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International Law Situations with Solutions and Notes
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SITUATION VI.

Three neutral merchant vessels are successively overtaken on the high seas by a war vessel of the United States when there is a war between the United States and State X.

(a) The first is found to have been guilty of a breach of blockade established by the United States at a port of State X and maintained with reasonably efficiency.

(b) A second neutral merchant vessel is found to have been carrying contraband to an unblockaded port of State X and is on the return voyage to its home port with the goods received in exchange for the contraband.

(c) The third neutral merchant vessel is a collier returning to its home port after accompanying the fleet of State X with a cargo of coal.

What, if any, action should the commander of the United States war vessel take in each case?

SOLUTION.

(a) The commander of the United States war vessel, unless certain that the neutral vessel breaking the blockade is exempt from seizure, should send the neutral vessel to the nearest prize court.

(b) The neutral merchant vessel on her return voyage is not liable to seizure because of carriage of contraband on the outward voyage and should not be detained for such cause.

(c) If a war vessel of the United States overtakes a neutral vessel which has accompanied the enemy fleet as a collier before the neutral vessel has completed her voyage by return to the port of departure or to a home port, the commander of the United States war vessel should not hesitate to seize the collier and send it with its crew to a prize court, or, if necessary, to treat it immediately as an enemy vessel might be treated under similar conditions.

NOTES ON SITUATION VI.

Reasons for Situation VI.—(a) Some recent discussions and opinions have raised questions as to what might be considered an effective blockade.

(b) The action of the prize court at Vladivostok in the case of the *Allanton* has raised questions as to the liability of vessels on the return voyage for carrying contraband on the outward voyage.

(c) The present necessity for collier service has given rise to the question of the liability of a neutral vessel engaged in this service in time of war.

Provision of the Declaration of Paris, 1856.—By the Declaration of Paris, 1856, to which the United States did not accede, but to the principles of which it has in practice adhered—

Blockades, in order to be binding, must be effective—that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

It is evident that even those states which acceded to this Declaration of Paris cannot interpret literally the last clause, “sufficient really to prevent access to the coast of the enemy.” Probably no blockade could be maintained in this manner for any considerable length of time. During the night a fast vessel might pass in, or in a fog a vessel well acquainted with the locality might pass through, and in these days of submarines it may not be possible to guard against the passing of such a vessel. That it is not expected that the access to the coast will really be prevented is seen in the provisions for penalties for the breach of blockade. No penalties would be necessary under a literal interpretation of the declaration, for the access of vessels would be prevented, and if a vessel obtained access the blockade would not be effective, and hence the vessel would not be liable to penalty. This clause has been given a sane interpretation as meaning that the access of a vessel to the coast or her egress to the sea would be with evident danger. Such a blockade would be regarded as reasonably effective, and it is such a blockade that Situation VI considers.

To break such a blockade a neutral merchant vessel must resort to unusual means or efforts. If a vessel does this it would ordinarily imply the taking of an unusual risk for the hope of an unusual reward which would accrue in consequence of some special advantage gained by the blockaded belligerent. Penalty, therefore, would justly be inflicted by the other belligerent if possible in order to prevent aid to the blockaded belligerent.

A neutral merchant vessel may, however, approach a port that has been blockaded and find that there are no belligerent vessels before the port. It may pass in.

Admitting that these belligerent vessels have been scattered by a storm and that the neutral vessel passes out of the port just as the blockading vessels return to their stations, would it be held that the neutral vessel had violated an effective blockade? The general consensus is that the temporary scattering of vessels before a blockaded port by a storm does not break the blockade. The interpretation of the word "temporary" is still open to question. What should be considered a "temporary suspension?" Blumerincq proposes twenty-four hours' absence as the limit of "temporary suspension." Others attempt to fix a limit of distance, the character of the storm, etc., as factors in determining suspension. It is difficult to reconcile the doctrine of "temporary suspension" with the principles of the Declaration of Paris.

Position of the United States.—The United States recognizes the necessity of observing the rules of International law in maintaining a blockade, and in General Order No. 492 of the Navy Department, June 20, 1898, gives quite full statement for the guidance of blockading vessels and cruisers:

INSTRUCTIONS TO BLOCKADING VESSELS AND CRUISERS.

1. Vessels of the United States, while engaged in blockading and cruising service, will be governed by the rules of international law, as laid down in the decisions of the courts and in the treaties and manuals furnished by the Naval Department to ships' libraries, and by the provisions of the treaties between the United States and other powers.

The following specific instructions are established for the guidance of officers of the United States:

BLOCKADE.

2. A blockade to be effective and binding must be maintained by a force sufficient to render ingress to or egress from the port dangerous. If the blockading vessels be driven away by stress of the weather, but return without delay to their stations, the continuity of the blockade is not thereby broken; but if they leave their stations voluntarily, except for purposes of the blockade, such as chasing a blockade runner, or are driven away by the enemy's force, the blockade is abandoned or broken. As the suspension of a blockade is a serious matter, involving a new notification, commanding officers will exercise especial care not to give grounds for complaints on this score.

NOTIFICATIONS TO NEUTRALS.

3. Neutral vessels are entitled to notification of a blockade before they can be made prize for its attempted violation. The character of this notification is not material. It may be actual, as by a vessel of the blockading force, or constructive, as by a proclamation of the government maintaining the blockade, or by common notoriety. If a neutral vessel can be shown to have had notice of the blockade in any way, she is good prize and should be sent in for adjudication; but, should formal notice not have been given, the rule of constructive knowledge arising from notoriety should be construed in a manner liberal to the neutral.

4. Vessels appearing before a blockaded port, having sailed without notification, are entitled to actual notice by a blockading vessel. They should be boarded by an officer, who should enter in the ship's log the fact of such notice, such entry to include the name of the blockading vessel giving notice, the extent of the blockade, the date and place, verified by his official signature. The vessel is then to be set free; and should she again attempt to enter the same or any other blockaded port as to which she has had notice she is good prize.

5. Should it appear from a vessel's clearance that she sailed after notice of blockade had been communicated to the country of her port of departure, or after the fact of blockade had, by a fair assumption, become commonly known at that port, she should be sent in as a prize. There are, however, treaty exceptions to this rule, and these exceptions should be strictly observed.

6. A neutral vessel may sail in good faith for a blockaded port with an alternative destination to be decided upon by information as to the continuance of the blockade obtained at an intermediate port. But, in such case, she is not allowed to continue her voyage to the blockaded port in alleged quest of information as to the status of the blockade, but must obtain it and decide upon her course before she arrives in suspicious vicinity; and if the

blockade has been formally established with due notification, any doubt as to the good faith of such a proceeding should go against the neutral and subject her to seizure.

7. In accordance with the rule adopted by the United States in the existing war with Spain, neutral vessels found in port at the time of the establishment of a blockade will, unless otherwise ordered by the United States, be allowed thirty days from the establishment of the blockade to load their cargoes and depart from such port.

8. A vessel under any circumstances resisting visit, destroying her papers, presenting fraudulent papers, or attempting to escape, should be sent in for adjudication. The liability of a blockade runner to capture and condemnation begins and terminates with her voyage. If there is good evidence that she sailed with intent to evade the blockade, she is good prize from the moment she appears on the high seas. Similarly, if she has succeeded in escaping from a blockaded port she is liable to capture at any time before she reaches her home port. But with the termination of the voyage the offense ends.

9. The crews of blockade runners are not enemies and should be treated not as prisoners of war, but with every consideration. Any of the officers or crew, however, whose testimony before the prize court may be desired, should be detained as witnesses.

10. The men-of-war of neutral powers should, as a matter of courtesy, be allowed free passage to and from a blockaded port.

11. Blockade running is a distinct offense, and subjects the vessel attempting, or sailing with the intent, to commit it, to seizure, without regard to the nature of her cargo. The presence of contraband of war in the cargo becomes a distinct cause of seizure of the vessel, where she is bound to a port of the enemy not blockaded, and to which, contraband of war excepted, she is free to trade.

From these instructions it may be seen that dispersion from stress of weather is not held to interrupt the continuity of the blockade, though no definite time of absence or other limiting specification is indicated. Voluntary departure, except for chase of a blockade runner, is held to break the blockade, as is flight before an enemy.

There are numerous conditions under which a neutral vessel may pass through or approach a blockade without guilt. These are mentioned in the clauses under "Notifications to neutrals."

Opinion of Pradier-Fodéré.—The general principle is, “if a vessel has succeeded in escaping from a blockaded port she is liable to capture before she reaches her home port. But with the termination of the voyage the offense ends.”

Pradier-Fodéré well says:

Il se peut que du temps de Grotius la notion de la *violation* ait été moins étendue qu'elle ne l'est aujourd'hui; qu'avant Bynkershoëck l'entrée seule dans les ports bloqués ait été considérée comme illicite, tandis que de nos jours on regarde comme telles l'entrée et la sortie, suivant les cas, etc.; ce qu'il y a de certain, c'est qu'il n'y a pas de matière où le pêle-mêle des théories et des pratiques contraires soit plus inextricable et fasse de cette question un objet d'étude plus indigeste: les gouvernements restreignant dans des proportions justes, ou élargissant outre mesure, la notion du fait délictueux, suivant qu'ils sont disposés à épargner ou à atteindre le plus possible la navigation étrangère; la doctrine soutenant trop souvent avec docilité, dans chaque pays, les vues de son gouvernement, ou s'émancipant et se perdant dans le labyrinthe de ses distinctions subtiles et des systèmes; enfin les conseils et tribunaux de prise posant dans leurs décisions des principes, tantôt très larges, tantôt très rigoureux. Pour éviter de se perdre dans ce mélange obscur d'opinions et d'applications diverses, il est nécessaire de se laisser plus que jamais guider par les lumières du sens commun, et de rechercher, non *ce qui est* (c'est à dire à peu près le chaos), mais *ce qui doit être*. Or, le bon sens se joignant aux principes les plus élémentaires du droit, il s'agisse d'un blocus *régulier*; qu'il n'y ait eu un *acte matériel* constituant soit une *violation*, soit une *tentative de violation*; que le navire neutre arrêté comme violateur ait eu connaissance du blocus; que l'existence du blocus ait été portée à sa connaissance, *sur la ligne même de l'investissement*; que le navire neutre ait été surpris en *flagrant délit*. Telles sont les conditions essentielles principales de la violation des blocus, conformes à la raison, à l'équité et aux vrais principes du droit; tout ce qui est en dehors d'elles est irrationnel, arbitraire et inique. (8 Droit international public, p. 391, §3139.)

(a) *Conclusion as to the blockade.*—In Situation VI (a), a neutral merchant vessel is overtaken in time of war by a war vessel of the United States and is found to have been guilty of a breach of blockade established and maintained with reasonable efficiency by the United States. The war vessel in such case would of course only take

action against the neutral vessel if overtaken on the high seas or within belligerent jurisdiction and before return to her home port. The commander of the war vessel would further be bound to act under orders such as are shown in General Order No. 492. He would be bound also by international law, by treaties, etc. When in doubt in regard to any of these points, the safe course is to send the vessel in for adjudication by the prize court.

The conclusion in this case would therefore be that the commander of the United States war vessel, unless certain the neutral vessel breaking the blockade was exempt from seizure, should send the neutral vessel to the nearest prize court.

Contraband trade.—In concluding his discussion on the sale of contraband, Professor Moore says:

The fundamental principles are simply these: From the point of view of *neutrality* the question of *unlawfulness* is presented in two aspects, (1) that of international law and (2) that of municipal law. Offenses under (1), i. e., acts unlawful by international law, are divided into two classes, (a) acts which the state is bound to prevent and (b) acts which the state is not bound to prevent, and which therefore are not usually offenses against municipal law. The dealing in contraband belongs under (1) (b), for it is (1) unlawful by international law, as is shown by the fact that the noxious articles may be seized on the high seas and *confiscated*; but (b) it is not an act which it is the duty of the neutral state to prevent, and therefore is not usually prohibited by municipal law.

Why is the neutral state not bound to prevent it? Simply because, from obvious considerations of convenience, it has been deemed just to confine within reasonable bounds the duty of the neutral state to interfere with the commerce of its citizens, even for the purpose of repressing unneutral acts. The principal interest to be subserved being that of the belligerents, it is left to them, in respect of many acts in their nature unneutral, to adopt measures of self-protection; and neutral states are deemed to have discharged their full duty when they submit to the belligerent enforcement of such measures against their citizens and their commerce. (7 Digest of International Law, p. 972.)

Vladivostok court on the Allanton.—The decision of the Vladivostok prize court in the case of the *Allanton* states that the visiting party from the Russian war vessel found the *Allanton* a British steamer—

with a cargo of 6,500 tons Japanese coal. Besides the captain, Henry Motger, and the crew, consisting of 30 men of different nationalities, was a young Japanese who declared he had embarked in Mororan for the purpose of going to America, which statement was confirmed by the captain. Examination of the ship's documents showed that the *Allanton* was going to Singapore with coal from Mororan; nevertheless the officer requested the captain to take all documents and accompany him on board the cruiser for the purpose of giving more exact information. To this the captain demurred, but sent on board his mate, Henry Mitchell, with the documents. At the second examination of the documents it turned out that the official log book and the chief officer's log book were missing, and these were immediately ordered to be sent for examination. The official log book was not in order, being kept up only until May 2/15, 1904. According to remarks in chief officer's log and also other documents it became evident that in May the *Allanton* brought to Sasebo a full cargo of Cardiff coal. After having discharged this contraband in Sasebo, the steamer went to Mororan, where she took a new cargo of Japanese coal according to documents destined for Singapore and addressed to Messrs. Patterson, Simon & Co. The admiral being doubtful as to the genuineness of the steamer's destination, gave orders to have her taken to Vladivostok. On June 6/19 steamer arrived in Vladivostok under command of Lieutenant Petroff, and the case was given to the prize court for trial. At trial captain stated that steamer was registered at Glasgow, owned by W. Rea, resident in Belfast. On February 8/21, she left Cardiff with coal bound for Hongkong, by way of Cape of Good Hope. Upon her arrival at Hongkong the captain received orders to proceed to Sasebo with cargo. Having discharged her cargo there, she proceeded to Mororan, where new cargo of coal was taken for Singapore. On her way to this port she was detained by the Russian cruisers in the Japanese Sea.

The Japanese, Tatiki Miachara, declared that he embarked on the *Allanton* in Mororan intending to go to America for the purpose of completing his education, but neither a passport nor any other document to prove his identity were in his possession.

* * * * *

Having taken into consideration all circumstances of the case referred to, the court decided:

"1. That the S. S. *Allanton* was arrested correctly, under observance of the rules in paragraphs 2, 3, 15, and 17 of the statutes of Maritime Prizes, and on the basis of fully satisfactory reasons justifying the steps taken. Such reasons are:

"(a) The irregularity of the ship's log.

“(b) Indisputable proof of the ship having delivered recently at a Japanese port a full cargo of contraband of war with full knowledge and sanction of owner.

“(c) The chartering of the steamer by a Japanese trading company and the fact that she was loaded exclusively with coal, being contraband of war, in case the real destination was not Singapore but a hostile port or squadron.”

Proceeding to consider the question of the owner's standpoint with regard to the obligations of neutrality, the court found that—

“2. The owner ‘took active measures that the cargo should not be exposed to detention on its way to Japan.’”

With regard to the second trip, during which the *Allanton* was arrested by the Russian cruisers in the Japanese Sea, this time the court also turned its attention to the following important circumstances:

“(a) The course the steamer kept on her way to Mororan passed through the whole theater of present war * * * which could be very easily avoided by taking the way through the ocean, so much the more as the last-mentioned way to Singapore, if this were the destination, would have been only a trifle longer, about 100-120 miles.

“(b) The statement given by the young Japanese, Tatiki Miachara, embarked in the *Allanton* at Mororan for the purpose of going to America to finish his education, is apparently invented, as Miachara had no document whatever in his possession to prove his identity, whereas, taking into consideration the utterly strict passport rules in Japan and with regard to Asiatics in America, it appears impossible for a Japanese subject, not having served his time in the army, and not having in his possession a certificate stating his being released from the same, to leave Japan without permission from the local authorities and without a passport in his possession.

“(c) The discontinuance of remarks of arrivals at ports in the official log, from the moment the ship left Hongkong, and further the fact that even after the first illegal trip was finished no such remarks have been made, seem to prove that on the second trip Singapore was no more the destination of the *Allanton* than Hongkong was on the first.

“3. Concerning the cargo the *Allanton* carried when arrested, the fact that the steamer was chartered directly by the Japanese company for taking a full cargo of coal from Mororan and the nonexistence of any statement whatever showing that the coal had become the property of a neutral proves that the cargo in question was still the property of the Japanese company; consequently, being hostile property, accompanied by the Japanese, Miachara, presumably in the capacity of agent.

"A combination of all details and circumstances mentioned above and the character of the cargo convinces the court that the real destination of this hostile cargo was by no means Singapore, but a Japanese or Korean port, or even the enemy's fleet maneuvering in the open sea, on account of which the cargo in question was declared by the court to be contraband of war in accordance with paragraph 6, clause 8 of H. I. M. order of February 14, 1904.

"The court considers it proved that illegal actions have been exercised by the owner of the ship and captain of the same for the strengthening of the enemy's military store by bringing him coal, necessary for carrying on naval warfare, and that the steamer *Allanton* has thereby forfeited the rights of neutrality.

"Considering the circumstances in this case in connection with state of affairs in the theater of war, the court finds—even independent of the proved fact that the *Allanton* was about to bring contraband of war to the enemy—that the facts referred to are so much the more important, as ships of neutrals serving in the place of the Japanese merchant service, and thus enabling the Japanese Government to utilize the latter for furtherance of war operations, exercise a great influence on the results of the war, disadvantageous to Russia, not speaking of the fact that such actions on the part of neutrals, being left unpunished, would make it almost impossible for Russia to follow up one of the most important and natural objects in naval war—to cut off the enemy from the possibility of availing himself of the sea as a means of communication."

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The prize court considered the *Allanton*, as well as her cargo, fully legal prize, and accordingly decided to confiscate the same in favor of the Imperial Government.

Opinions of the case.—Smith and Sibley, reviewing the case of the *Allanton*, say:

The *Allanton*, as appears from the argument of M. Sheftel, could not, on any fair construction, be considered as engaged in a contraband transaction, either when proceeding to Mororan or when leaving that port. M. Sheftel proceeded to observe that the majority of the authorities on international law held that a vessel which succeeded in conveying contraband to a hostile port and was captured, not while engaged in doing so, but subsequently on the return voyage, could not be held liable to confiscation. Such was the principle enunciated by Prof. Franz Despagnet, Prof. Franz von Liszt, and Prof. de Martens. Prof. de Martens, in his work, "International Law among Civilized Nations," positively asserted that "In order that the seizure of a neutral vessel for conveying contraband should be lawful, it

is necessary that the neutral vessel in question should be caught in *flagrante delicto*. Capture subsequent to the discharge of the unlawful cargo is not justifiable in law." In an even more striking sentence M. Sheftel observed that, according to Russian naval regulations in force, it was not permissible to seize a vessel for conveying contraband after she had discharged her cargo at the hostile port. The Russian regulations of March 27, 1900, regarding maritime prizes, declared: "Mercantile vessels of neutral nations are liable to be confiscated as prizes when captured in the act of conveying contraband to the enemy or to an enemy port." This clearly implies that, according to regulations, a vessel is not liable to be seized after discharge of her cargo at the hostile port. In the case of the *Imina*, Sir W. Scott said:

"Taking it, however, that they (the goods conveyed, ship timber) are of such a nature as to be liable to be considered contraband on a hostile destination, I cannot fix that character on them in the present voyage. The rule respecting contraband, as I have always understood it, is that the articles must be taken *in delicto* in the actual prosecution of the voyage to an enemy's port. Under the present understanding of the law of nations you cannot take the proceeds on the return voyage. * * * If the goods are not taken *in delicto*, and in the actual prosecution of such a voyage, the penalty is not generally held to attach."

It therefore follows that the Vladivostok prize court, in proceeding on the principle that a vessel is liable to be confiscated after she has conveyed contraband to a hostile port, decided contrary both to modern continental maritime law as enunciated by its greatest living exponent, to maritime law as enunciated a hundred years ago by Lord Stowell, and to Russian naval regulations of the present day. (International Law as interpreted during the Russo-Japanese War, Appendix F, p. 438.)

Decision of St. Petersburg court on appeal.—The supreme court at St. Petersburg, in the case of the *Allanton* on appeal, said:

The fact of the steamer *Allanton* having embarked a cargo at an enemy's port and from a Japanese company cannot serve as sufficient grounds for confiscation, inasmuch as, if the Japanese company be considered the owners of the cargo previous to its delivery to the holders of the bill of lading, it would yet not be liable to confiscation in virtue of Article II of the Maritime Prize Regulations, which provides that a neutral flag covers an enemy's cargo, provided that it is not contraband, whereas coal could be recognized as contraband only in such case if it were being conveyed to the enemy or to an enemy's port, which was not so

in the present case. The circumstances which, in the first instance, led to the surmise that the cargo of the steamer *Allanton* was destined for delivery to the enemy or to an enemy's port, are removed by virtue of the documents submitted at the trial of the case in the supreme prize court, and have no definite effect.

The delivery by the *Allanton* on her first voyage of a cargo of Cardiff coal to the Japanese port of Sasebo cannot serve as sufficient ground for the confiscation of the cargo subsequently shipped from Mororan to Singapore, as, in virtue of Article XI of the Prize Regulations, vessels of neutral nationality are liable to confiscation only in event of their being caught in the act of conveying contraband to the enemy or to an enemy's port, and by no means if they had on a previous occasion carried contraband to the enemy.

The route which was taken by the steamer *Allanton* from Mororan has been accepted as the shortest, as also the statement of Captain Motger to the effect that, in carrying coal not as contraband, but to a neutral port, he had no cause to fear detention of the vessel. Although, according to the decision of the Chief Hydrographic Department, the majority of vessels prefer the ocean route, owing to frequent fogs which occur in the Japanese Sea making it dangerous for navigation, but as it would appear from this decision that some vessels nevertheless take the route across the Japanese Sea, the route taken by the captain of the *Allanton* cannot serve as evidence against him. The discovery on board the vessel of the Japanese, Tatiki Miachara, if there had been any cause for suspicion in the beginning, in view of his possessing no documents establishing his identity, this suspicion is now removed, as on further investigation of the case it was not proved that he had acted as agent for the enemy's government, or had been intrusted with the delivery of the cargo of coal. The omission of entries in the official log book from the 15th of May, 1904, although an infringement of the regulations for keeping log books, is yet insufficient for disqualifying the evidence brought forward in regard to the steamer having been directed to Singapore, more especially as the entries in the other ship's log were properly made.

Admitting, on the foregoing grounds, that the steamer *Allanton* and her cargo were not liable to confiscation, the supreme prize court, guided by Article XXX of the Prize Regulations, imperially confirmed, then considered the question as to whether there were sufficient grounds for the detention of the steamer *Allanton* and her cargo, and whether the established conditions and rules were observed on such detention. The supreme court found that there were in every respect sufficient grounds for suspicion that her cargo was destined for the enemy or for the enemy's port.

The Admiralty court at St. Petersburg rendered a decision in the appeal of the *Allanton*, October 9/22, 1904:

1. The steamer *Allanton* and cargo, consisting of coal, to be considered as not subject to confiscation and to be set free.

2. The arrest of the steamer and cargo to be considered as having been made on sufficient ground.

3. The decision of the Vladivostok prize court in that part which relates to the confiscation of the vessel to be reversed. (U. S. Foreign Relations, 1905, p. 754.)

Opinion of United States court on carriage of contraband.—In the case of the sloop *Ralph* the court held the opinion that—

Upon the general question of contraband it may be said: The transportation of contraband articles to one of the belligerents is in itself an assault for the time being upon the other belligerent, in the fact that it may furnish them with the weapons of war and thereby increase the resources of their power as against their adversary; and for that reason, upon a broad ground of self-preservation incident to nations as well as individuals, the parties against whom the quasi assault is made have a right to defend themselves against the threatened blow by seizing the weapon before it reaches the possession of their enemy.

The seizure of contraband is not only punishment, but it is also prevention, and the paramount purpose of its exercise is prevention, just as in self-defense on the part of persons it is to protect; but when the act is accomplished, the damage suffered, and the danger passed, then the incidents of self-defense cease. The extent to which the right to seize may be carried upon other property belonging to the offending party depends upon a variety of circumstances and conditions. The effect of the seizure may be confined to the contraband articles alone, but may extend beyond those to other property of the guilty party by way of punishment incident to the wrong of carrying contraband.

Upon that general doctrine of the subject of contraband there is a qualification which was recognized by the courts at the time the capture of this ship was made. The effect of that qualification is that the outgoing voyage must be free from the taint of fraud and misrepresentation made or practiced by persons in charge of vessel upon the rights of belligerents. (39 U. S. Court of Claims Reports, 204.)

So early as 1806, Mr. Madison, Secretary of State, wrote that the rule "that a vessel on a return voyage is liable to

capture by the circumstances of her having on the outward voyage conveyed contraband articles to an enemy's port" is an interpolation in the law of nations. (7 Moore International Law Digest, p. 748.)

(b) *Conclusion as to liability for carriage of contraband.*—In Situation VI (b) a neutral merchant vessel is returning to a home port with the cargo received in exchange for a contraband cargo previously delivered to a belligerent port. The offense involved in the carriage of contraband is deposited with the contraband. If the neutral merchant vessel is not guilty of any offense on the return voyage the carriage of contraband on the outward voyage involves no penalty and the neutral merchant vessel should not be detained.

Liability of neutral vessel for service as collier.—Under ordinary circumstances coal in the time of war is conditional contraband and as such its liability to confiscation is determined by its destination. If destined for the enemy fleet it would without question be regarded as liable to capture until the cargo was deposited. The contraband cargo only would be liable to confiscation unless the owner of the vessel was also an owner in the cargo or unless the vessel had false papers or was involved in some manner other than as simple carrier of freight in the ordinary manner.

The neutral vessel under consideration in Situation VI (c) has been accompanying the fleet as collier and is returning to her home port after this service.

This act is not a simple act of carriage of contraband of which the guilt is deposited with the delivery of the contraband, but an act of service on the part of the neutral vessel. The service has been in aid of the belligerent as much as would be the service of one of the belligerent's own colliers, for the vessel has accompanied the fleet with the cargo of coal and is now returning from the service. Such an act involves participation in the actual war undertakings of State X. The neutral vessel which has thus accompanied a fleet could have no destination except such as that of the fleet and must be under the control

of the commander of the fleet and practically a part of the fleet. The belligerent has received more than the simple supply of coal. The collier has been at his service, accompanying the fleet, and giving a certainty of supply as demanded.

The collier has, on the other hand, received the protection of the fleet to the full extent. Its compensation has probably been certain and adequate. It has not merely furnished coal in the manner of an ordinary sale or even as an ordinary transaction in contraband. Up to the time of its return, i. e., till it had completed its service, it was practically under convoy of the belligerent fleet. The whole career of the vessel while engaged as a collier for the fleet was such as to identify the interests of the collier with those of the belligerent. The act was something more than the carriage of contraband. It was an act of unneutral service. It was an act of the nature of service "for a warlike purpose in aid of a foreign state" which under the British Foreign Enlistment Act of 1870 forfeits ship and equipment to the Government.

If the ship is guilty of an offense in thus being "employed in the military or naval service of any foreign state at war with any friendly state" (section 8, Act of 1870) which makes it liable to confiscation by its own government then the offense as concerns the belligerent against whom the vessel has served is certainly equal and an equal penalty would be justified, i. e., confiscation of the ship.

Further, the personnel of the collier has identified itself with the personnel of the belligerent and has practically entered the service of the belligerent. The personnel of the collier would therefore be liable to treatment of prisoners of war, as persons in the service of the enemy. The British and other neutrality laws make such service penal by municipal law so it would be no injustice to make the officers and crew liable to the laws of war.

It may be argued, however, that the vessel under consideration is returning from its service as collier accompanying the fleet and that it is not liable after the com-

pletion of the service with the fleet. The British Foreign Enlistment Act of 1870, section 8, is very definite as relates to such service and its penalties.

If any person within Her Majesty's dominions, without the license of Her Majesty, does any of the following acts, that is to say—

(3) Equips any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state; or

(4) Dispatches, or causes or allows to be dispatched, any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state;

Such person shall be deemed to have committed an offense against this act, and the following consequences shall ensue:

(1) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labor.

(2) The ship in respect of which such offense is committed, and her equipment, shall be forfeited to Her Majesty.

The interpretation clause, section 30, defines "naval service" and "equipping" as follows:

"Naval service" shall, as respects a person, include service as a marine, employment as a pilot in piloting or directing the course of a ship of war or other ship, when such ship of war or other ship is being used in any military or naval operation, and any employment whatever on board a ship of war, transport, store-ship, privateer, or ship under letters of marque; and as respects a ship include any user of a ship as a transport, storeship, privateer, or ship under letters of marque.

"Equipping" in relation to a ship shall include the furnishing a ship with any tackle, apparel, furniture, provisions, arms, munitions, or stores, or any other thing which is used in or about a ship for the purpose of fitting or adapting her for the sea or for naval service, and all words relating to equipping shall be construed accordingly.

"Ship and equipment" shall include a ship and everything in or belonging to a ship.

The neutral can not plead his nationality as an exemption for the consequences of an act which is in its nature hostile.

(c) *Conclusion as to treatment of neutral collier serving enemy fleet.*—The collier has therefore been engaged in unneutral service. This service is not to be confused with the carriage of contraband, which is a commercial undertaking and renders the goods liable to seizure, but the service of the collier is unlike in nature, in intent, and in penalty. As the neutral agent has identified himself with the belligerent, the United States is justified in treating him as a belligerent.

The regulations in regard to the liability for transport service for the enemy hold that the penalties extend to the ship and personnel. The liability for the breach of blockade remains till the completion of the return voyage. The liability of the collier under consideration should certainly not be considered as deposited with its cargo. If it were thus regarded a fleet of neutral colliers would be of greater advantage to a belligerent than a fleet of its own. The neutral colliers while bound for the fleet might be liable to confiscation, etc., as would the belligerent colliers, but after discharging the coal and leaving the fleet would not, as would the belligerent colliers, be liable to seizure. Therefore the neutral collier engaged in belligerent service could go on from port to port incurring liability only when loaded with coal and bound for the enemy. Such a contention would seem hardly reasonable when by domestic law such service is penalized.

In Situation Vi (c), therefore, when a war vessel of the United States overtakes a neutral collier returning to its home port after accompanying the fleet of its enemy, State X, the United States commander should not hesitate to seize the collier and send it with its crew to a prize court, or, if necessary, to treat it immediately as an enemy vessel might be treated under similar conditions.

Conclusion.—(a) The commander of the United States war vessel, unless certain that the neutral vessel breaking the blockade is exempt from seizure, should send the neutral vessel to the nearest prize court.

(b) The neutral merchant vessel on her return voyage is not liable to seizure because of carriage of contraband

on the outward voyage and should not be detained for such cause.

(c) If a war vessel of the United States overtakes a neutral vessel which has accompanied the enemy fleet as a collier before the neutral vessel has completed her voyage by return to the port of departure or to a home port, the commander of the United States war vessel should not hesitate to seize the collier and send it with its crew to a prize court, or, if necessary, to treat it immediately as an enemy vessel might be treated under similar conditions.