle andere Natien met desen staet in Verbondt Vruntschap, of te Neutraliteyt staende, &c.
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Being obliged, therefore, by reason of these Hostilities, with God's Help, to repair, and cause the said Damages to be repaired, to prevent others for the future, and as far as possible to hinder the Ruin of the Commerce and Navigation of this Country;

try; and for this end to deprive those of the said Government, as far as it is in our Power, of the *Conveniencies* and *Necessaries*, by which they might continue to *damage* the State of this Country, and the good *Inhabitants* thereof; we have thought it fit and necessary to order all those who are under our *Obedience*, and most expressly forbid them, as also to give *Notice to all other Nations* which are in *Alliance*, *Amity*, and *Neutrality* with this State; as we do, &c.

Que d'icy en avant personne des Habitans de ces Pais n'ait à s'ingerer de mener ou transporter hors de ces Pais, ou hors d'autres Pais, Royaumes, Places ou Villes directement ou indirectement, aucune Merchandise ou Denrée de quelque sorte, qualité, ou nature qui se puisse être, nulle exceptées, dans quelques Ports, Iles, Villes, & Places d'Angleterre, Ecosse, ou Irlande, ou autres de la Domination Art. I. Eerstelijck, dat van nu voortoen niemant van d'Ingesetenen deser Landen, hem sal hebben te bevorderen uyt dese Landen, ofte oock uyt eenige andere Landen, Koninckrijcken, Plaetsen, ofte Steden, te vervoeren ofte transporteren, directelijck, ofte indirectelijck, naar eenige Havenen, Eylanden, Steden, ofte Plaetsen van Engelandt, Schot-

tion du present Gouvernement d'Angleterre, ni d'avoir aucune Correspondence avec les Habitans des dits Royaumes, ou Dependances, par Lettres ou autrement, tendantes au desavantage de cet Etat. Schotlandt, ofte Yerlandt, ofte anderen onder de gehoorsaemheyt vande jegenwoordige Regeringe van Engelandt staende, eenige waren, Gooderen ofte te Coopmanschappen, van vat foorte, qualiteyt, ofte nature de Selve oock souden mogen wesen, geen uytgedondert, ofte oock eenige correspondentie ende gemeenschap met d'Indwoonderen van Engelandt voornoemt, ofte hare onderhoorigen, door Brieven ofte anderfints, stricken ende tot naedeel van desen Staeten, te houden, in eeniger manieren, dat oock niemandt ter We-relt, al-hoe-wel en Vreemdelingh, ende geen Ingestenend deser Landenzijnde, hem't geen

Quaussi Personne du Monde, quoi qu'Etranger, & non habitant de ces Pais, n'ait à entreprendre de faire rien de ce qui est dit ci-dessus, sur peine d'être punis sans aucune connivence, comme Ennemis de cet Etat, & en outre sur peine de confiscation des Vaisseaux & Merchandises qui se trouveront avoir eu dessein d'aller en Angleterre, ou autres Places comme dessus, ou la valeur d'iceux & à icelles, au cas qu'ils soient déjà retirés & qu'on ne les ait pu saisir,

' geen voorſz. Is uyt ' pooght worden naer
 ' deſe Landen ſal heb- ' Engelandt voornoo-
 ' ben t'onderwinden, ' emt, ofte andere
 ' op pene van daer ' Plaetſen als vooren,
 ' over, als Vyanden ' vervoert te worden,
 ' vanden Staet, ſonder ' ofte de waerde van
 ' eenige conniventie, ' dien, by ſoo verre
 ' geſtraft te worden, ' de ſelve albereyts
 ' ende voorts op ver- ' uytgevoert, ofte an-
 ' beurte van alle de ' derſints niet te be-
 ' Schepenende Good- ' komen ſullen wer-
 ' eren die men be- ' den.'
 ' vinden ſal, dat ge-

Article I. ' That from henceforward
 ' none of the Inhabitants of theſe Coun-
 ' tries offer to carry, or transport out of
 ' theſe Countries, or *out of any other Coun-*
 ' *tries*, Kingdoms, Places, or Towns, di-
 ' rectly, or indirectly, any Merchandiſe, or
 ' Commodity of *any Sort, Quality, or Na-*
 ' *ture ſoever*, (none excepted) into any
 ' Harbours, Iſlands, Towns, and Places of
 ' England, Scotland, or Ireland, or others
 ' in the Dominion of the preſent Govern-
 ' ment of England, nor to have *any Corre-*
 ' *ſpondence* with the Inhabitants of the ſaid
 ' Kingdoms, or Dependencies, by *Letters*,
 ' or *otherwiſe*, tending to the Diſadvantage
 ' of this State. Neither ſhall any Perſon
 ' whatever, *though a Foreigner*, and *not an*
 ' Inhabitant

' * Inhabitant of theſe Countries, undertake
 ' to do any thing of what is ſaid as above,
 ' on pain † of being puniſhed, without any
 ' Connivance, as Enemies of this State.

' And moreover, on pain of forfeiting
 ' ſuch Ships and Merchandize, as ſhall
 ' appear to have been deſtined for England,
 ' or other Places as above, or the Value
 ' thereof, in caſe that they are already
 ' withdrawn, and cannot be laid hold of.'

The Contents of other Articles are as follows :

Article IV. ' All Neutral-ſhips are to
 ' keep the high Seas, and not to be found
 ' upon the Coaſts, and particularly in the
 ' Bays and Creeks of the Enemy.'

Article V. ' To be viſited, and their Do-
 ' cuments ſearched, that the Dutch Com-
 ' manders may be aſſured that they are not
 ' going to England; if it appears from the
 ' Documents, or from other Circumſtances,
 ' that they are deſtined thither; then they
 ' may

* Bynkerſhoek. Quæſt. Juris Pub. L. 1. c. x. p. 33. ſays as follows.

† ' Negant Fœderati et focii noſtri ſubditum ad communem
 ' hoſtem commeantem a nobis puniri, vel res ejus publicari
 ' poſſe, quemque enim principem ſua ipſius edicta exſequi,
 ' adeoque nullas hic eſſe Fœderatorum partes. Sed *ratio*,
 ' *uſus* atque *ipſa Utilitas* eam ſententiam evertunt. Excute quæ
 ' de ea re, habet Aitzema. Hiſt. Belg. L. 46. p. 629, 630.

‘ may *safely* be brought in for Adjudica-
‘ tion.’

Memoire Instructif, or the Ordonnance and Regulations delivered by the Court of France to the States-General of the United-Provinces, published by Authority in the Utrecht Gazette, July 8, 1756.

PREAMBLE,

‘ Every Power at War is naturally atten-
‘ tive to prevent its Enemies from carrying
‘ on a free Trade, under the Protection of
‘ Neutral Colours. It may happen, for
‘ example, that notwithstanding a Ship
‘ carries Neutral Colours, that the Ship it-
‘ self, and the Goods on-board her, may
‘ really and truly be the Property of the
‘ Enemy, which is, what is termed, a
‘ *Navire Masqué* (or a Ship disguised). In
‘ such a case, if the Enemy's Property is
‘ discovered, the Ship would be deemed a
‘ good Prize.

‘ As during a War every Power is *justified*
‘ in suspecting that Disguise and Artifices
‘ will be made use of, the Privateers are
‘ diligent in stopping Neutral-ships, to *ex-*
‘ *amine* by the Papers and Documents,
‘ which they are obliged to have on-board,
‘ if

‘ if they are really Neutrals, or if the Ships
‘ or Cargoes belong to the Enemy.’

The Ordonnance of the Marine and Regulations of France have exacted certain Conditions and certain Forms, which, when observed * by a *Neutral-ship*, that Ship is considered as truly neutral; but if, on the contrary, it is found that there is a Failure in any of those Forms and Conditions, the Ships are to be presumed to be disguised, that is, to belong to the Enemy, and are to be deemed lawful Prizes.

It must also be here observed, that the Regulations established by France during the War, are not particular to her only, but that other Nations have established nearly the same.

As the Hollanders are neutral in the present War, it is their *Interest* to conform to the Regulations of France, to prevent their Ships being declared good Prizes.

1. Among the Number and Quality of the Papers which they are to have on-board their Ships, must be the Charter-party, Bills of Loading and Invoices: where these

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Do-

* It appears by this, that the French Admiralty condemns or acquits all other Neutral-ships upon these Principles, as well as Dutch Ships, and that it considers these Principles as the Law of Nations.

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Documents are not found, the Ships will be deemed good Prizes.

2. It will not be sufficient that the Ships have the Bills of Loading on-board, but they must also be found signed by the Captain; if they are not so signed, they will be considered as null, and the Ships and Merchandizes will be adjudged as good Prizes; because from such Defect they will be presumed to belong to the Enemy.

N. B. It was always customary to make double and triplicate Bills of Loading, and till now they thought that in Holland it was not necessary, that those which the Captain carries should be signed by him, and that he had them to serve only as Memorandums, to ascertain the Merchants to whom he was to deliver the Goods, and to enable him to demand his Freight; nor in the last War were such Things commonly practised; which however has been the Occasion of the Confiscation of many Ships.

3. If a Dutch Ship shall be met with by a French Privateer, the Captain is to take care not to throw, nor cause to be thrown, *any of his Papers* into the Sea; if it should be proved that *any kind* of Papers were thrown overboard, the Ship and Cargo shall be declared a good Prize.

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4. The Dutch are further to observe, that the Super-cargo, Clerk, or Marine-officer, is not to be a Native of any Country at Enmity with France; and that not more than a Third of the Ship's Crew be the Subjects of the Enemy. If these Particulars should not be observed, the Ship shall be declared a good Prize, and presumed to belong to the Enemy.

5. Among the Papers on-board Dutch Ships, must be the Equipage or Muster-roll, authenticated by the public Officers of the Place from whence they came: when this Authenticity is wanting, the Ships will be declared good Prizes.

6. The Dutch Merchants are likewise to observe, not to export by their Ships, any Contraband-goods, such as Fire-arms, Swords, Cutlasses, and other Things useful and necessary for the Purpose of War, under pain of Confiscation.

7. If the Dutch Ships carry any Goods or Merchandize of the Growth or Manufacture of the Enemies of France, they shall be esteemed good Prizes; but the Ships shall be discharged.

N. B. The Regulation made in the last War, permitted the Dutch to trade with
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the Enemy, in conformity to the Treaty of Commerce made with the States in 1739. But as the King revoked that Treaty at the Conclusion of the War, the Goods of the Growth or Manufacture of England, or belonging to the English, which shall hereafter be found on-board a Dutch Ship, shall be declared good Prize, unless the 14th Article of that Treaty should hereafter be renewed.

8. The Licence or Passport, which may be granted in Holland to a Dutch Ship, shall be of use only for that Voyage for which it was given; that is, to go from the Place of its Loading, to that of its Destination, and from thence to return to Holland. If it should make any other *intermediate* Voyages with that Passport, it shall be declared a good Prize.

9. When the Licence or Passport shall be given in Holland to a Dutch Ship, it must be declared in that or some other Paper on-board, that the Ship was, at the time of granting it, in one of the Ports of Holland: in failure of which she shall be deemed a good Prize.

10. If the States of Holland should grant Passports or Licences to the Owners or Masters of Ships, Subjects of an Enemy of

of France (unless such Owners or Masters shall have resided, and been *naturalized* in Holland, * *before* the Declaration of the present War) the Ships and Merchandize shall be confiscated, as reputed to have belonged to the Enemy, even though the Ship should have been built in Holland.

11. If a Ship is English-built, or formerly belonged to the Enemy, the Dutch Captain must have on-board authentic Papers, and a Bill of Sale certified by the public Officers in Holland, to prove that such Ship is Dutch Property, and was such † *before* the Declaration of the present War.

N. B. It is further required, that it be proved by the Papers on-board, that the Deed of Transfer of the Property of the Ship has been registered by the principal Officer of the Port in Holland, from which the Ship has departed; and without these *two* Proofs, the Ship may be declared a good Prize; of which there were several Instances in the last War.

12.

* This shows how much the French were aware of the Readiness of the Dutch to grant Burghers Briefs to any that apply for them.

† From this Article it seems, that the French do not allow the Dutch to purchase, in time of War, any Ships of the Enemy.

12. If during the present War, any Privateer, or Ship of War, should take any Ships English-built, and that those Ships should afterwards be sold to the Dutch, or other neutral Subjects, there must always be found on-board of them Documents to prove the *Captures* as well as the Sale; without which, such Ships will be liable to Condemnation.

This Account contains therefore the principal Rules that Dutch Ships are to observe (not but that other neutral Powers are under the same Restrictions regarding their Ships) and the principal Precautions which they are to avoid, being declared good Prizes in case they should be taken during the Course of the present War, by the French Men of War or Privateers.

F I N I S.