

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 *commercium 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.

4. *By whom is a truce made?*—159.

A partial truce may be made by a subordinate commander, and it is a power necessarily implied in the nature of his trust; but it is requisite to a general truce, or suspension of hostilities throughout the nation, or for a great length of time, that it be made by the sovereign of the country, or by his special authority.

5. *What is the general principle on the subject?*—159, 160.

If a commander makes a compact with the enemy, and it be of such a nature that the power to make it be reasonably implied from the nature of the trust, it will be valid and binding though he abuse his trust.

6. *From what time does a truce bind the contracting parties?*—160.

From the time it is concluded; but it does not bind the individuals of the nation, so as to render them personally responsible for a breach of it, until they have had actual or constructive notice of it.

7. *What effect has a truce?*—160.

It only temporarily stays hostilities; and each party to it may do whatever he may have a right to do in time of peace. He may continue active preparations for war, by repairing fortifications, levying and disciplining troops, and collecting provisions and articles of war, within his own territories.

8. *How is it in the case of a truce between the governor of a fortified town and the army besieging it?*—160, 161.

He may do whatever, under all the circumstances, would be deemed compatible with good faith and the spirit of the agreement; but he is justly restrained from doing what would be directly injurious to the enemy, and could not safely be done in the midst of hostilities. Neither party is at liberty to continue works constructed either for attack or defense, and which could not safely be done if hostilities had continued; for this would be to make a mischievous and fraudulent use of the cessation of arms. All things should remain as they were in the places contested, and of which the possession was disputed at the moment of the conclusion of the truce.

9. *At the expiration of the truce, may hostilities recommence without any fresh declaration of war?*—161.

They may; but if the truce be for an indefinite time, justice and good faith require due notice of an intention to terminate it.

10. *What is a passport?*—162.

A passport, or safe conduct is a privilege granted in war, and exempting the party from the effect of its operation, during the time, and to the extent prescribed in the permission.

11. *Who may grant passports?*—162.

The power to grant them flows from the sovereign authority, but it may be delegated by the sovereign to persons in subordinate command, and they are invested with that power, either by an express commission, or by the nature of their trust. The general of an army, from the very nature of his power, can grant safe conducts.

12. *Is the permission transferable by the person named in the passport?*—162.

It is not.

13. *Why not?*—162.

It may be that the government had special reasons for granting the privilege to the very individual named, and it is presumed to be personal.

14. *To what is the sovereign who grants security by a passport, morally bound?*—162.

To afford such security against any of his subjects or forces, and to make good any damage the party may sustain by a violation of the passport.

15. *What does a safe conduct generally include?*—162.

The necessary baggage and servants of the person to whom it is granted.

16. *What effect is given to a license by the enemy, to the subjects*

of the adverse party, to carry on a specified trade, by the government which grants them?—163.

It is the resumption of a state of peace to the extent of the license. In the country which grants them, licenses to carry on a pacific commerce are *stricti juris*, as being exceptions to a general rule; though they are not to be construed with pedantic accuracy, nor will every small deviation be held to vitiate the fair effect of them.

17. *Whenever any part of the trade assumed under the license is denuded of authority under it, what is the consequence?*—164.

Such part is subject to condemnation.

18. *To whom is the use of the license to trade limited?*—164.

To the precise persons for whose benefit it was obtained.

19. *What effect have treaties of peace?*—165.

When made by the competent power, they are obligatory upon the whole nation. If the treaty requires the payment of money to carry it into effect, and the money can not be raised but by an act of the legislature, the treaty is morally obligatory upon the legislature to pass the law, and to refuse it would be a breach of public faith. All treaties, made by that department of the government which is intrusted with the treaty-making power, become of absolute efficacy, because they are the supreme law of the land.

20. *May the power competent to bind the nation by treaty, alienate the public domain, and how?*—166.

There can be no doubt, that the power competent to bind the nation by treaty, may alienate the public domain and property by treaty. The power that is intrusted generally, and largely, with the authority to make valid treaties of peace, can, of course, bind the nation by alienation of part of its territory: and this is equally the case, whether that territory be already in the occupation of the enemy, or remains in the possession of the nation, and whether the property be public or private.

21. *When is a treaty of peace valid and binding on the nation?*—167.

When made with the present ruling power of the nation,

or the government *de facto*. Other nations are to look only to the fact of possession of the supreme authority.

22. *Are defensive allies included in the pacification?*—167.

They are. The principal party, in whose name the war is made, can not justly make peace without including those defensive allies in the pacification who have afforded assistance, though they may not have acted as principals. The ally is, however, to be no further a party to the stipulations and obligations of the treaty, than he has been willing to consent. All that the principal can require is, that his ally be considered as restored to a state of peace.

23. *When must allies treat for peace in concert?*—167.

Every alliance, in which all the parties are principals in the war, obliges the allies to treat in concert, though each one makes a separate treaty of peace for himself.

24. *What is the effect of a treaty of peace?*—168.

It puts an end to the war, and abolishes the subject of it. Peace relates to the war which it terminates. It is an agreement to waive all discussion concerning the respective rights of the parties, and to bury in oblivion all the original causes of the war.

25. *What does it forbid?*—168.

It forbids the revival of the same war, by taking arms for the cause which at first kindled it, though it is no objection to any subsequent pretensions to the same thing on other foundations.

26. *What if an abstract right be in question between the parties, and they make peace without taking notice of the question?*—168, 169.

It remains open for future discussion, because the treaty wanted an express concession or renunciation of the claim itself.

27. *What if nothing be said in the treaty about the conquered country or places?*—169.

They remain with the possessor, and his title can not afterward be called in question.

28. *During war, what title has the conqueror to the territory he has subdued?*—169.

Only a usufructuary title; and the latent rights and title of the former sovereign continue, until a treaty of peace, by its silence, or by express stipulation, shall have extinguished his title for ever.

29. *How does peace affect debts existing, and injuries committed, prior to the war, but which made no part of the reasons for undertaking it?*—169.

They remain entire, and the remedies are revived.

30. *From what time do treaties bind the contracting parties?*—169.

From the moment of their conclusion, and that is understood to be from the day they are signed. A treaty made by the minister abroad, when ratified by his sovereign, relates back to the time of signing.

31. *What is the effect of acts of hostility committed subsequent to the date of the treaty?*—170.

They can not affect the subjects of the nation with guilt, provided they were committed before the treaty was known.

32. *What only can be required in such case?*—170.

That the government make immediate restitution of things captured after the cessation of hostilities.

33. *Are individuals responsible civiliter for acts of hostility committed subsequent to the date of the treaty, but before it was known?*—170, 171.

The better opinion was, that though such an act be done through ignorance of the cessation of hostilities, yet, mere ignorance of that fact would not protect the aggressor from civil responsibility in a prize court; and that if he acted through ignorance, his own government must protect and save him harmless. The decisions, however, are conflicting on the subject.

34. *If a time be fixed by treaty for hostilities to cease in a given place, what if a capture be previously made, but with knowledge of the peace?*—171, 172.

It has been a question among the writers on public law,

whether the captured property should be restored. The better, and the more reasonable opinion is, that the capture would be null, in such case, though made before the day limited, provided the captor was previously informed of the peace.

35. *What is the obligation of treaties?*—175.

Treaties of every kind, when made by the competent authority, are as obligatory upon nations as private contracts are binding upon individuals.

36. *How are treaties to be construed?*—175.

They are to receive a fair and liberal interpretation, according to the intention of the contracting parties. Their meaning is to be ascertained by the same rules of construction, and course of reasoning, which we apply to the interpretation of private contracts.

37. *If a treaty should, in fact, be violated by one of the contracting parties, with whom alone does it rest to pronounce it broken?*—175.

With the injured party. The treaty, in such a case, is not absolutely void, but voidable at the election of the injured party. If he chooses not to come to a rupture, the treaty remains obligatory.

38. *What is the difference between a new war for some new cause, and a breach of a treaty of peace?*—175.

In the former case, the rights acquired by the treaty subsist notwithstanding the new war; but in the latter case, they are annulled by the breach of the treaty of peace, on which they are founded.

39. *What is the effect of a violation of any one article of a treaty?*—175.

It is a violation of the whole treaty.

40. *Why is this?*—175.

All the articles of a treaty are dependent on each other; and one is to be deemed a condition of the other; and a violation of any single article overthrows the whole treaty, if the injured party elects so to consider it.

41. *How may such effect be prevented?*—175.

By an express provision in the treaty, that if one article be broken, the others shall, nevertheless, continue in full force.

42. *What if a treaty contains stipulations which contemplate a state of future war, and make provision for such an exigency?*—176.

Such stipulations preserve their force and obligation when the rupture takes place.

43. *Is the doctrine universally true, that treaties become extinguished, ipso facto, by war, unless revived by an express or implied renewal on the return of peace?*—176.

It is not. When treaties contemplate a permanent arrangement of national rights, or, by their terms, are meant to provide for the event of an intervening war, it would be against every principle of just interpretation to hold them extinguished by the event of war. They revive at peace, unless waived, or new and repugnant stipulations be made.

44. *How long does the national character of the place agreed to be surrendered by treaty, continue?*—177.

It continues as it was under the character of the ceding country, until it be actually transferred. Full sovereignty can not be held to have passed by the mere words of the treaty, without actual delivery.

45. *Does the release of a territory from the dominion and sovereignty of the country, if the cession be the result of coercion or conquest, impose any obligation upon the government to indemnify those who may suffer a loss of property by the cession?*—178.

It does not.

46. *Why is this?*—179.

No government can be supposed to be able, consistently with the welfare of the whole community, and it is, therefore, not required, to assume the burden of losses produced by conquest, or the violent dismemberment of the state. It would be incompatible with the fundamental principles of the social compact.

LECTURE IX.

OF OFFENSES AGAINST THE LAW OF NATIONS.

1. *Why is the violation of a treaty of peace, or other national compact, a violation of the law of nations?*—181.

Because it is a breach of public faith.

2. *What offenses fall more immediately under the cognizance of the law of nations?*—182.

The violations of safe conducts, infringements of the rights of ambassadors, and piracy. To these we may add the slave trade, which may now be considered, not, indeed, as a piratical trade, absolutely unlawful by the law of nations, but as a trade condemned by the general principles of justice and humanity, openly professed and declared by the powers of Europe.

3. *What does a safe conduct or passport contain?*—182.

A pledge of the public faith, that it shall be duly respected.

4. *What has the statute law of the United States provided as to the violation of safe conduct?*—182.

That if any person shall violate any safe conduct or passport, granted under the authority of the United States, he shall, on conviction, be imprisoned not exceeding three years, and fined at the discretion of the court.*

5. *What is piracy?*—183.

Piracy is robbery, or a forcible depredation on the high seas, without lawful authority, and done *animo furandi*, and in the spirit and intention of universal hostility. It is the same offense at sea with robbery on land.

6. *How are pirates punished?*—184.

They are everywhere pursued and punished with death. Every nation has a right to attack and exterminate them without any declaration of war.

7. *What has Congress declared as to piracy?*—184, 185.

That murder or robbery, committed on the high seas, or in

* Act of Congress of April 30th, 1790, sec. 27.

any river, haven, or bay, out of the jurisdiction of any particular State, or any other offense which, if committed within the body of a country, would, by the laws of the United States, be punishable with death, should be adjudged to be piracy and felony, and punishable with death. That if any captain or mariner should piratically and feloniously run away with any vessel, or any goods or merchandise to the value of fifty dollars; or should yield up any such vessel voluntarily to pirates; or if any seaman should forcibly endeavor to hinder his commander from defending the ship or goods committed to his trust, or should make a revolt in the ship; every such offender should be adjudged a pirate and felon, and be punishable with death. That accessaries to such piracies before the fact are punishable in like manner; but accessaries after the fact are punishable only by fine and imprisonment. That if any person, upon the high seas, or in any open roadstead, or bay, or river, where the sea ebbs and flows, commits the crime of robbery in and upon any vessel, or the lading thereof, or the crew, he shall be adjudged a pirate. And that if any person engaged in any piratical enterprise, or belonging to the crew of any piratical vessel, should land and commit robbery on shore, such an offender shall also be adjudged a pirate.*

8. *Is it sufficient to refer to the law of nations for a definition of piracy?*—186.

It is so held by the Supreme Court. Robbery on the high seas is, therefore, piracy by the Act of Congress, as well as by the law of nations.

9. *Is it, for the purpose of giving jurisdiction, of any importance on whom or where a piratical offense has been committed?*—186.

It is not. A pirate, who is one by the law of nations, may be tried and punished in any country where he may be found.

10. *Of what effect is the plea of autrefois acquit, resting on a prosecution instituted in the courts of any civilized State, beyond such State?*—188.

It would be a good plea in any other civilized State.

* Act of April 30th, 1790, c. 9, sec. 8.

11. *Can an alien, under the sanction of a national commission, commit piracy while he pursues his authority?*—188.

He can not. His acts may be hostile, and his nation responsible for them. They may amount to a lawful cause of war, but they are never to be regarded as piracy.

12. *What if a natural born subject was to take prizes belonging to his native country, in pursuance of a foreign commission?*—191.

He would, on general principles, be protected by his commission from the charge of piracy.

13. *What have the United States done to prevent the mischief of such conduct?*—191.

They have followed the provisions of the English statute, and the general practice of other nations, and have, by the Act of Congress of April 30th, 1790, sec. 9, declared that if any citizen should commit any act of hostility against the United States or any citizen thereof, upon the high seas, under color of any commission from any foreign prince or State,* or on pretense of authority from any person, such offender shall be adjudged to be a pirate, felon and robber, and on being thereof convicted, shall suffer death.

14. *For what aggressions, upon the high seas, does the Act of Congress authorize a capture and condemnation, in the courts of the United States?*—191.

For all piratical aggressions by foreign vessels. All such hostile and criminal aggressions on the high seas, under the flag of any power, render property taken *in delicto* subject to confiscation by the law of nations.

15. *How far is the African slave trade regarded as an offense?*—191, 192.

It is an offense against the municipal laws of most nations in Europe, and it is declared to be piracy by the statute laws of England and the United States.

16. *Is it to be considered as an offense against the law of nations, independent of compact?*—192.

This has been a grave question, much litigated in the courts charged with the administration of public law.

* A STATE, in the meaning of public law, is a complete or self-sufficient body of persons, united together in one community, for the defense of their rights, and to do right to foreigners.

17. *What is the doctrine of the English cases on this head?*—198, 200.

That the slave trade, abstractly speaking, is immoral and unjust; and it is illegal, when declared so by treaty or municipal law. But it is not piratical or illegal by the common law of nations, because, if it were so, every claim founded on the trade would at once be rejected everywhere and in every court on that ground alone. That the British statutes against the slave trade were only applicable to British subjects, and only rendered the trade unlawful when carried on by them.

18. *What has been finally decided, as to the question, in this country?*—200.

The Supreme Court, in a case before it,* declared that the slave trade, though contrary to the law of nations, had been sanctioned, in modern times, by the laws of all nations who possessed distant colonies; and a trade could not be considered as contrary to the law of nations, which had been authorized and protected by the usages and laws of all commercial nations. It was not piracy, except so far as it was made so by the treaties or statutes of the nation to which the party belonged. It might still be lawfully carried on by the subjects of those nations who have not prohibited it by municipal acts or treaties.

19. *What have the United States prescribed by statute, against the slave trade?*—193, 194.

The Constitution of the United States laid the foundation of a series of provisions, to put a final stop to the progress of this great moral pestilence, by admitting a power in Congress to prohibit the importation of slaves after the expiration of the year 1807.

Prior to that time Congress did all on that subject that it was within their competence to do. By the acts of March 22d, 1794, and May 10th, 1800, the citizens of the United States, and residents within them, were prohibited from engaging in the transportation of slaves from the United States to any foreign place or country, or from one foreign place or country to another, for the purpose of traffic.

By the act of March 2d, 1807, it was prohibited, under

* The *Antelope*, 10 Wheat. R., 66.

severe penalties, to import slaves into the United States after January 1st, 1808; and on April 20th, 1818, the penalties and punishments were increased, and the prohibition extended not only to importation, but generally against any citizen of the United States being concerned in the slave trade. The act of March 3d, 1819, went a step further, and authorized national armed vessels to be sent to the coast of Africa, to stop the slave trade, so far as citizens or residents of the United States were engaged in the trade; and their vessels and effects were made liable to seizure and confiscation.

The act of May 15th, 1820, went still further, and declared that if any citizen of the United States, being of the crew of a foreign vessel, engaged in the slave trade, or any person whatever being of the crew of any vessel owned in whole or in part, or navigated for or on behalf of any citizen of the United States, should land on any foreign shore, and seize any negro or mulatto not held to service or labor by the laws of either of the States or Territories of the United States, with intent to make him a slave; or should decoy, or forcibly bring or receive such person on board such vessel, with like intent; or should forcibly confine or detain on board any negro or mulatto, not lawfully held to service, with intent to make him a slave; or should on board any such vessel offer to sell as a slave any negro or mulatto, not held to service as aforesaid; or should, on the high seas, or on any tide water, transfer or deliver over, to any other vessel, any such negro or mulatto, with intent to make him a slave, or should deliver on shore, from on board any such vessel, any negro or mulatto, with like intent, such citizen or person should be adjudged a pirate, and, on conviction, should suffer death.*

20. *How far does the statute operate?*—194.

It operates only when our municipal jurisdiction might be applied, consistently with the general theory of public law, to the persons of our citizens, or to foreigners on board of American vessels.

* These Acts of Congress applied exclusively to external commerce in slaves. The *internal* commerce, within the United States, in slaves, was left to the control and discretion of the State governments, previously to the adoption of article XIII, of the amendments to the Constitution, which abolished slavery.