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From the WEEKLY CHRONICLE.

Mr. Minns,

THE general pretensions of the Americans to a right to engage in the Colonial trade of the enemies of Great-Britain, particularly as they appear in the Remonstrance of their Minister to the British government, have been so ably discussed, and so satisfactorily refuted, in a letter which was printed in your last paper, that it seems scarcely necessary to add any thing further upon that subject. There are however, some collateral points and arguments, in other documents, proceeding from equal authority, which may seem to require a more specific answer. After a few preliminary remarks, therefore, rather by way of recapitulation of what I consider as already proved, than as new matter, I shall proceed to state some observations upon those points, to which the writer of that letter has either not adverted, or which he has but incidentally mentioned.

FROM the earliest times of systematic enquiries into the rules, which were to serve as guides for the conduct of independent nations, the adjustment of the respective claims of neutral, and belligerent powers, has ever been considered as perplexing and difficult. The right of trading uncontrolled, with any consenting people, set upon one side, the right of restraining this traffic in certain cases, asserted on the other, have both been maintained with equal warmth, and confidence, and supported with no small appearance of plausibility.

WHETHER there may be any competition of real rights in other cases, is not of the present consideration, but I think it has been fully established that if a principle be admitted, which I believe has never been denied, that a nation cannot aid and abet one of the powers at war against the other, without a breach of its neutrality, in the question of the colonial trade, no such conflict exists. It has been shewn that that branch of trade is an injury to Great-Britain in its very nature, without a shadow of right to plead in its defence. It is, in its origin, its existence, its very essence, and its effects, an assistance given to one enemy at the expense of the other, in their respective relations as belligerents, and consequently in their hostile operations. If it had not been an important object to Great-Britain, in the way to intercept the Colonial communications of France, and to deprive her of resources had not supplied the means of effecting it, no stagnation of the colonial trade would have taken place. If France had not, in consequence of the distresses imposed, required relief against the maritime exertions of Great-Britain, the monopoly would still have continued. The opening of the markets therefore, was neither more or less, than an application to neutrals for aid against Great-Britain. If neutrals by engaging in it could not have assisted France, they would not have obtained the privilege, and if it had not been an expedient of that country to counteract the operations of her enemy, Great-Britain would never have objected to it. It bears no resemblance then to those usual and habitual branches of trade, which a neutral may justly be said to have a right to carry on as well during a state of war as of peace, because in peace it has no existence at all, and in war it exists only as an aid to one party, and an impediment to the other, in their respective systems of warfare.

BUT I mean now only to advert to the assertions contained in the Message of the President of the United States, to the Senate and House of Representatives, and in a Letter of Instructions written by the American Secretary of State, to James Munroe Esq. that the principles held by Great-Britain, are new unacknowledged by the usage of nations, contrary to the most approved authorities, and that they have moreover been virtually renounced by Great-Britain, both through Commissioners appointed by treaty, and in His Majesty's Instructions explained in the decisions of the maritime tribunals.

THERE is an evident fallacy in the assertion that the principles maintained by Great-Britain, are of "modern date" "or novel doctrines." The principle itself is confounded with the application of the principle. The principle itself is coexistent with the Law of Nations, or rather with the Law of Nature, which is only another word for common sense, justice, and reason, that he who assists one enemy, in the operations of war, at the expense of the other, is no longer a neutral, but a friend to one party, and an enemy to the other. In what the assistance may consist must depend upon circumstances. It is impossible to ascertain *a priori* every case which may arise. Those of contraband and blockade have been long settled, and universally admitted, because they must have early and frequently occurred. But assistance is not limited to those two cases only. Whenever other modes of aid are discovered, the belligerent has a right to resist them; not by any new principle but by an application of the old principle to existing circumstances. New situations create new modes of warfare, new points of attack, and defence. New modes of assistance will consequently be resorted to, but not the less unneutral, and hostile because they may have been unforeseen, because they may not have been distinctly specified by jurists, or provided for in any treaties.

It happened so with respect to contraband. Changes in the practice, and the objects of war render a great part of the old list of prohibited articles almost useless, others, not usually enumerated, become more serviceable, and even essential. Neutrals, infligated by their views of private

emolument, for some time strenuously contended that none but the article in the old catalogues could possibly be unlawful. The point was fairly discussed, such doctrines which make the Law of Nations a law of the letter, and not of the spirit, could not stand the test of reason, and they were obliged finally to abandon them.

THUS the application of this principle to the particular case of the Colonial trade must, in one sense, necessarily be of modern date, because the subject matter is not of ancient times. It could not be applied to Colonies, before Colonies existed. Their establishment, peculiar laws and situation, are within a few centuries; and it was long, before their real benefit was fully understood, and experienced. It is only since a few years that they became of consequence enough to form an object of attack on one side, and of protection on the other, and therefore it is but recently that a Neutral by trading with the Colonies, could materially assist an enemy. The very moment the *casus faderis* arose, the old rule was considered as immediately attaching to it. The plan of relaxing the colonial monopoly and admitting Neutral merchants "pour approvisionner et vendre les Colonies," in time of war, as far as I am informed, was first adopted by France about the year 1705, under Mons. Pontchartrain then Minister of the Marine. "Upon its first introduction it was considered on all sides as an expedient of war, which neutral nations ought not to aid, and which this country was under no obligation from the Law of Nations to tolerate," and the very first Neutral vessels employed in the service were made prize. In the year 1756 and 1779, and at other periods, the same practice was resorted to, and with the same consequences,* without even a remonstrance as far as I have heard, either on the side of France, or of the Neutral Countries. The principles then now asserted by Great-Britain and said to be novel doctrines and mere innovations, are at least of a century standing, and certainly as old as the very first existence of the case to which they apply.

It is said too, that "this practice is unacknowledged by the usage of other nations." If this were the fact, to make it at all applicable to the question, it must be shewn that they were in the same predicament with Great Britain. I am not aware that the same case in its full extent, ever happened to any other nation. No other Country engaged in war with an Enemy possessing valuable Colonies, has ever obtained such a decisive naval superiority as totally to annihilate their trade, and connection and to compel them to open the market to neutrals. But the same principle of preventing neutrals from engaging in the carrying trade of the enemy, has been extended by France, under the old, as well as under the new Governments to a much greater length than ever was contended for by this Country. We are informed by the Code des Prizes, that as early as the year 1704, it was ordained, that "La totalité de la Cargaison sera bonne prise, si, chargée sur un navire neutre elle est du Cru et fabrique de l'ennemi, et destinée pour un état ennemi." The whole of the cargo shall be "good prize, if, laden on board a neutral ship, it is of the growth and manufacture of the enemy, and destined for the enemy's Country." This comprehends all exportations, and importations between the mother country and the colony, whether direct or circuitous, and whoever may be the proprietors of the commodities. To the regulations, and practice of that country in more recent times I apprehend no neutral would wish me to have recourse for precedents.

THIS affords amongst innumerable instances, which are evident upon the mere inspection of their respective Codes, that in the most palpable contradiction to the calumnies continually repeated of the naval oppressions said to be inflicted upon neutral commerce, by Great-Britain, that country has always adopted a milder system of maritime laws than France.

It is another charge against these British principles "that they are contrary to the Law of Nations as settled by the most approved authorities." As to the particular question of the colonial trade, no authorities are to be expected in those venerable writers whose impartiality, learning, sound sense, and experience, have justly rendered them the arbiters of nations, because the case did not arise in their day. But the principles which I have already laid down, by which that question must be decided, and upon which Great Britain has acted, are there to be found in all their luminous evidence, and irresistible force. As they advanced nearer to modern times, and new cases arose, their general principles became more specific, and distinct. In stating the utmost extent of the rights of neutrals, Bynkershoek confines them within the very limits now contended for by Great-Britain, "That it was lawful for them to do whatever was permitted whilst peace subsisted between the powers at war." *Omnia quo potuerunt, cum pax esset inter eos, quos inter nunt bellum esset.* So Wolff stating the services which might be rendered to either of the belligerents, describes them to be those which were rendered when the war did not subsist, or in time of peace. *Quæ extra bellum, seu pacis tempore gentibus præstantur.*

I have had the curiosity to look into some of those more

modern writers upon the subject, who have appeared as the professed supporters of neutrality. Their manifest partiality, want of candour, inconsistencies and reciprocal contradictions, can scarcely intitle them to much consideration in the light of authorities. They differ materially as to their doctrines, and agree only in an insidious animosity against Great-Britain, and against each other. Each of them condemns, and not entirely without reason, the absurdities of his rival advocate; and each of them boasts, that he has discovered the grand desideratum which is to cure all difficulties relating to the conflicting rights of belligerents, and neutrals. Their nostrum is indeed effectual—absolutely the law, and the tomahawke. Their profound Philosophy has found out, that the rights of neutral commerce are paramount to every thing, the rights of belligerents, nothing; the lucre of gain an imperishable obligation, to which every thing is to give way, and all pretensions assumed in opposition to it, are oppression, or the mere offspring of convention. Such persons cannot be accused of warping the truth in favour of belligerents, their admissions, therefore, on that side of the question, may fairly be valued as disinterested testimony. Now it is remarkable that whilst they are contending for the most unrestrained liberty of trade under the natural Law of Nations, even to the supplying of contraband, and relieving beleaguered places, there is not one of them who does not introduce the very qualification which is now said to be peculiar to Great-Britain.—Galliani says, "a neutral people have a perfect right to continue their trade with two nations who are their friends, Neutrality being a Continuance in their former state, not a new state of things."

LAMERZON, after establishing that the only law obligatory upon neutrals is that of a perfect impartiality, proceeds to state that "they may carry on their commerce in the same manner in which they did in time of peace. Effi per conseguenza il faranno nel modo istesso, in cui lo facevano in tempo di Pace." Afterwards he calls it, "il loro solito commercio" their usual commerce.

AZUNI defines perfect neutrality to be, when a power "continues to conduct itself as it did before the war." "Quand une Puissance continue à se conduire comme elle se faisoit avant la guerre." Passive neutrality he makes to consist in this, *en continuant de souffrir que toutes les nations belligerentes, ou quelquesunes d'elles, continuent d'introduire et d'exporter les marchandises qu'on introduisoit dans son pays, ou qu'on en exportoit avant la guerre.* Again in another place he calls it, *le droit qu'il avoit avant la guerre.* So, qu'ils doivent continuer d'y faire leur commerce de la même manière et avec la même liberté qu'en temps de paix. Le commerce étant permis en temps de paix aux sujets d'une puissance, il leur sera encore permis de le faire avec la même liberté pendant la guerre. He lays it down as "an invariable theory, as founded upon the rules of natural justice and the Law of Nations," qu'il doit être permis aux nations amies et neutres de poursuivre, dans toute son étendue, leur commerce de la même manière et avec la même liberté qu'ils l'ont pratiqué en temps de paix. Afterwards he calls it, the commerce of which they are in possession. To be impartial in commerce he says, *is equivalent to doing what they did before the war.* "The mischief done by belligerents to neutrals is by interrupting their commerce, et en ne les laissant pas dans l'état où ils étoient avant la guerre." And not to multiply quotations, he says finally, that it is sufficiently demonstrated to be an incontestable principle, que les puissances neutres peuvent librement commercer avec chaque partie belligerente sur le même pied où étoit leur commerce en temps de paix.—"Trade freely with each belligerent party, upon the same footing upon which their commerce was in time of peace."

It seems then, that the warmest enthusiasts for the rights of neutrals claim for them only their usual, and habitual modes of commerce. If this is the rule which is to determine the extent of their rights, by a parity of reasoning it must form the just restriction of them. So much for the assertion that the British principles are supported by no authority.

BUT these principles, whether founded or unfounded, Great-Britain is said to have abandoned. In the Message from the President of the United States, is the following passage. "The right of a neutral to carry on commercial intercourse with every part of the dominions of a belligerent, permitted by the laws of the Country, (with the exception of blockaded ports, and contraband of war) was believed to have been decided between Great-Britain and the United States by the sentence of their Commissioners, mutually appointed to decide on that and other questions of difference between the two nations; and by the actual payment of the damages awarded by them against Great-Britain, for the infraction of that right."

How any such points can be believed to have been decided by those Commissioners is difficult to conceive. It is certain that they had no such authority from the Treaty, under which they were appointed. The article alluded to premises, that "Whereas, complaints have been made, that

* Dei Doveri dei Principi neutrali, Ch. 9. § 2.

† Del Commercio dei Popoli Neutrali, § 5. & p. 45.

‡ Azuni, Systeme universel de Principes du Droit Maritime, Vol. II. pages 21. 31. 43. 53. 83. 95. 196. & 211.