

30. *Does the principle of immunity extend to neutral property on board an armed belligerent vessel?*—132.

In this country, the Supreme Court has decided that it does, and that the goods do not lose their neutral character even if resistance be made by the armed vessel, provided the neutral had not aided in such armament or resistance, notwithstanding he had chartered the whole vessel, and was on board at the time of the resistance. In England, the High Court of Admiralty made a cotemporary decision of an opposite character.

---

## LECTURE VII.

### OF RESTRICTIONS UPON NEUTRAL TRADE.

1. *What is the principal restriction imposed, by the law of nations, on the trade of neutrals?*—135.

The prohibition to furnish the belligerent parties with war-like stores, and other articles which are directly auxiliary to war-like purposes. Such goods are denominated contraband of war.

2. *What goods are contraband of war?*—135.

In the attempt to define them the authorities vary, or are deficient in precision, and the subject has long been a fruitful source of dispute between neutral and belligerent nations.

3. *What does Grotius define contraband of war?*—135.

He distinguishes between things which are useful only in war, as arms and ammunition, and things which serve merely for pleasure, and things which are of a mixed nature, and useful both in peace and war. He agrees with other writers in prohibiting neutrals from carrying articles of the first kind to the enemy, as well as in permitting the second kind to be carried. As to articles of the third class, which are of indiscriminate use in peace and war, as money, provisions, ships, and naval stores, he says, that they are sometimes lawful articles of neutral com-

merce, and sometimes not; and the question will depend upon circumstances existing at the time. They would be contraband if carried to a besieged town, camp, or port.

4. *What become contraband in a naval war?*—136.

In a naval war, it is admitted that ships, and materials for ships, become contraband, and horses and saddles may be included.

5. *What are contraband according to Vattel?*—136.

He says, in general terms, that commodities particularly used in war are contraband, such as arms, military and naval stores, timber, horses, and even provisions, in certain junctures, when there are hopes of reducing the enemy by famine.

6. *What is held as to sail cloth?*—136.

It is now held to be universally contraband, even on a destination to ports of mere mercantile naval equipment.

7. *Are materials for the building, equipment, and armament of ships of war, contraband?*—137.

The executive government of this country has frequently conceded, that such materials as timber and naval stores were contraband. But it does not seem that ship timber is, *in se*, in all cases, to be considered a contraband article, though destined to an enemy's port.

8. *Are provisions regarded as contraband?*—139.

The modern established rule is, that provisions are not generally contraband, but may become so, under circumstances arising out of the particular situation of the war, or the condition of the parties engaged it.

9. *What are the principal circumstances which tend to preserve provisions from being liable to be treated as contraband?*—139.

One is, that they are the growth of the country which produces them. Another circumstance, to which some indulgence is shown by the practice of nations, is when the articles are in their native and unmanufactured state. Wheat is not considered as so objectionable a commodity, when going to an enemy's



country, as any of the final preparations of it for human use. The most important distinction is, whether the articles were intended for the ordinary use of life, or even for mercantile ships' use, or whether they were going with a highly probable destination to military use.

10. *Is the character of the port to which the articles are going a test?*—140.

It is. If the port be a commercial one, it is presumed the articles are going for civil use; but if its predominant character be that of a port of naval military equipment, it will be presumed that the articles are going for military use.

11. *What determines an article to be contraband?*—141.

The *usus belli*.

12. *When goods are clearly shown to be contraband, what follows?*—141.

Confiscation to the captor is the natural consequence. It is a general understanding, grounded on true principles, that the powers at war may seize and confiscate all contraband goods, without any complaint on the part of the neutral merchant, and without any imputation of a breach of neutrality in the neutral sovereign.

13. *What if only part of a cargo be contraband?*—143.

Contraband articles are said to be of an infectious nature, and they contaminate the whole cargo belonging to the same owners. The innocence of any particular article is not usually admitted to exempt it from the general confiscation.

14. *With what loss is the act of carrying contraband articles attended?*—143.

Only with the loss of freight and expenses, unless the ship belongs to the owner of the contraband articles, or the carrying of them has been connected with malignant and aggravating circumstances.

15. *Among such circumstances, which are considered the most heinous?*—143.

A false destination and false papers.

16. *In those cases, and in all cases of fraud in the owner of the ship, or of his agent, how far is the penalty carried?*—143.

It is carried beyond the refusal of freight and expenses, to the confiscation of the ship, and the innocent parts of the cargo.

17. *May a neutral forfeit the immunities of his national character by violations of blockade?*—144.

He may. Among the rights of belligerents, there is none more clear and incontrovertible, or more just and necessary in the application, than that which gives rise to the law of blockade. Bynkershoek and Grotius consider the carrying of supplies to a besieged town, or blockaded port, as an offense exceedingly aggravated and injurious. They both agree that a neutral may be dealt with severely; and Vattel says he may be treated as an enemy.

18. *What is necessary in order to apply the law of blockade?*—144.

The fact of the actual blockade must be established by clear and unequivocal evidence; and the neutral must have had due previous notice of its existence; and the squadron allotted for the purpose of its execution, must be competent to cut off all communication with the interdicted place or port; and the neutral must have been guilty of some act of violation, either by going in, or attempting to enter, or by coming out with a cargo laden after the commencement of the blockade.

19. *What amounts to an entire defeasance of the blockade?*—144.

The failure of either of the points requisite to establish the existence of a legal blockade, even though the notification of the blockade had issued from the authority of the government itself.

20. *How is a blockade defined?*—145.

The definition of a blockade given by the convention of the Baltic powers, in 1780, and again in 1801, and by the ordinance in Congress, in 1781, required that there should be actually a number of vessels stationed near enough to the port to make the entry apparently dangerous. The government of the United States has uniformly insisted that the blockade should be effect-



ive, by the presence of a competent force, stationed, and present, at or near the entrance of the port.

21. *Does the occasional absence of the blockading squadron suspend the blockade?*—145.

Its occasional absence, produced by accident, as in the case of a storm, and when the station is resumed with due diligence, does not suspend the blockade provided the suspension and the reason of it be known.

22. *How is the attempt to take advantage of such an accidental removal, regarded?*—146.

As an attempt to break the blockade, and as a mere fraud.

23. *When ought the commerce of neutrals to the place blockaded, to be free?*—146.

When the blockade is raised by the enemy, as by applying the naval force, or a part of it, though only for a time, to other objects, or by the mere remissness of the cruisers.

24. *What if the blockade be raised voluntarily, as by a superior force?*—146.

It puts an end to it absolutely.

25. *What is the object of a blockade?*—146.

It is not merely to prevent the importation of supplies, but to prevent export as well as import, and to cut off all communication of commerce with the blockaded port.

26. *Is the act of egress culpable?*—146.

It is as culpable as the act of ingress, if it be done fraudulently; and a ship coming out of a blockaded port is, in the first instance, liable to seizure, and to obtain a release, the party must give satisfactory proof of the innocence of his intention.

27. *Does a blockade extend to a neutral vessel found in port when the blockade was instituted?*—146, 147.

It does not; nor does it prevent her coming out with a cargo *bona fide* purchased, and laden on board, before the commencement of the blockade.

28. *Should the place be invested by land as well as by sea, to constitute a legal blockade?*—147.

The modern practice does not require it; and if a place be blockaded by sea only, it is no violation of belligerent rights for the neutral to carry on commerce with it by inland communication.

29. *How is notice of the blockade communicated?*—147.

In two ways; either actually, by a formal notice from the blockading power; or constructively, by notice to his government, or by the notoriety of the fact. It is immaterial in what way the neutral comes to the knowledge of the blockade. If the blockade actually exists, and he has knowledge of it, he is bound not to violate it.

30. *What effect has notice to a foreign government of a blockade?*—147.

It is notice to all the individuals of that nation; and they are not permitted to aver ignorance of it, because it is a duty of the neutral government to communicate the notice to their people.

31. *What difference is there between a blockade regularly notified, and one without such notice?*—147.

In the former case, the act of sailing for the blockaded place, with an intent to evade it, or to enter contingently, amounts, from the very commencement of the voyage, to a breach of the blockade; for the port is to be considered as closed up, until the blockade be formally revoked, or actually raised; whereas, in the latter case of a blockade *de facto*, the ignorance of the party as to its continuance, may be received as an excuse for sailing to the blockaded place, on a doubtful and provisional destination.

32. *How is the question of notice of the blockade determined?*—148.

It is a question of evidence, to be determined by the facts applicable to the case.

33. *May information as to the existence of the blockade be sought at the mouth of the port?*—148.

It can not in any case. A neutral can not be permitted to



place himself in the vicinity of a blockaded port, if his situation be so near that he may, with impunity, break the blockade whenever he pleases, and slip in without obstruction.

34. *Is the fact of clearing out, or sailing for a blockaded port, in itself innocent?*—149.

It is, unless it be accompanied with knowledge of the blockade.

35. *How is the fact regarded, if accompanied with such knowledge?*—149.

By the law of the English prize courts, sailing for a blockaded port, knowing it to be blockaded, is, in itself, an attempt, and an act sufficient to charge the party with a breach of the blockade, without reference to the distance between the port of departure and the port invested, or the extent of the voyage performed when the vessel was arrested. The Supreme Court has coincided essentially with this doctrine.

36. *What is the consequence of a breach of blockade?*—151.

The confiscation of the ship; and the cargo is always, *prima facie*, implicated in the guilt of the owner or master of the ship; and it lays with them to remove the presumption that the vessel was going in for the benefit of the cargo, and with the direction of the owner.

37. *If a ship has contracted guilt by a breach of blockade, when is the offense discharged?*—151.

Not until the end of the voyage. The penalty never travels on with the vessel further than to the end of the return voyage; and if she is taken in any part of that voyage, she is taken *in delicto*. The penalty for a breach of blockade is also held to be remitted, if the blockade has been raised before the capture. The *delictum* is completely done away when the blockade ceases.

38. *Is the conveyance of hostile dispatches among the acts of illegal assistance to a belligerent?*—152.

It is, and deemed to be most injurious and of a hostile and noxious character.

39. *What is the appropriate remedy for this offense?*—152.

The confiscation of the ship; and if any privity subsists between the owners of the cargo and the master, they are involved by implication in his delinquency. If the cargo be the property of the proprietor of the ship, then, by the general rule, *ob continentiam delicti*, the cargo shares the same fate; and, especially, if there be an active interposition in the service of the enemy, concerted and continued in fraud.

40. *What distinction is made between carrying dispatches of the enemy between different parts of his dominions, and carrying dispatches of an ambassador from a neutral country to his own sovereign?*—152, 153.

The effect of the former dispatches is presumed to be hostile; but the neutral country has a right to preserve its relations with the enemy, and it does not necessarily follow that communications of the latter sort are of a hostile nature.

41. *Why has the law of nations armed belligerents with the rights of visitation and search at sea?*—153.

In order to enforce the rights of belligerent nations against the delinquencies of neutrals, and to ascertain the real, as well as assumed character of all vessels upon the high seas.

42. *Upon what is the right founded?*—153.

It is founded upon necessity, and is strictly and exclusively a war right, and does not rightfully exist in time of peace unless conceded by treaty.

43. *What if, upon making the search, the vessel be found employed in contraband trade, or in carrying enemy's property, or troops, or dispatches?*—153.

She is liable to be taken and brought in for adjudication before a prize court.

44. *What is the penalty for the violent contravention of this right?*—154.

The confiscation of the property so withheld from visitation, and the infliction of this penalty is conformable to the settled practice of nations, as well as to the principles of the municipal jurisprudence of most countries in Europe.



45. *Are England and the United States agreed as to this right of visitation and search?*—155.

They are. The doctrine of the English admiralty on the right of visitation and search, and on the limitation of the right, has been recognized, in its fullest extent, by the courts of justice in this country.

46. *What is the penalty for resistance of search?*—155.

Confiscation to all vessels, without any discrimination as to the national character of the vessel or cargo, and without separating the fate of the cargo from that of the ship.

47. *Does the right of search apply to public ships of war?*—155.

It does not. Their immunity from the exercise of any civil or criminal jurisdiction, but that of the sovereign power to which they belong, is uniformly asserted, claimed and conceded.

48. *May the exercise of the right of search involve the cruiser in a trespass?*—156.

The mere exercise of the right involves the cruiser in no trespass, for it is strictly lawful; but if he proceeds to capture the vessel as prize, and sends her in for adjudication, and there be no probable cause, he is responsible. It is not the search, but the subsequent capture, which is treated in such a case as a tortious act.

49. *When is a rescue unlawful?*—157.

When effected by the crew after capture, and when the captors are in actual possession.

50. *Should the neutral vessel be furnished with documentary evidence of her neutral character?*—157.

The neutral is bound, not only to submit to search, but to have his vessel duly furnished with the genuine documents requisite to support her neutral character.

51. *What are the most material of these documents?*—157.

The register, passport or sea-letter, muster-roll, log-book, charter-party, invoice and bill of lading.

52. *What effect has the concealment of the papers material for the preservation of the neutral character?*—157.

It justifies a capture, and carrying into port for adjudication, though it does not absolutely require a condemnation.

53. *What effect has the spoliation of such papers?*—157, 158.

Their spoliation is a still more aggravated and inflamed circumstance of suspicion. The fact may exclude further proof, and be sufficient to infer guilt; but it does not, in England, as it does by the maritime laws of other countries, create an absolute presumption *juris et de jure*. The Supreme Court has followed the less rigorous English rule, and held that the spoliation of papers was not, of itself, sufficient ground for condemnation, and that it was a circumstance open for explanation.

---

## LECTURE VIII.

### OF TRUCES, PASSPORTS, AND TREATIES OF PEACE.

1. *What is a truce?*—159.

A suspension of arms.

2. *What effect has it?*—159.

It does not terminate the war, but it is one of the *commercii belli*, which suspends its operations.

3. *How is a particular distinguished from a general truce?*—159.

A particular truce is only a partial cessation of hostilities, as between a town and an army besieging it. But a general truce applies to the operations of the war, and, if it be for a long or indefinite period of time, it amounts to a temporary peace, which leaves the state of the contending parties, and the questions between them, in the same situation as it found them.